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

Seventy-Ninth Session
March 22, 2017

The Committee on Commerce and Labor was called to order by Chair Irene Bustamante Adams at 1:31 p.m. on Wednesday, March 22, 2017, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada, and to High Tech Center Room 110, Great Basin College, 1500 College Parkway, Elko, 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/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Irene Bustamante Adams, Chair
Assemblywoman Maggie Carlton, Vice Chair
Assemblyman Nelson Araujo
Assemblyman Chris Brooks
Assemblyman Skip Daly
Assemblyman Jason Frierson
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblyman Al Kramer
Assemblyman Jim Marchant
Assemblywoman Dina Neal
Assemblyman James Ohrenschall
Assemblywoman Jill Tolles

COMMITTEE MEMBERS ABSENT:

Assemblyman Paul Anderson (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman John C. Ellison, Assembly District No. 33
Senator Pete Goicoechea, Senate District No. 19
Assemblyman Elliot T. Anderson, Assembly District No. 15
Assemblyman Richard Carrillo, Assembly District No. 18
Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Wil Keane, Committee Counsel
Pamela Carter, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Peter D. Krueger, representing Spring Creek Association, Elko, Nevada
Eric Witkoski, Chief Deputy Attorney General, Consumer's Advocate, Bureau of Consumer Protection, Office of the Attorney General
Jessie Bahr, President, Spring Creek Association, Elko, Nevada
Greg Brorby, Private Citizen, Spring Creek, Nevada
David Curtiss, Private Citizen, Vallejo, California
Stephanie Licht, Private Citizen, Spring Creek, Nevada
Mike McFarlane, Director, Spring Creek Association, Elko, Nevada
Joseph Reynolds, Chairman, Public Utilities Commission of Nevada
Fred Voltz, Private Citizen, Carson City, Nevada
Laurie Crehan, Regional State Liaison, Office of the Deputy Assistant Secretary of Defense, United States Department of Defense
Ryan Gerchman, Acting Vice Chair, United Veterans Legislative Council
Jon L. Sasser, representing Washoe Legal Services; and Legal Aid Center of Southern Nevada
Sophia A. Romero, Staff Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada
George O. West III, Attorney, Consumer Attorneys Against Auto Fraud, Las Vegas, Nevada
Andy MacKay, Executive Director, Nevada Franchised Auto Dealers Association
Bryan Wachter, representing Retail Association of Nevada
Tyre Gray, representing Las Vegas Metro Chamber of Commerce; and The Chamber, Reno-Sparks-Northern Nevada
Brian Warren, State Government Affairs Director, Western Region, Biotechnology Innovation Organization
Rylan Hanks, Director, Global Regulatory and Research and Development Policy, Amgen
Eva Olech, President, Rheumatology Association of Nevada
Kim Bennett, Private Citizen, Las Vegas, Nevada
Barry Gold, Director of Government Relations, AARP
Tom McCoy, Nevada Government Relations Director, American Cancer Society Cancer Action Network
Ryan Beaman, representing Clark County Firefighters, Local 1908
Todd Ingelsbee, representing Professional Fire Fighters of Nevada
Catherine O'Mara, Executive Director, Nevada State Medical Association

Chair Bustamante Adams:
[The roll was taken.] We are going to refer two bills to the Assembly Committee on Commerce and Labor, Subcommittee on Energy.

Assembly Bill 342: Revises provisions relating to renewable energy. (BDR 58-1107)

Kelly Richard, Committee Policy Analyst:
Assembly Bill 342 is sponsored by Assemblyman Ohrenschall. This bill revises provisions relating to renewable energy.

Assembly Bill 405: Establishes certain protections for and ensures the rights of a person who uses renewable energy in this State. (BDR 52-959)

The second bill we are considering for referral is Assembly Bill 405 sponsored by Assemblyman Brooks. This bill establishes certain protections and ensures the rights of a person who uses renewable energy in Nevada.

Chair Bustamante Adams:
If there are no objections, I will refer Assembly Bill 342 and Assembly Bill 405 to the Subcommittee on Energy. [There were none.]

We have four bills today. Assembly Bill 109 will be first, Assembly Bill 282 will be second, Assembly Bill 262 will be third, and Assembly Bill 245 will be last. We will open the hearing on A.B. 109 and call Assemblyman Ellison to the table.

Assembly Bill 109: Revises provisions relating to public utilities. (BDR 58-622)

Assemblyman John C. Ellison, Assembly District No. 33:
I represent Assembly District No. 33, which includes Elko, Ely, and Eureka, all the way down to Caliente. I am here today to introduce Assembly Bill 109 for your consideration. Today Pete Krueger is with me, and I am waiting on Senator Goicoechea, who is cosponsor of the bill. Currently under Nevada law, the Public Utilities Commission of Nevada must hold at least one general consumer session in both Clark and Washoe Counties, the counties with the largest population and second largest population. General consumer sessions are free and open to the public, and are meant to get input and answer questions that residents may have about the process. Assembly Bill 109 gives residents of Elko County and rural communities the same opportunities to air their concerns and issues to the Public Utilities Commission of Nevada (PUCN). I have heard from my constituents on various issues and problems that relate to their utilities. Yet they do not have a way to bring their concerns to the public forum. I would like to go through Proposed Amendment 3069 to the bill (Exhibit C).

Assembly Bill 109 requires the Public Utilities Commission of Nevada to conduct a general consumer session in Elko County every year in order to get the community involved in issues concerning certain public utilities. Under current law those sessions are only required

in Clark and Washoe Counties. This bill also requires the Consumer's Advocate of the Bureau of Consumer Protection, Office of the Attorney General, to intervene in certain proceedings relating to water, sewer, and disposable utilities. This would only be required if the utility has an annual gross operating revenue of $2 million or more and has filed a general rate application with the Commission.

Peter D. Krueger, representing Spring Creek Association, Elko, Nevada:
Spring Creek Association is a group of approximately 5,000 homeowners in Spring Creek, which is a beautiful community south of Elko. If you have never been there, you need to go and see the Lamoille Spring Creek area. As Assemblyman Ellison highlighted, Spring Creek Utilities is a private utility. For most of us, our water utility could be Truckee Meadows Water Authority in the north and Southern Nevada Water Authority in the south, but this is a private utility that owns and operates all of the supply lines, storage, and purveying of water to the Spring Creek residents. As Assemblyman Ellison so eloquently said from the mock-up, this bill hopes to bring transparency to the process.

You will hear from four members and actual rate payers from Spring Creek and the Spring Creek Association who will describe to this Committee the difficulty and the problems they have had without these beginning steps. You will hear that, as rate payers, they believe this is a first step in this idea of transparency and getting the water utility to address concerns. You will hear the term "death spiral." As rates go up, and through conservation, rate payers are conserving water to keep their bills down but also do the right thing. And yet their rates keep going up and up and up. The homeowners and rate payers will speak specifically about that. This is a water system that is old. It was installed in the 1970s, and you know that federal and state law required a lot of upgrades over the years for safety and water quality. The current utility recently changed their name. They were Utilities Inc., and now they are Great Basin Water Co. They purchased this system sometime in 2000. That is the overview.

Senator Pete Goicoechea, Senate District No. 19:
What we hope to accomplish with this bill is fairly simple. First and foremost, we need to have engagement between the utility company and the consumer base. That has not been happening. They have been struggling. They have town hall meetings but are not getting representation from the utility at those meetings. Most of the interaction is going on between the utility and the Public Utilities Commission, so the consumer base is being left out. This bill does require a general consumer session, as is presently offered in Washoe and Clark Counties, to be held in Elko County, the fifth-largest county in Nevada. We are proposing three general consumer sessions be held annually. We have spoken to the Bureau of Consumer Protection, and they have their mill tax, which will not be a huge fiscal issue, but I assume they will come forward to address it. That is all we are really doing.

Clark and Washoe Counties presently have general consumer sessions. We are requesting that the fifth largest county, Elko County, be included so we can get some interaction between the consumer base, the utility company, and the Consumer's Advocate. This is what we hope to accomplish.

Mr. Krueger spoke to a death spiral; I am afraid that is where we are. The rates are going to continue to go up, water use is going to go down, and ultimately we may hit a point where the rate payer—the consumer base—cannot afford those rates. We understand we are going to have to prepare and move forward, and it is going to significantly change whether we end up being a public utility through a general improvement district in Elko County or however they are going to address it. But in the short term, we have to fix this.

The system is in bad shape. The rate payers cannot afford to fix it because public utilities think rate-based water now goes to the Public Utilities Commission and they can clearly justify a rate increase. The needs are there. The system is old. They get a rate increase. They pass it on to the consumer base. The consumer answer is we will use less water. The yards are dying. Again, as Mr. Krueger spoke, Spring Creek is the gateway to Lamoille. Most of you have been to Lamoille and can appreciate its beauty. The people there cannot even maintain their lawns because they cannot afford the water.

Assemblywoman Carlton:
From what I am hearing, this system is basically working; it is just that the prices are getting out of control. All of the wheels are turning, the rates are being done, they can legitimize their rates, it is just that the prices are getting higher and higher. This is a for-profit water utility. Is this correct?

Senator Goicoechea:
Yes, that is correct.

Assemblywoman Carlton:
The basic request is they have a consumer meeting in your area so people do not have to come to Carson City for the meeting. Is that correct?

Senator Goicoechea:
Technically, they do not have standing in place if it is a Public Utilities Commission hearing. The Consumer's Advocate is supposed to represent them and does at those hearings. This is really an opportunity for the consumer base to have standing in a Public Utilities Commission hearing, unless you actually petition and want to spend the money to hire an attorney. What this bill is trying to do is give the majority of those consumers the opportunity to voice their concerns to the Consumer's Advocate, and then the Consumer's Advocate will intervene for them with the Public Utilities Commission.

Assemblywoman Carlton:
The Consumer's Advocate is paid out of the mill tax and that does go on this utility. The mill tax is applied to this utility.

Senator Goicoechea:
The mill tax is presently in the Consumer's Advocate's budget, and I think he is here or in Las Vegas.

Assemblywoman Carlton:
But I am saying that on this utility bill that mill tax is paid.

Senator Goicoechea:
Yes.

Assemblywoman Carlton:
So it is incorporated into the bill.

Senator Goicoechea:
I believe so, but I do not want to misspeak.

Assemblywoman Carlton:
It seems to me the issue is you have a for-profit company selling water on an old system.

Senator Goicoechea:
Yes. We have seen some numbers, and again I really do not want to speak to those, but they could be as high as $40 million to bring the system up to date. You do the math: 5,000 users, $40 million; it is going to get very expensive. I think we are setting the foundation for a transition that is going to have to occur. In the interim, while that happens, I think we will need the Consumer's Advocate, the consumer base, the utility company, and the Public Utilities Commission to be engaged.

Assemblywoman Carlton:
Have you invited the Consumer's Advocate to come out to Elko to speak to the people? If so, did he decline?

Senator Goicoechea:
Yes, we have had numerous conversations with Mr. Witkoski, and I think he will be here to testify in support of this bill. The Public Utilities Commission has a hearing on April 19, and at least it is moving. It has been the real connection between the consumer base, the utility, and the Public Utilities Commission that could be facilitated by the Consumer's Advocate we need, and that is what this bill is asking for.

Assemblywoman Neal:
I was reading the letter from Davis Graham & Stubbs, LLP (Exhibit D), and they were saying in section 2, where you are removing the discretionary right to intervene, there are some costs associated with the change you are seeking that may land on the plate of the rate payer. I am assuming we are trying to avoid that, but do you know what those costs are?

Pete Krueger:
On the videoconference link from Las Vegas will be Mr. Witkoski, the Consumer's Advocate of the Bureau of Consumer Protection in the Office of the Attorney General, who can properly address that issue.

Assemblyman Ellison:
We have been having a problem with short-term financing when they go in for a rate increase. Instead of extending it out over a long period, they are making it really short. They are trying to do their funding in a short time, like two years, which has taken the bills from here to here [hands positioned vertically, two feet apart]. What we are trying to do is get them to consider extending them out over long periods of time versus short-term financing. It just makes it rough on the people who live in that district.

Assemblyman Brooks:
In the consumer session you are requesting be added to Elko County, you could be discussing other issues that affect the residents, not just water. You could talk about power issues or any other issues before the Public Utilities Commission. Is that correct?

Senator Goicoechea:
I believe the language in the bill says: "In addition to the case-specific consumer sessions required by subsection 1, the Commission shall . . . conduct a least one general consumer session . . . ." Yes, I assume they probably could at this point. Again, this is the issue we are attempting to address.

Assemblyman Brooks:
Going back to what Assemblywoman Carlton was talking about, the costs of some of this are assessed through the mill tax on utilities that provide service. I do not think it would all just rest on this water utility. You have Nevada Energy in parts of Elko County, and I think there are probably ways that some of those costs can be spread around and other issues could be discussed at the same time.

Senator Goicoechea:
I was only speaking about the intent of the bill. That is where we are headed.

Assemblywoman Jauregui:
Currently, the general consumer sessions that are held annually are only held in Clark and Washoe Counties, the first and second largest counties. Carson City is the third-largest county. When the general consumer session is held in Washoe County, do they get to participate in it too, to discuss any utility-related questions that concern consumers?

Senator Goicoechea:
Your colleague to your right [Assemblyman Kramer] could probably better answer that. I would assume that in Carson City, since the Public Utilities Commission is here and the Consumer's Advocate has an office here, it is probably a lot easier to access without driving 330 miles to Elko. The sheer distance to Elko County is a huge issue, even if there is a rate case in front of the Public Utilities Commission. You cannot ask a thousand people to drive to Carson City to attend as public comment in a Public Utilities Commission in a rate case. Technically you would not have standing unless you actually petitioned that case.

I do not think it is going to be that costly. Mr. Witkoski can address that, and again, I think it is in fairness to the consumer base. They are paying for it on their utility bills, and are just looking for a service and trying to reach resolution to a real problem.

We have a system that is 50 years old; it was put in by a private company—a subdivision developer—and the system is worn out. I am sympathetic to Utilities Inc. and Great Basin Water Company, but that is not going to solve the problem in the end. We are going to have to work together to get this worked out, and I think that is the Consumer's Advocate's position.

Assemblyman Ellison:
It is five or five and one-half hours from Spring Creek to Carson City, and if you have 30 people travel here, it makes it pretty rough. If we can have a session once per year there, at least Spring Creek residents can be there to voice their opinion at the Public Utilities Commission and the Consumer's Advocate office.

Assemblywoman Jauregui:
I was asking because for the counties surrounding Clark and Washoe Counties, it might be easier for them to access the consumer sessions, but Elko County cannot because they are so far away. That was where my question was going. I was concerned that the cities who do not get these sessions can still access these sessions because they are so geographically close and Elko is not.

Assemblyman Daly:
The next step Senator Goicoechea was just talking about is that you are going to have a general consumer session so people can have an opportunity to air their grievances. If I understand it correctly, and maybe you can shed a little light on it, the water company is for-profit, so they are selling the water, and they are following all of the rules that go along with it under the Public Utilities Commission with the rate changes, and it has been justified. I am not sure how this solves the problem other than people now have a venue to complain, but it is not going to change any of the structures on the ground. Is there not something in place that requires them to maintain a minimum level of service? I know we had something like that in the Assembly Committee on Natural Resources, Agriculture and Mining a couple of sessions ago—what they are required to do, and how they are paying for some of it.

Senator Goicoechea:
I think the jury is still out on whether they are following all of the rules and complying with all of it. I know the Public Utilities Commission is conducting a field hearing in April. I know it is going to have to work better or the system will not be solvent. Clearly, as a private utility, they are not eligible for grants in the same manner they would be if they were public or a public utility or a formed general improvement district. I believe, in the long run, that is where we are headed. Elko County and Spring Creek are probably going to have to create some type of general improvement district or a public water system. If we are talking $40 million worth of improvements spread over 5,000 people, I would not want to live there.

Assemblyman Daly:
Theoretically, if they are not following the rules, the Public Utilities Commission could say, do this quicker. That might exacerbate the problem because you will spend even more money and have to spend it faster. Is Elko a public or private water system? Are you possibly talking about some type of merger and maybe going to a public system? I do not know what the answer is because I am not saying this is going to fix the dollar problem.

Senator Goicoechea:
The City of Elko is an incorporated city that has its own water system. Again, we are not talking about merging with them or encumbering that population base as we have a 25-mile separation between them. I think it would have to be a stand-alone. I do not believe the Elko County Commissioners are looking forward to this. It is going to be a costly venture, but again, something has to give. I am just a state senator representing them, and the answers are very easy for me. The Board of County Commissioners and those people that are there are going to have to come forward and come up with some solutions. In the interim, this continued rate crisis is not the answer. There are some issues and, again, that is what the Consumer's Advocate is positioned to do—to help resolve and work through those issues as well as intervene and bring those issues before the Public Utilities Commission.

Pete Krueger:
Assemblyman Daly, I think it is important to keep in mind there are two parts of this bill. One piece asks the Public Utilities Commission to conduct at least one public general consumer session in Elko and bring their experts. I do not see it as an opportunity to whine or complain; it is to get a better understanding. You will hear from the people with us from Spring Creek. The problem has been not only their distance, but also not having the resources to hire an attorney to intervene. The second part is, this bill says, as Senator Goicoechea indicated, the Bureau of Consumer Protection shall intervene, not in every case but upon request. That is another reason for the public session. You will hear from the Bureau of Consumer Protection in support of the bill.

Assemblywoman Tolles:
Have you heard from any of the other counties? Are they interested in the same process of having the general consumer sessions, particularly the rural counties that do not have access to these meetings?

Senator Goicoechea:
No, I have not. To be honest with you, we are trying to put out one fire at a time. Most of them are smaller, private utility companies. We have Elko and clearly Pahrump, but Pahrump has four other providers as well. Again, we are trying to put out one fire at a time, and this is a big one.

Assemblyman Brooks:
It is my understanding that in a general consumer session, any and all issues under the jurisdiction of the Commission can be addressed. You have 2 million people in southern Nevada in close proximity to a general consumer session. You have another 500,000 to 600,000 people in close proximity to a general consumer session in Washoe County. What population are we looking at, aside from the people utilizing the Spring Creek water utility, in close proximity to Elko County?

Senator Goicoechea:
My district has 135,000 people in it but, unfortunately, my district extends south to Las Vegas. In the immediate area between Wendover, Wells, Carlin, and White Pine County, I would assume we could reach out to a population base of approximately 60,000 people.

Assemblyman Brooks:
I think you are going to have Southwest Gas Company soon, too, and you have NV Energy out there in some of those areas. You will have this water utility. It seems like there could be some other issues that could be discussed in a general consumer session.

Senator Goicoechea:
I guess if those arose that would be fine, but Southwest Gas only gets to Elko, it does not even get to Spring Creek. Wells, Wendover, and Jackpot are with NV Energy. Once you get east of Elko, you have Wells Rural Electric and Mount Wheeler Power to the south. That is predominantly coming back this way. Water is the huge issue right there in Spring Creek. Spring Creek does have Sierra Pacific Power Company.

Assemblyman Ellison:
We have been trying to have hearings and get everyone together, but some of them have been denied or have not shown up. I think this is the only way we have left to address this concern and this issue.

Assemblyman Hansen:
This bill boils down to you having a third-party outside arbiter coming in, nonbinding, trying to help resolve the dispute. That is really what this is. Is this correct?

Chair Bustamante Adams:
We would like to hear from the Consumer's Advocate in Las Vegas. I know that we have individuals in Elko. This bill is about the Public Utilities Commission and the Consumer's Advocate. Water legislation is in Natural Resources. We will stick to the bill. We want to ensure people understand that. In Las Vegas we have the Consumer's Advocate, and we have several questions.

Eric Witkoski, Chief Deputy Attorney General, Consumer's Advocate, Bureau of Consumer Protection, Office of the Attorney General:
Yes, we can hear you.

Chair Bustamante Adams:
Can you answer some of the questions, especially about the cost associated if we add a general consumer session in Elko County.

Eric Witkoski:
The costs on a consumer session would be manageable, other than travel costs out there. I would note that we initially put a fiscal note on this bill (Exhibit E), not that we did not have the funds, but we may tap reserves during a biennium to do the case. That is not really driven by Spring Creek; it is just the nature of our work. It can fluctuate because, for instance, Nevada Power will have a rate case this year, Southwest Gas will next year, we already have a water case and another integrated resource plan case going. We have the reserves to handle that but I may not quite have the authority if I have a big rush of cases during a fiscal year. In discussions with Senator Goicoechea, I believe I can manage that through a transfer from my reserve and just go into the Interim Finance Committee (IFC). We think this is manageable. After looking at our budget and the mill assessment, we believe we can manage this, so we would withdraw the fiscal note on it after we have a full understanding.

Regarding a general consumer session in Elko, we believe that is helpful. You do it once per year; you go out and you hear from consumers. That was a product that came out of the energy crisis in 2000-2001 after we had wattage increases and we tried to manage that energy crisis. We ended up doing monthly increases, which was probably a bad idea and it really upset consumers. I think the Legislature in 2001 mandated that the Commission and our office participate in general consumer sessions that did involve all utilities. It provides an avenue for the rate payers to come to the Commission and air any concerns they have. I think this is a spinoff of that. I think they had some concerns. It is a big save—he said it is 300 miles to Carson City and sometimes they may feel like they are not getting the attention 300 miles from Carson City. I think this is a good bill. We believe consumers are asking for us to participate, and we can accommodate that. I think we can manage it within our budget and our reserves.

Assemblywoman Carlton:
Am I to understand that we are not going out there and having these conversations right now?

Eric Witkoski:
We do for general rate cases. They usually have a consumer session, and I believe it is usually in Elko. The people that I have working these cases have since retired so I am having to reshuffle a little bit. Normally, we have had quite a bit of conversations with the people out there and through the homeowners' association to understand what their concerns are.

Assemblywoman Carlton:
We are going out there now?

Eric Witkoski:
Yes. I think having a formal general consumer session is what Senator Goicoechea is going after. A commissioner goes out there or a hearing officer goes out there, there is a record of some of those complaints, and it does cause, at least once per year, people to go out there. As you know, the energy and utility business is very busy, so having that yearly meeting, it does ensure we are hearing from the consumers out there.

Assemblywoman Carlton:
If I heard that correctly, you are withdrawing the fiscal note. But there still will be a fiscal impact with this because you are not doing it now; you are going to do it. Are you are saying on the record that this can be absorbed?

Eric Witkoski:
With a caveat. What happens is maybe the last two years I would have a spend less, so my base here would be I spent less. As you know, when they build the budget they will pick your base year. By next year I may have a Nevada Power case, a Southwest Gas case, and a couple of water cases, so my spending may go up. I have the reserves, but I do not have the authority, and if I get in that situation I would come back to the IFC and ask to move some funds from reserve to my expert witness account.

Assemblywoman Carlton:
If you can, share with me what you think those dollars might be so that we can build it in. I hate waiting six to eight months after we leave session then find out we need to go find some money for something after a fiscal note has been removed. A fiscal note never goes away. It will stay attached to this bill; it will just be designated that it is no longer in effect. I would like to have some numbers please, because I do not want to make a decision and then find out later there were other facts out there. If you could share those numbers with me, that would be great.

Chair Bustamante Adams:
Are there any other questions for the Consumer's Advocate? [There were none.] We are going to take testimony in support of Assembly Bill 109, which means you like the bill as is and do not want to make any changes. Our limit is three minutes per person. I would like to start with the Elko individuals because we will lose our feed, and I want to ensure we get their testimony on the record. This is not about water policy—that is over in Natural Resources—but if you do have testimony specifically about this bill, I will take it. We do not have a staff member up there so you need to spell your name for the record. To make your testimony a part of the record, I will need your name and contact information so we can ensure we get it right. How many people do I have in Elko in support?

Jessie Bahr, President, Spring Creek Association, Elko Nevada:
We have some people in the room who are listening to the testimony, but we have two of us who would like to give our comments in support of the bill.

Chair Bustamante Adams:
Thank you. I am just trying to manage my time. Please proceed.

Jessie Bahr:
We are one of the largest homeowners associations (HOAs) in the country. We have about 5,400 properties, which is not typical of an HOA. We are actually looking at becoming a town in the future. We put together a volunteer water committee that has been working on these issues for many years. This issue drives down to what Senator Goicoechea was saying: We conserve water, the rates continue to go up.

If you look at the documents I have provided (Exhibit F)—the one that notes Spring Creek increases—over the past couple of years there have been 250 percent increases. If you compare them to the additional documents, you will see, compared to other private water companies in Nevada, we are significantly higher. When we talk about the "death spiral," it is going to continue to go up and continue to go up. We are the little guys out here asking for help, and this is just one step in the hundreds of steps we foresee that will need to happen to fix this water system in Spring Creek.

We understand that water is a valuable resource. We understand that systems are old across the country, but we are just asking our local legislators to help us with one step, by requiring that those people do come out once each year. I know there are budget issues that have been noted in the past, but we would hope there is a voice of the people that does get heard, and that is why we ask that this one portion does go through. We are really in support of A.B. 109 and trying to make some movement regarding water.

I would like to turn it over to David Curtiss. He is another community member. He owns property in Spring Creek, and he is on our water committee. I believe he is in Carson City with you. If the Chair would like to give it over to Greg instead since he is in Elko, we can do that as well.

Greg Brorby, Private Citizen, Spring Creek, Nevada:
I am speaking in support of the bill that will require the Bureau of Consumer Protection to intervene on behalf of the homeowners. To clarify, I would like to talk about the role of the various entities in a rate case proceeding. The role of the Public Utilities Commission of Nevada (PUCN) is essentially the hearing officer, the one who will eventually decide the matters that are presented to them and which presentation they think best fits the case. The role of the Commission staff is to balance the interests of the consumers and the company that filed the rate case. They are trying to find that balance between the two parties. The role of the Bureau of Consumer Protection is to be the consumer advocate for the residents and small business owners. Our only representation is from the Bureau of Consumer Protection's office. If they choose for whatever reason to not intervene, the homeowners and the small business owners have no voice to present it.

Another aspect of that are businesses, typically the larger ones, have the right to file for petition of leave to intervene, and the Commission can choose to grant or deny that. That is typically only granted to the larger customers, and there is really only one large water customer in our area—that would be the golf course within the Spring Creek Association.

There is very little opportunity for interveners to present their case and testimony in a rate case. The small business owners and homeowners do have the opportunity to present their case as well as public comment in a general consumer session. None of that is considered testimony that the Commission can use in making their decision. For example, in the last rate case in Spring Creek, there were many volunteers that provided expert testimony that were engineers, lawyers, and other experts, but because they did not have intervener status, their testimony could not be considered in the proceedings. I believe the Bureau of Consumer Protection's office intervened in that case, which again becomes our only voice in the rate case hearings. Under the current rules, it is very critical in my opinion that the Bureau of Consumer Protection provide that voice.

Chair Bustamante Adams:
We will go to Mr. Curtiss in Las Vegas.

David Curtiss, Private Citizen, Vallejo California:
I am here to testify in support of A.B. 109. In 2005 we bought several pieces of property in Spring Creek, including two identical fourplexes. We have been coming to the area for many years because of family connections in Elko, and decided to invest. Water services are provided by the Great Basin Water Co., formerly known as Spring Creek Utilities, where parent company, Corix, is based in Canada and has many subsidiaries all over the country. Over the past year, as stated by Jessie Bahr, the rates have gone up well over 200 percent, and the attitude of the company seems remarkably unresponsive to our concerns.

My purpose in this testimony is several-fold. The legislation is the first step and urges transparency; in other words, the company also participates in a transparent manner in this effort. We feel A.B. 109 does not go far enough. First, we pay among the highest rates for water and sewage in Nevada. Some 12 miles away, our family pays $80 per month for service on a large three-bedroom home with a lawn. For each Spring Creek fourplex, in 2015 we averaged well over $430 per month. We do not have accurate 2016 records because of billing problems that were created by the company. Each year we reduce outside watering in Spring Creek, and I estimate we probably eliminated approximately 70 percent of it. Yet each year the Great Basin Water Co. comes to the Public Utilities Commission and our rates continue to go up despite our reduced utilization.

Secondly, the PUCN, to my knowledge, has made only one visit to the area in the years I have owned property. The consumer affairs division has only recently taken some notice of the rates, and all of that occurred I think because of the mobilization of the Spring Creek community and the responsiveness of the local political leaders. The bill does two things: it mandates the PUCN to actually visit and listen, and the bill gives the Bureau of Consumer Protection Division the power to obtain relative material to ascertain the validity

of the rate increase proposals. It reaffirms, perhaps, what should have been happening already. However, this bill only reflects some of the initial goals of the effort to get legislative relief from the ongoing and very profit-focused efforts of Great Basin Water Co.'s parent company relative to Spring Creek. It does not go far enough.

Our initial desire and what we would like to see considered in the future is: We want Great Basin Water Co. to be mandated to meet and negotiate rate increases with the Spring Creek Association before coming to the Public Utilities Commission. If agreement cannot be reached, at least the effort would have been there and a collaborative attitude may have developed. We are a captive group. We are subject to the whims of what is presented. If there was competition we would never do business with this company; we would flock to the competitor.

Chair Bustamante Adams:
If we could bring your comments to a close, I will take your written testimony (Exhibit G).

David Curtiss:
Nevada has given a monopoly to this company that smacks of the same high-handedness that led Teddy Roosevelt to generate antitrust legislation. Last year Great Basin Water Co. had a major issue in that bills were erroneously tabulated. For example, one of my fourplexes had a prior bill for $100; for the same water consumption, the bill was later over $1,000. The company started a remediation process. My concern is that the remediation process will be charged back to the consumers rather than to the owners of the company where the responsibility belongs.

The bill does not go far enough in another area. If the company loses a court case, cost and judgment may be against the company, which can then turn around and raise rates saying they have increased legal costs. Great Basin Water Co. is assured an 8 to 10 percent return. Twelve miles away, Elko does not need that return. I would suggest an alternative system be in place that would be linked to efficiency and productivity. First, the rate would be tied to performance. How that would be measured would be up to the Public Utilities Commission. Consumer satisfaction would also be an element in deciding the rate of return. The other is the cost of money would be indexed.

In conclusion, I know that the water rates in Spring Creek will go up, our system is old and in need of help. I think the rate of increase is more than what we can bear, especially for me as an investor. Finally, my background is health care, yet over the last few years I have had to learn about arsenic, the depth of arsenic wells, piping, and so on. I just want a system where our tenants can turn on the water and I do not have to worry about whether or not there will be a second shower that day.

I have also gotten a civics lesson. If I were to draft a bill it would include facilitating the eminent domain process to facilitate what has happened in South Carolina as well as California. In my state, three communities have decided enough is enough and initiated the process to take over private water companies. The courts have sided with

the communities in these cases, and votes to fund eminent domain have exceeded 70 percent whenever it was sent to the ballot. In South Carolina, the parent company, Corix, got tired of an assertive community and responsive Public Utilities Commission and sold out to the community for millions less than what they initially suggested. I urge passage of A.B. 109 to start the process of resolving a relationship with Great Basin Water Co.

Chair Bustamante Adams:
How many people do I have in support of A.B. 109? [There was one.] Is there anyone else in Elko? [There was one.] I actually have to switch to opposition, so I will take your written testimony. I am going to hear the person in Elko.

Jessie Bahr:
She is in support. We have one more person there, Mike McFarlane, in support, and he is our last one.

Chair Bustamante Adams:
Can you tell me the name of the girl in support in Elko? Just her name.

Stephanie Licht, Private Citizen, Spring Creek, Nevada:
I am in support of A.B. 109.

Mike McFarlane, Director, Spring Creek Association, Elko, Nevada:
I am a director on the Spring Creek Board of Directors. I have been there for eight years. I am one of seven directors here to give our final presentation. This has been a central issue for the entire eight years I have been there. The bill we are presenting to you is very much trimmed down from the original we were proposing. We are offering this as a first step to see if we can get some relief. There is much frustration and distrust, the communication is very poor, and we think much of this is intentional on the part of the utility company. There are many examples of this, and I am going to run through some quickly.

They drilled a well one time outside of Spring Creek in anticipation of a future development in another place, and they tried to put that well into the rate case to add to the Spring Creek rate payers. Their idea of how to charge that off was to give it to the existing rate payers rather than the future rate payers who may be there. For the arsenic treatment that was set up, they waited until the last minute when they were under an Environmental Protection Agency (EPA) deadline to devise a system that experts since then have said was probably neither the cheapest nor the best they could have put in. It is there and it works. But again, it was a delayed response and showed little consideration for the rate payers. You have heard much about the death spiral. This is not an exaggeration; I am going to give you a specific example. After the first rate increase which nearly doubled the rates, the golf course in Spring Creek underwent extreme conservation methods. The next year, the water bill was down by $100,000. At the next rate increase, the rates were increased at a level where we went in and did the projection, and the rates would have increased the bill $100,000.

The rate increase exactly met the decrease we had achieved through water conservation. That is a clear example of the death spiral. If we are going to continue to conserve even more to see if we cannot spend more, and we can see already that will result in a loss of revenue, and they will come back for another rate increase. This is not an exaggeration.

This also occurs with the homeowners' property values. The value of the fire prevention is an issue because there is a lack of greenery around homes that we are not meeting as recommended. They have even made an intentional delay of one of our projects. There was a water line that was not known, we were trying to make a Spring Creek structure, we needed their permission—they did not even know it was there—so we requested their permission, and we actually have documentation that they intentionally delayed approving that out of retribution for our opposing their rates. My emphasis here is there is extreme frustration. This is not a frivolous matter. We consider this a minimum bill as only one step forward; we think there are many that could be put in. Thank you for your time, and we urge you to support A.B. 109.

Joseph Reynolds, Chairman, Public Utilities Commission of Nevada:
I would like to testify in support of A.B. 109. It is a straightforward bill, it is common sense, and we would be more than happy to hold a general consumer session out in Elko.

Chair Bustamante Adams:
We are going to opposition for A.B. 109. Is there anyone in Elko who is opposed to A.B. 109? [There was no one.] Is there anyone in Carson City opposing this bill? [There was no one.] Is there anyone in Las Vegas opposing this bill? [There was no one.] Okay Mr. Voltz, we will take your testimony.

Fred Voltz, Private Citizen, Carson City, Nevada:
I support the general objective of this bill, but I think the details could be improved. First, videoconferencing would seem to be the way to go here. That is how we are communicating with Elko for this meeting. Unfortunately, the current consumer sessions are infrequent enough—they are just once per year—they should be at least twice per year given all of the issues about energy and utilities that are occurring in Nevada. More important, it is critical that different parts of the state hear what the issues are in the other parts of the state. That is why having one consolidated general consumer session video-conferenced, and it might be over two days, would be a much better way to go than having a physical presence necessary. In the consumer sessions there is only the chair attending; the other two commissioners do not attend. They do not get to hear what is on the minds of the consumers. Additionally during those consumer sessions, many times there is zero dialogue with the PUCN. People ask questions of the commissioners, they have concerns. The Public Utilities Commissioner who is presiding, typically the chair, does not respond, and the staff does not respond in all cases. That is a problem—just to be heard but to not have any resolution, and that needs to change in my opinion.

In the past, Elko has had attendance at the Wildlife Commission, periodically when they have extended videoconferencing to Elko, and no one has shown up on many occasions. Be aware of the fact that just because you have a meeting does not mean that someone will appear and go to the trouble and expense of sending someone out there in person. If they attend by videoconference, it would seem to be much better.

The other issue that is concerning in hearing some of the testimony in support of the bill is that it seems as though the people who are participating in the Spring Creek water system have some sort of an expectation that someone is going to come to their rescue to pay the $40 million to upgrade the system. Unless the State General Fund is flush and has the extra funds to do that, I do not see how there is going to be a white knight here to pay the cost of upgrading that system. It really needs to fall to the actual users of the system, the property owners. Perhaps they will have to take out a long-term bond to do that in league with the private water company. There are many ways that can be solved. It is troubling that the water company does not seem to be dealing in a forthright manner with the customers there, but at the same time it is important to note that the Public Utilities Commission has had oversight of their rate case and has apparently decided that the charges they are making and the increases are justified on some basis or another.

Chair Bustamante Adams:
Thank you for your testimony. Are there any others in the neutral position? [There were none.] Assemblyman Ellison, Senator Goicoechea, would you like to make any closing comments?

Assemblyman Ellison:
I think if we had the hearing in Elko, they would be surprised at the number of people who would show up. They would have to actually book the high school or the school in Spring Creek to hold the people who would show up for this meeting because the concerns have been going on for many years. I appreciate your hearing the bill, and I think there is much to take into consideration to pass A.B. 109.

Senator Goicoechea:
Thank you for hearing this fairly simple bill. I think the bill makes sense, and those people really need some help.

Chair Bustamante Adams:
We are going to close the hearing on Assembly Bill 109. We will open the hearing on Assembly Bill 282 and call Assemblyman Elliot T. Anderson to the table.

Assembly Bill 282: Revises provisions governing benefits and protections for service members. (BDR 52-625)

Assemblyman Elliot T. Anderson, Assembly District No. 15:
I am here to present Assembly Bill 282, which revises provisions governing benefits and protections for service members. This act stands on the shoulders of the Servicemembers Civil Relief Act of 2003 (SCRA), which is a federal law. The SCRA has evolved throughout the modern era of warfare. Congress enacted the act to provide for, strengthen, and expedite the national defense by protecting service members, thereby enabling them to devote their entire energy to the defense needs of the nation That act is codified federally at 50 U.S.C. §§ 3901-4043 and previously at 50 U.S.C. §§ 501-597b. In general, the act operates by temporarily suspending judicial and administrative proceedings and transactions that may adversely affect the civil rights of service members during their military service. Starting in World War I, Congress began to provide service members protections from civil proceedings. Congress reauthorized and amended those protections at various times including, but not limited to, World War II and shortly after the start of the Afghanistan and Iraq wars.

The act applies across the United States, both in federal and state courts. It generally protects active duty service members, reservists, and National Guard service members called up for active service under federal orders. It starts generally when people enter military service and ends on the date they are released from military service. It has been amended as late as 2010 through the Veterans' Benefits Act of 2010. Substantively, the SCRA provides many layers of protection to service members. These protections include relief from default judgments, evictions, foreclosures, tax collection, auto leases, cell phones, and other areas. This is the background for your information about how this began throughout our history. I would like to go through to A.B. 282 section by section.

Section 3 defines what a "service member" is. Section 4 defines "written notice" to make it clear what sort of notice will be required under the act. Section 5 is the heart of the act and establishes the protection under which "A service member may, upon written notice to the service provider, terminate or suspend a contract for a service described . . . " in the act. It allows people that right when there is a permanent change of station or deployment of not less than 30 days. That is an important provision because there are times when people are out for a week doing field training. This seeks to apply to situations when there is a major relocation or event that a service member needs to be focused on. In terms of the contracts that can be suspended or terminated, those would include Internet service, membership in a health club, and a video service. Those are defined in subsection 6, if you are interested in exactly what it would apply to.

In order to activate the provisions under subsection 3 of section 5, "The service member must provide written proof to the service provider of the official military service orders showing that the service member has been relocated or deployed, as described in subsection 1 . . . ," which is what I just mentioned, relating to the permanent change of station or deployment of more than 30 days. In terms of suspending the obligations under the contract, it would be effective the day the written notice is received, which is under subsection 4. In terms of any obligations that have already been incurred up to the day of that written notice, the service member would still be liable to make those payments. If not, that would be an unjust

enrichment on the part of the service member since those services were contracted for. This does not seek to completely void contractual obligations; it only seeks to give relief when there is a military event that the service member needs to be focused on. In addition, subsection 5 incorporates existing federal law in 50 U.S.C. § 3956, which allows for the termination of a contract for cellular or regular phone. This would incorporate that protection into the state law as well.

I also want to note in section 5, subsection 6, paragraph (c), which creates some exceptions to the "video service" definition for wholly Internet-based services such as Netflix. The point is to get away from services that are tied to a specific geographic location. As a matter of course, on long deployments there is still the ability to access the Internet depending on the specific deployment and what the conditions are. In that case, if it is a wholly Internet-based service and not tied to a geographic location, it does not need to fall under the act's protections because the service member is still able to access and consume those types of services.

Section 6 provides that a service member who terminates or suspends a contract can give written notice within 90 days after termination of relocation or deployment in order to reinstate the provisions. It allows the service member, if the deployment is less than 12 months, to just resume on the same terms and conditions originally provided for under the contract. Furthermore, if the deployment is longer than 12 months, it allows that service member to seek out a new term of service with new conditions. It is defined under the same terms and conditions that were offered by the service provider to any new customer within the 12-month period preceding the termination of the relocation or deployment. This will be more applicable in a situation where you have someone who does not receive a permanent change of station and instead goes on a year-long deployment to the Middle East. In that case, they could choose to create a new contract or resume under those old conditions if they were less than 12 months old.

Under section 7, a service member who terminates, suspends, or reinstates a contract cannot be charged a penalty or fee, and they cannot lose a deposit. This is in order to protect them and not make them pay for serving our country.

Section 8 is one of the remedies contained in the act that allows a private right of action on behalf of the service member. Section 9 recognizes that every service member is not going to have the ability to file an action and that it can be very difficult for a service member who is deployed to be engaging in judicial proceedings. In fact, federal SCRA holds statutes of limitation for that. I do not expect every service member to have the wherewithal to engage in that sort of action. Section 9 allows the Attorney General the ability to prosecute violations of this act, being cognizant that every service member will not always have the ability to prosecute their own action, and to ensure the provisions of this act are enforced.

Madam Chair, that concludes my run-through of the legislation.

Assemblywoman Jauregui:
Thank you for bringing this bill forward. I think it is a great bill. I have worked with many service members when they were being deployed or relocated to help them get out of mortgages. Is there any way we can extend it, because sometimes the contracts are under a spouse's name. Would this bill extend protection to the spouse?

Assemblyman Elliot T. Anderson:
Service members, as explicitly defined under the provisions in section 3, would not include the spouse; however, I would be happy to make that change. Assuming that the service member's spouse would be relocating as well in the example of the permanent change of station under section 5, subsection 1, paragraph (a), that would be applicable and necessary. However, on a 12-month deployment, I do not think that would be appropriate if the military spouse will still be using the services. In that case, I am uncomfortable; I am unsure the exact same situation applies because the spouse is still going to be there consuming the same services. I do not think the protection is needed in that case. I think your suggestion is a very good one for permanent change of station orders. We, of course, would be willing to entertain that amendment.

Assemblywoman Jauregui:
I was meaning for a permanent change of orders. If they receive notice of deployment, relocation, or permanent change of station three months before they go out, are they allowed to cancel it at that point, or is the contract terminated the day before they leave?

Assemblyman Elliot T. Anderson:
It becomes effective the day they provide written notice. There is a requirement that they have to show the orders either the day notice is given or within 90 days. For example, if they are in Special Forces and go out on a mission, they would have up to 90 days to show that written proof. It could be done retroactively if they have proof of the dates they were deployed.

Assemblywoman Jauregui:
How soon are service members notified they will be leaving?

Assemblyman Elliot T. Anderson:
It is a case-by-case situation, I think, where you have regular deployments and plenty of notice. When there are regular deployments you often have predeployment workshops where you have some of the military Judge Advocate General's Corps that come in and prepare these types of notices under the existing law. I see no reason why they could not help prepare if you have that time. There are some situations, again taking the special forces example, that you do not always have notice. You are serving just on call.

Chair Bustamante Adams:
As a military spouse, I totally agree with the advance notice as much as possible.

Assemblyman Brooks:
Do the definitions and some of the other provisions in this bill line up perfectly with the federal SCRA?

Assemblyman Elliot T. Anderson:
I would note that they are complementary. In one case there is overlap, and if you look at section 5, subsection 5, there is a citation to federal law that incorporates that. The other memberships and contracts that are included are not included in the federal law. States have the ability to add protections, but they cannot do anything that conflicts.

Assemblyman Brooks:
Is it the same definition for service member in the federal law as in your bill?

Assemblyman Elliot T. Anderson:
The definition in A.B. 282 is based from the state of Washington law. That is what I directed. I liked what was being done in Washington. I will have to get you answers to that question later. I will have to go back and double-check the definition.

Assemblywoman Carlton:
I am not familiar with these military service orders, and we are sharing these orders with private companies so I have a security question. Is there any information on the orders that is personal to the service member and maybe should not be going to someone's desk some place and then just sitting there? We are always thinking about security of information. You have seen these orders, and I have not. Are you comfortable with that?

Assemblyman Elliot Anderson:
I think it just depends on the situation. Theoretically, using the Special Forces example, that would absolutely be something that would be a bit more sensitive. I would think that permanent change of station orders would not be as sensitive. Certainly operational security is important, but because of the way it is written in terms of orders, there are orders written all of the time every day. The way I understand the provisions under the way this bill is drafted, commanders can specifically draft something for public consumption that would incorporate the provisions of this act. We do not explicitly define what has to be in the order. An order can be a company commander writing a letter that says: ". . . pursuant to . . . law, the service member has orders . . . ," and I think that would comply. We would leave that to the military to figure out.

Assemblywoman Carlton:
Thank you for putting that on the record. I hope as this bill moves forward, and I look forward to seeing it on the floor, that is actually put on record. I would hate to see a company say this letter is not good enough, we want to see your actual orders—and there was something in those orders that should not be shared. I am happy you said that, and we

want to make sure we give them all the opportunity. We know someone down at the bottom of the management rung will likely say this is not good enough, and we want to make sure service members have the opportunity to give contract providers what they need.

Assemblyman Elliot T. Anderson:
I would be happy to add additional intent for the record. I understand how important that is. The United States Department of Defense (DOD) is also here, and they can also answer your question after their prepared remarks.

Chair Bustamante Adams:
Are there any other questions for Assemblyman Anderson? [There were none.] We will move to the support position for A.B. 282. Is there someone in Las Vegas?

Laurie Crehan, Regional State Liaison, Office of the Deputy Assistant Secretary of Defense, United States Department of Defense:
Madam Chair and members of the Committee, thank you for the opportunity to discuss the policy in A.B. 282. Assemblyman Anderson has done a nice job framing the issue. We have found over the past ten years that when our service members and state National Guard are deployed, many of the products he has included in this bill have become financially problematic for our service members. This will allow them to cancel or suspend contracts while they are deployed and not have that additional financial pressure while they are serving our country. Regarding the extension to spouses, I want to say that we had not considered it, but there are many younger spouses who, during deployment, will leave where they are stationed or where their spouse is stationed and move back with their family. By extending it to spouses who do not remain in the area, it might also help them by not having these additional financial burdens.

I would like to thank Assemblyman Anderson for sponsoring this bill and I urge your support in moving this bill along. [Also submitted was (Exhibit H).]

Chair Bustamante Adams:
I appreciate your work with our Assembly members and others to help us bring legislation forward to make Nevada a military-friendly state. Thank you. Is there anyone else in Las Vegas? [There was no one.] Is there anyone in Carson City to speak in support of A.B. 282?

Ryan Gerchman, Acting Vice Chair, United Veterans Legislative Council:
Our chair, Kevin Burns, could not be here today, so I am speaking on his behalf and for the rest of the veterans in Nevada. We are in support of A.B. 282. The rigors, pressure, and stress of predeployment are huge for a service member. They have everything on their military side to attend to, all of the checklists they are responsible for, which is everything from their weapons to their gear and everything else. To have to worry about a gym membership and how they are going to take care of that when they are gone, and

wonder why they should pay for that gym membership for just a couple of months if they are not even going to be there but not be allowed to suspend it. This bill covers that, as well as the other aspects that have been forgotten, as was mentioned by Ms. Crehan in Las Vegas. This is just a great bill, and we are in full support of it.

Chair Bustamante Adams:
Is there anyone in opposition to A.B. 282? [There was no one.] Is there anyone in the neutral position? [There was no one.] Assemblyman Anderson, do you have any closing comments?

Assemblyman Elliot T. Anderson:
Thank you for your consideration of this measure, Madam Chair and Committee members. Assemblyman Brooks, I will get you that answer by the end of the day. I think I have the citation.

Chair Bustamante Adams:
We will close the hearing on A.B. 282. We will open the hearing on Assembly Bill 262.

Assembly Bill 262: Revises provisions relating to contracts for the sale of vehicles. (BDR 52-937)

Assemblyman Richard Carrillo, Assembly District No. 18:
Thank you for hearing Assembly Bill 262 today. Assembly Bill 262 hopes to revise provisions for vehicle sales contracts, specifically defining the term "knowingly" for the purposes of provisions governing deceptive trade practices. With your permission Madam Chair, I would like to introduce Jon L. Sasser, who will be presenting the details of the bill sections to the Committee.

Jon L. Sasser, representing Washoe Legal Services; and Legal Aid Center of Southern Nevada:
In Las Vegas I have two witnesses who are my subject matter experts, Sophia Romero and George West. I will give a quick overview of the bill. I will also tell you I have been approached by representatives of both the The Reno-Sparks Chamber of Commerce and the Franchise Auto Dealers Association that have concerns about two parts of the bill. I have agreed with them, with the sponsor's permission, to continue some conversations we have had in work session around those, and I think they will come to the table.

This bill does three things. First there is the term "knowingly," used throughout *Nevada Revised Statutes* (NRS) Chapter 598, which defines deceptive trade practices. That term is not defined in the Chapter and, as a result, there is a lot of litigation around what "knowingly" means. We are offering a definition of "knowingly" that is derived from three other parts of NRS, kind of a common definition, and I think it would be good for the Chapter to clarify that to avoid litigation on the vagueness of terms.

The second thing the bill does is deal with the problem of wrongful repossession of automobiles. We have a law in Nevada under the Contracts for Sale of Vehicles provisions of NRS Chapter 97, which says that you cannot repossess an automobile that is being bought on installment payments unless the payment is at least 30 days late. At that point in time, you can repossess. We have finance companies that will repossess early, grab someone's car if they are a week late, and refuse to give it back. That is already illegal under the law. The problem is, it is not clear that is a deceptive trade practice. As a result, people will come to Legal Aid, and we can represent a handful of people in those cases, but we cannot take care of the volume. Private attorneys will not get involved as a general rule because they do not, under the present law, have the ability to recover attorney's fees if they win the case. We are asking that repossession before default be made a deceptive trade practice.

Section 7 relates to the bond that is required of these dealerships and other entities. The bond basically protects if someone is sued but they go out of business, so there is no money for the consumer to recover. We want to broaden what is covered under that bond to add violations of NRS Chapter 598, deceptive trade practice, the laws about repossession of automobiles under NRS Chapter 97 and NRS Chapter 104A. We want to add, through an amendment (Exhibit I) that I have offered online, three common torts that are associated here. The most common is conversion. If you do not have a contract term, you can sue sometime for that tort. Finally, there is some vagueness and inconsistency in the current law about who you would serve the papers on if you want to make a claim against the bond. We are changing that, to be consistent with other parts of *Nevada Revised Statutes,* from the Secretary of State to the Commissioner of Insurance.

That is a quick overview of the sections. Ms. Romero can give you information about the cases that come to the Legal Aid Center of Southern Nevada. Mr. West is a private attorney who can talk about the requests that he receives but is unable to respond to because of the lack of attorney's fees. With the Chair's permission, may we go to Las Vegas and have questions for all?

Chair Bustamante Adams:
Yes. Ms. Romero, would you like to go first?

Sophia A. Romero, Staff Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada:
Thank you for the opportunity to comment here today. Assembly Bill 262 is extremely important for us. First, it clarifies current law and allows us to avoid unnecessary litigation by defining the term "knowingly," which is defined elsewhere in Nevada statute but not in NRS Chapter 598. It expands the law to both promote consumer protections and ensure fair competition among car dealers. The statutes will also allow for private attorneys to take cases they would not otherwise be able to handle due to a client's inability to pay. I did submit some pretty lengthy written testimony but for the sake of brevity here today, I am just going to hit the highlights and go over the examples I have attached to my written testimony (Exhibit J).

Legal Aid Center of Southern Nevada has become inundated with cases involving violations of NRS Chapter 97, illegal repossessions and violation of the Uniform Commercial Code, which is codified under NRS Chapter 104. Therefore, the need for private attorneys in this area is undeniable. Currently, Legal Aid of Southern Nevada cannot handle every case dealing with these issues and cannot help those who are over our income guidelines. We do abide by income guidelines, and for those clients who are just a little bit over our income guidelines that we cannot help, they have a difficult time getting a private attorney because there is no way for private attorneys to recover in these types of cases right now. Because of this, the private bar needs the assurance of an ability to recover attorney's fees in order to take these types of consumer rights cases. In the absence of a bill such as this, which makes these violations subject to deceptive trade practices, it is difficult to recover attorney's fees and is therefore a bar to representation for people who cannot afford an attorney.

It is also important that the requirement for the bond be extended to cover these types of cases so that despite the financial stability of the dealership itself, both the client and the attorney alike are able to be assured recovery, which will promote the private bar's interest in these types of cases. Clarity is needed here because creative surety bond counsel always argue that if any claim for relief in the case is based on something other than exact wording of the surety bond, it is not covered by the bond.

I have prepared examples of the types of violations that are occurring. These are three ongoing cases. The first example you will see on the first page is the default definition (Exhibit K) which says you have to be 30 days late, and you have to be 10 days late before they can charge a late fee of $15. This is an actual contract from one of the car cases I have. They have the client sign this first page, and then if you will turn to the second page, they also have the client sign this second page which changes the term of default to one day and changes the late fee to one day. This is already a violation of Nevada law, but private attorneys cannot take these types of cases because there are no guaranteed attorney's fees if they win. Legal Aid Center of Southern Nevada cannot handle the volume of cases we are seeing.

The next example (Exhibit L) entitled "Addendum to Sales Contract" states that the late payment is going to be $39 if you are 24 hours late, and that any payments more than 24 hours late are subject to repossession. Again, these are addendums to the sales contract that these car dealerships are having consumers sign. Consumers are not aware of their statutory rights. They are not aware that the contract cannot be changed under the law. They are signing them and when their vehicles are repossessed, the car dealerships are trying to charge them not only their monthly payment but $500 in repossession fees. In many cases, the consumer cannot pay both the monthly payment and the repossession fees. Therefore, they lose their vehicle. The dealership retains the down payment and any payments the consumer has made, and they resell that vehicle to someone else.

The third example (Exhibit M) is another example of a contract used to repossess a car before the client was 30 days late. These are just some examples of current ongoing cases we have right now so the Committee can get a feel for what is going on and the types of contracts (Exhibit N) people are being required to sign. Again, they are currently a violation of Nevada statute, but because they do not fall under the Deceptive Trade Practices Act, it is difficult to find private attorneys to take these cases. Thank you for the opportunity to comment here today.

George O. West III, Attorney, Consumer Attorneys Against Auto Fraud, Las Vegas, Nevada:

I am a consumer attorney in Las Vegas. My practice is limited exclusively to automobile fraud, which covers the entire transaction process, including repossession. I would like to get into the weeds and behind the reasons we need this particular bill and law. The U.S. Census conducted a survey (Exhibit O) through the *American Community Survey Reports* entitled, "Who Drives to Work? Commuting by Automobile in the United States: 2013." I do have a copy which I will give to Mr. Sasser and he can distribute to the Committee. The report states that 86 percent of the United States public use their automobile to get to and from work. The census only took into account people who use their automobiles to get back and forth to work. When you take that into account, you realize that a person's vehicle is their lifeline. It is an absolute necessity for their financial stability and security. If you take that away from them, they are unable to pay their mortgage and rent, and they are unable to put food on the table. Unfortunately, when we had the downturn in the economy in 2006, there was a proliferation of a lot of "buy here, pay here" dealerships where a person would come in, they would hold the paper, and the dealerships would then repossess the car way before the 30-day allowable time for them to do so. This has been a rampant practice that I have seen very often in my work. Unfortunately, the reality is these dealers do dig in many times, and we need statutory clarification with respect to exactly what constitutes a deceptive trade practice.

As Ms. Romero indicated, the financial reality is on the end of the few attorneys like myself who do handle these cases. It is financially not feasible for us as consumer lawyers to take on a repossession case unless that repossession case is also related to something deceptive that happened in the underlying sales transaction. I get about 400 to 450 hits on my website, and I probably get about a hundred contacts a month. About 10 of those, maybe 15, are wrongful repossession cases, and 2 to 3 of them usually have to do with repossessions prior to the 30 days. Unless I can find something that otherwise was deceptive in their underlying transaction, which sometimes does not happen, there is not much I can do for them. I am hopeful they can qualify for legal aid, but if they cannot, unfortunately, these are the consumers that are left out.

If you think about just how essential the vehicle is—if all of the Committee members would think how important your vehicle is to your daily livelihood and to the livelihood of your constituents—I think there is no doubt and no credible dispute that a person's vehicle is their lifeline, when you take into consideration, and what the rest of the survey did not, the uniqueness of our state. We have a very pervasive gaming and hospitality community, and it

is very difficult when you are a cocktail waitress and your car is taken away from you when you are on swing shift or graveyard shift and you are waiting for a bus on north Boulder Highway in an area you should not be in. These are the people who really need the protection. Because of the unique situation we have in Nevada, a person in Sparks who gets her car taken away from her will not be able to take public transportation to get to Reno back and forth. It is the same thing in Las Vegas.

Finally, we need these protections to stop the abuses that keep happening. I have seen them grow and continue to grow, even as the economy has gotten better. I understand the "buy here, pay here" dealers do provide a valuable service to the community. They sell cars to people who otherwise are unable to get financing, which is a good thing. The problem is you get into the cycle of repossessing the cars prior to the 30 days, then reselling the car to another consumer, then repossessing the car again, and on and on. This is what is happening here. I think this legislation addresses adequately the problems that we have and will be able to adequately provide services to enfranchise those who are not able to afford attorneys.

Chair Bustamante Adams:
We are going to open up to questions from the Committee.

Assemblywoman Neal:
I am trying to get an example from the amendment that Mr. Sasser presented which adds negligent misrepresentation within the undertaking for the bond. I would like to get some examples of when that has occurred and if the cases you have had in southern Nevada reflect what the process is for trying to prove negligent misrepresentation. Does that relate to the collateral?

Sophia Romero:
Part of the negligent misrepresentation is the fact that they are telling these people they can repossess their car if they are 24 hours late. They are misrepresenting the current status of Nevada state law, and they are attempting to charge these people repossession fees that were not rightfully incurred because the dealership or the finance company did not wait the 30 days before they repossessed someone's vehicle.

George West:
Regarding negligent misrepresentation, there are many enumerated deceptive trade practices within NRS Chapter 598. If you read certain of those enumerated practices, some of them do lie within a negligent misrepresentation. They do not use those words, but they use words such as "knew" or "should have known" with respect to certain things involving the underlying transactions. One of those is the condition of the vehicle or something similar. I would submit to the Committee that there are sufficient protections in NRS Chapter 598 that would possibly envelope a negligent misrepresentation claim, but as Ms. Romero indicated, there are a lot of smaller dealerships. This does not happen, and let me go on record here to say that repossessions do not happen by franchised new car dealerships. These are happening by used car dealerships, just for clarification. When you are dealing with

negligent misrepresentations, you have these smaller dealers who are misrepresenting the rights of the consumer with respect to the repossession rights, which is the big issue before this Committee.

Assemblywoman Neal:
Thank you. When I was reading NRS Chapter 598 and the add-ons in the amendment, I was trying to figure out whether you are looking to stack all of these claims. If that is the case, what would be the penalties? Let us say you filed a case and now you have the ability to say dealer X engaged in negligent misrepresentation, abusive process, and also conversion. What then would be the fines that the dealer would be facing if those were stacked claims?

Jon L. Sasser:
The idea is to not stack claims; the idea is to put the different things in there so that if your case falls within one rather than the other, the bond would cover it. I believe Mr. West said sometimes there is an argument as to whether the bond will cover when that particular tort was not covered. In terms of stacking claims, I think the people in the south litigate this and I do not.

Sophia Romero:
There is only one recovery, so if there is a deceptive trade practice, the statute provides for actual damages and attorney's fees. Let us say the actual damage was $1,000. There is not going to be $1,000 per violation. When they were only out of pocket $1,000, they are not going to recover $5,000 or something similar. There is just one set of damages for these types of violations.

Assemblywoman Neal:
I ask the question because if you look at section 7, subsection 4, on page 8, it says: "The undertaking of the bond is for the use and benefit of the consumer and includes any breach of consumer contract, deceptive trade practice, fraud, fraudulent representation or violation of any of the provisions of this chapter or chapters 41, 97, 104, 104A, or 598 of NRS . . . ." I had assumed that by inserting the different chapters and the fact that it was an "or" statement that those different chapters may have provided different penalties. I just want to be clear about what that means.

Chair Bustamante Adams:
Are there any other questions from the Committee? [There were none.} We will move into the support position for A.B. 262. [There was none.] We will take opposition to A.B. 262, and please be specific. What is it about the bill that you would like to change? Do not just tell me that you do not like the bill because that does not help the Committee members.

Andy MacKay, Executive Director, Nevada Franchised Auto Dealer Association:
When you look at section 1 of the bill in terms of the definition of "knowingly," the broadness and specifically the term of art does not require knowledge of the prohibition against the act or omission. Let me go on the record, and this is important. We went to the bill sponsor, and he asked us to speak with Mr. Sasser. Mr. Sasser has been great to work

with. What he indicated in his opening statement is 100 percent correct. I think that we are going to be able to ultimately amend this bill and get to a position that we will be able to support. Our concern with respect to the bill as drafted is the broadness in terms of the definition of "knowingly" in section 1. To members of the Committee and Madam Chair, I thank Mr. Sasser for having very open lines of communication with us and his willingness to work through this.

Chair Bustamante Adams:
Thank you for being an example of how the process should work.

Bryan Wachter, representing Retail Association of Nevada:
We would echo the comments of my colleague from the Nevada Franchised Auto Dealers Association. We would also note that the Assemblywoman from District No. 14 [Maggie Carlton] is fond of saying that we write laws for bad actors. We could not agree more. We would, however, ask to refine section 1 so the good actors know exactly what the rules are and what we are supposed to be doing. We spoke to the sponsor of this bill. I personally did not have a chance to speak to Mr. Sasser, but as a group following Mr. MacKay's lead, we do think we can get to a place where everyone can go forward and operate effectively, knowing what the rules are.

Chair Bustamante Adams:
Thank you for your testimony.

Tyre Gray, representing Las Vegas Metro Chamber of Commerce; and The Chamber, Reno-Sparks-Northern Nevada:
I would like to echo the comments that have already been made. Again, I do believe we will be able to get this worked out. There is a concern about where this was placed in the NRS because when you are dealing with NRS Chapter 598, there are a couple of drop-down things that go on in there. We want to make sure the definition of "knowingly" is clear so that the good actors are not caught up in this. Thank you to the Committee, and thank you to the sponsor and to Mr. Sasser for working with us.

Chair Bustamante Adams:
Are there any others in opposition? [There was no one.] Is there anyone in neutral? [There was no one.] Assemblyman Carrillo, do you have any closing comments?

Assemblyman Carrillo:
The individuals who just spoke approached me and want to work with Mr. Sasser. It is great to have those conversations to see if we can be in that place where we need to be.

Chair Bustamante Adams:
We are going to close the hearing on A.B. 262. We will invite our Majority Leader to the table and open up the hearing on Assembly Bill 245.

Assembly Bill 245: Enacts provisions governing the dispensing of biological products and interchangeable biological products. (BDR 54-504)

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27:
I have the honor of presenting Assembly Bill 245. I have two guests sitting with me who I will introduce to you in just a moment. Let me start off with why we have A.B. 245 in front of you today.

Nevada must update its laws to address the advent of biosimilar products and interchangeable biosimilar products. Existing generic pill statutes in the *Nevada Revised Statutes* do not apply to these products. Some of you might be sitting there wondering what a biosimilar is. A biosimilar is a highly similar version of a biologic medicine, but unlike a generic, it is similar and not identical to the brand version. That is why there is no such thing as the word "bio-generic" and why these new products are called biosimilar products. Unlike pills that are taken orally, biologics, including biosimilars, are injected or infused. Assembly Bill 245 updates Nevada law so the Nevada pharmacists can automatically substitute lower-cost, interchangeable biosimilars for brand name biologics to patients. It also provides clarity to physicians, pharmacists, and patients about which biosimilar products can be automatically substituted by pharmacists for prescribed brand name biologics.

Assembly Bill 245 is based on consensus language developed nationally in 2014, and the coalition behind this bill includes branded drug companies as well as generic drug companies. Existing Nevada generic substitution law states that a pharmacist may select a non-innovator product; shall substitute a less expensive non-innovator product; and shall not substitute if the prescribing practitioner indicates that a substitution is prohibited. Also the pharmacist shall communicate the substitution to the patient and the pharmacist shall retain the records for the prescription for up to two years.

Assembly Bill 245 follows all of the above-mentioned provisions and also includes provisions providing that only a biological product deemed an "interchangeable" biological product by the Food and Drug Administration (FDA) may be automatically substituted, and the pharmacist shall communicate with the physician, via electronic means and within three business days after the patient leaves with their medication, so that the patient record is updated.

Twenty eight states plus Puerto Rico have passed similar biosimilar substitution legislation and all other states are evaluating similar measures. Patients and physician groups supporting this legislation are numerous. We have letters from them (Exhibit P) uploaded to Nevada Electronic Legislative Information System (NELIS). I believe there are more than ten letters of support from different groups, including patient advocacy groups and medical groups as well.

Before I introduce the two gentlemen sitting with me, I want to let you know of one change. You have before you a conceptual amendment (Exhibit Q) to section 5. Section 5 relates to the provision that the State Board of Pharmacy shall maintain a link on its Internet website to the list of the FDA-approved interchangeable biological products. We want to ensure that we are as clear and specific as possible for that listing. You will see that we worked to clarify it so that the board shall maintain a link on its Internet website to the federal Food and Drug Administration's "List of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity of Interchangeability Evaluations," otherwise known as "The Purple Book." The Purple Book already exists, a link to it exists—so we are just asking for ease of physicians and practitioners in Nevada to have one place where they can go to and click on the website so they can see what the allowable interchangeable biologic products are.

I have here today Brian Warren from Biotechnology Innovation Organization (BiO) to answer the more technical questions for you. He is going to explain what the bill does, section by section, and also explain what Congress did, what permissive actions Congress took, and what states must do now. He will explain the five principles of this legislation, talk a little bit about the coalition behind this, and explain what happens if Nevada does not pass A.B. 245.

I also have Rylan Hanks, a pharmacist from Amgen, who will discuss the science of biosimilars. This is a fascinating field when we have physicians visiting our Assembly Chambers. A couple of weeks ago I had a group of family practitioners in the office; two were students and three were practitioners who had been out of school for a while. They were mature physicians. One of the two students who had a background in biochemical engineering was explaining to the other physicians this cutting-edge science and what is happening. They lost me when they started talking about molecular things because if I cannot see it with my bare eye, it does not exist. There is some fascinating science here.

They are going to talk about the difference between generics and biosimilars. They are going to talk about the safety profiles, the difference between biosimilars and interchangeable biosimilars, and FDA guidelines as well as explaining why we need a bill, even if there are not interchangeable biosimilars on the market now. That is how cutting edge we are. With that and with your indulgence, Madam Chair, I will begin with Mr. Warren.

Brian Warren, State Government Affairs Director, Western Region, Biotechnology Innovation Organization:

Our members consist of the firms that develop and manufacture innovator biologic products as well as biosimilar products. As Assemblywoman Benitez-Thompson mentioned, there was previously no such thing as a generic version of innovator biologic products. There is still no exact generic, but the FDA now has passed laws that provide guidance for the approval of biosimilar products and interchangeable biosimilar products. These are products that are intended to drive competition for these innovative medicines that provide great benefit to patients that are also quite expensive. We believe that competition in this phase will be beneficial to patients in terms of increasing access to medicines as well as reducing costs while maintaining patient safety.

We are here today because state law needs to be updated to reflect the changes to FDA law, and give pharmacists and physicians clarity so they can predictably operate in this space. Assembly Bill 245 is based on national consensus model language. That language preserves safety, clearly articulates the roles and responsibilities of pharmacists and physicians, and reduces the regulatory burden for compliance. There are five principles the BiO organization has developed and that this national consensus legislation is based on. Those are:

- Substitution should only be allowed for interchangeable products, those that are deemed interchangeable by the FDA;

- The prescribing physician should be able to prohibit substitution biological products just as they can for generic medications by prescribing "do not substitute or dispense as written;"

- The patient should be notified when a substitute product is being dispensed to that patient;

- The pharmacist also communicates when a substitute product is dispensed to the prescribing physician so they have a complete medical record; and

- A record is to be kept by the pharmacy.

Our goal is that pharmacists be able to substitute interchangeable products just as easily as they do for generic products with these patient protections in mind. Assembly Bill 245 adds to Nevada's current generic substitution laws and maintains all of the existing safety precautions, as well as adding the simple prescriber communication requirement. Of these five principles for the substitution of interchangeable products, it was the communication to the prescriber that did not exist. This bill adds that requirement when an interchangeable biologic is substituted.

We believe that this bill will increase safe and effective treatment options for patients and also act as a beneficial way to help control health care spending.

Rylan Hanks, Director, Global Regulatory and Research and Development Policy, Amgen:

Amgen is a biotechnology company making both innovative and biosimilar medicines. I am also a pharmacist by trade, having practiced in a retail pharmacy setting. I am formerly with the Food and Drug Administration's Office of Generic Drugs. I am here to briefly speak about the scientific and regulatory concepts underpinning generic drugs, biosimilars, and interchangeable biologic products.

As we have talked about, biosimilars are not generic medicines. There are some important reasons and rationale behind why this is the case. Biosimilars harness the power of biology in living cells to produce the product they would like to make. Those products are usually protein products that are demonstrated to be highly similar to an innovator molecule

currently on the market. Generic drugs, on the other hand, utilize a chemical recipe to make an exact copy of an existing product on the marketplace. Finally, biosimilars are much larger and much more complex—and this is true for all biologics—than traditional generic chemical drugs. These biosimilars can be on the order of 600 to 800 times larger than a traditional generic product. The reason that is important is because patients' immune systems can recognize larger, more complex molecules when they enter into a patient's body. While it is understood that these products are not generic drugs, there is established criteria set forth to ensure these medicines are comparably safe and effective to the medicines currently on the market. From a regulatory perspective, FDA requires different information for approval between biosimilars compared to generic drugs.

First, generic drugs must show they are the same as the innovator molecule. That has to be a demonstration proven to the FDA prior to approval. However, for biosimilars the criteria has to be established as being highly similar to the innovator molecule on the market with no clinically meaningful differences. This is established through a totality of evidence that is presented to the agency prior to approval.

There are two distinct designations under which the FDA has been given authority to approve these molecules. One is biosimilarity, and the other is interchangeability. For an interchangeable designation, this adds additional scientific criteria to gain approval from the FDA. For an interchangeable, one must meet both the standard set forth for biosimilarity—again, being highly similar with no clinically meaningful differences as well as demonstrating that they are expected to have the same clinical result in any given patient as compared to an innovator molecule—and demonstrate that there is no additional risk in terms of safety or efficacy when switching back and forth between that proposed interchangeable and the innovator molecule, as compared to someone staying on the innovator molecule throughout treatment. Those are the important concepts underpinning the differences between generics and biosimilars as well as biosimilars and interchangeable biologic products. Again, this is with the understanding that as you approve interchangeable biologic products, these may be substituted at the pharmacy level. The data that is required for that is not found in a biosimilar application. That is important because biosimilars will be prescribed by a physician and an interchangeable can be substituted by pharmacists and other health care providers.

Chair Bustamante Adams:
We will take questions from the Committee.

Assemblywoman Jauregui:
Right now with a regular prescription for pills, if the physician does not write "dispense as prescribed," the pharmacist will automatically give you the less expensive version to save the patient money. Will we require them to do that with the biosimilars too, because they sound more expensive so we want to ensure we are saving the consumer money? If they can substitute it for a generic version, will they do it?

Brian Warren:
Yes, they will. Simply by working off of the generic substitutions statute, this bill for the substitution of interchangeable biologic products would also require the pharmacist to dispense the less expensive alternative to the patient.

Assemblywoman Neal:
I have a similar question related to the language in section 7, subsection 2. I am concerned because it says ". . . the pharmacist shall dispense, in substitution, the least expensive of the drugs or interchangeable biological products . . . ." What I am not clear on is in one place you are saying the biological product, and I was assuming the biological product was the generic, but I do not think that is true because it does not say the interchangeable. The bottom line question is what if the pharmacist feels that the choice of the interchangeable biological product is not the thing they feel is the best product for you to have, regardless of whether it is the least expensive. They feel that, based on the ingredients or whatever, they understand from the prescription that the generic is a better drug to dispense to the patient. I feel you are eliminating the choice because the words say "shall dispense." It is not "may," it is "shall."

Rylan Hanks:
These are not generic versions, these are biosimilar interchangeables. There are not going to be biosimilars or interchangeables for every single molecule. The language in the bill does talk about what you pointed out, but the idea here is that there are mechanisms in the legislation that allow for decisions like that to be made in terms of what the best product to be chosen should be. When the physician decides what medicine should be prescribed for the patient, he or she does preserve the right to mark "dispense as written" based on whatever the best medicine should be. "Dispense as written" is a mechanism where the prescriber can preserve the decision about what the medicine and choices are for the therapeutic intent and the condition of the patient.

The other component is that, at the pharmacy level, the pharmacist has to allow the patient to know if a substitution was about to occur. That patient has to agree to that substitution if it was to occur.

Assemblywoman Neal:
Section 7, subsection 4 says: "If the person refuses to accept the drug or biological product that the pharmacist intends to dispense in substitution, the pharmacist shall dispense the drug prescribed . . . or biological product prescribed . . . ." What is the biological product? What I heard you say is it is not necessarily the generic. Is this true?

Brian Warren:
I believe when it is using the word "biological product" in this sentence, it is referring to the fact that the pharmacist at that point still has the choice between dispensing the name brand product that was prescribed or the interchangeable version of the product.

Assemblywoman Neal:
That is what I thought, so why do we need to add that into the statute if that is what they can already do? This is confusing to me. My sister is a pharmacist; she has her doctorate degree in pharmacy.

Assemblywoman Benitez-Thompson:
Current statute does not include a definition of "biological product" or "interchangeable biological product." Nowhere in the status quo do we contemplate the use of either of these terms. Sections 2 and 3 of Assembly Bill 245 codify these terms in law.

Assemblywoman Neal:
My final question was going back to section 4 where you are talking about the notice shall be given by the pharmacist within three business days. How did you come up with the three business days? It seems like you are putting a lot of burden on the pharmacist, and in my understanding for a retail pharmacist, they are doing a large volume of prescriptions daily. They do a lot of things, and this is just another added responsibility. They are under a lot of different rules where they get penalized for failure to do certain things. I was wondering about the three-business-day notification. Where did the language come from, and is it standard practice in some other part of the statute that a pharmacist is already under a three-day notification?

Assemblywoman Benitez-Thompson:
You have a great question. As we have been working on the bill, this is where the majority of the conversation has been. There is a group of people who would like to see a two-day notification process, and physicians and retailers would like to see a five-day notification process. We chose a number we thought everyone could live with, and three days was the consensus.

Assemblywoman Neal:
I worry about that because I know how stressful it is in the retail pharmacy world. My sister will do 12 hours per day, 6 days per week. To have this layered on top of that, where she now has to focus on whether or not she appropriately gave notice for a biological product or an interchangeable biological similar, I think it is extra work. I have a problem with that.

Rylan Hanks:
It is not that big of a burden. Let me explain what we are talking about with the three-day notification. When we talk about interchangeable biologic products and biosimilars, it is a very small fraction of the overall number of prescriptions that go through the retail pharmacy where a pharmacist would be required to notify the prescriber. We are talking about a handful, probably less than four per week in terms of biologic products would go through a retail pharmacy, as compared to the volume of thousands that go through weekly on average for chemical drugs. This would really not be that huge of a burden to a pharmacist.

The rationale behind it is because of the additional understanding about the immune response that biologics may elicit and the idea that notification is purely because of the fact that as patients transfer between different kinds of biologic medicines, over a span of time—this usually is not immediately, but over months, potentially years—if something were to occur with that patient, there needs to be a complete and accurate medical record so that the health care team can go back and forensically identify what that patient was on, so we can consider that as a safety protocol to ensure the safety of the patients.

I think those are the two big rationales in terms of burden. The final piece I will say is that included in this bill are different mechanisms in terms of the communication fees. Much of the standard practice for pharmacists would meet the standard language in this proposed legislation, which are interoperable health systems and electronic medical records. These components are largely in place for pharmacies to utilize in terms of how they already practice, so this is not an additional burden. The only real additional requirement would be that if the electronic pieces could not be met—meaning that the pharmacist had no electronic means of recordkeeping or interoperable systems—and the communication needed to happen, the pharmacist would need to fax or make a phone call to communicate. We think three days is appropriate because, often in business practices, a pharmacy may be open when the physician is no longer in the office. Allowing this leeway of time appropriately allows that communication to occur for both health care providers.

Assemblywoman Benitez-Thompson:
In the course of the conversations we have been having, the intent is to set up a framework for biological products and interchangeables. They are not in the state yet, but they are coming. If we can prop up what we believe is a reasonable framework by which these products can enter the market in Nevada, then I believe we are doing our due diligence in propping up what we believe is initial sound policy. What I have committed to is that I will follow my policy, and if we find problems once these come into the market and they are here in the state, then we have to consider adjustments. The best-laid plans on paper always come out a little bit different in the real world. We can then revisit kinks, problems, and unintended consequences, and we should remain committed to do so. In setting up the framework at the outset, we think that we have done our due diligence to get in place what is the best for a start.

Assemblywoman Neal:
I appreciate that, and I understand the need to track. One final question on "his or her designee" for the dispensing pharmacist, could that be the pharmacy tech? Who would that be?

Brian Warren:
Yes, that is intended to allow the pharmacist to delegate this responsibility to a pharmacy technician or other appropriate staff within the pharmacy to perform the communication itself.

Assemblywoman Carlton:
I am trying to figure out what we are trying to do here. Basically what we are doing is we have a scheme set up for generics right now—and I remember all of the apprehension people had about generics way back in the day. This is a similar scheme for this different type of medicine that will not have a generic because it is not chemical-based, it is molecular-based. This basically sets up the same scheme with the protections, dispense as written, the whole thing. That is basically what we are trying to do. These drugs are not currently in Nevada at all, did I understand that correctly?

Brian Warren:
Yes. The innovator biological products are in Nevada, and there are four biosimilar products that have currently been approved by the FDA. There are, however, none of the interchangeable products. The FDA has yet to grant interchangeable status to any product, so those products that could be automatically substituted under this bill have not yet been approved for the market.

Assemblywoman Carlton:
Apparently this legislation has passed in other states, but those drugs are not out there yet. Is that correct?

Brian Warren:
Yes. There are two reasons that these bills are being pursued following the adoption of the federal law, but prior to the actual existence of these products on the market. One reason is so the laws are in place when those products become available. We then would not have to limit patient ability to access them because there is no law on the books to provide guidance to pharmacists and physicians on how to handle them. Second, we believe this bill is necessary now because it makes clear the interchangeable products can be automatically substituted, similar to how a generic is substituted, but it makes clear that a non-interchangeable product cannot be substituted. This is because the FDA has not deemed those products appropriate to be substituted. This bill provides that level of clarity now so we do not have any inappropriate substitution of non-interchangeable products today.

Assemblywoman Carlton:
Can you give me an example of what these drugs are, because I am trying to picture in my mind what we are talking about? What types of drugs are proposed? What type of illness does this deal with?

Rylan Hanks:
Some of the diseases we are talking about that can be treated with these medicines include cancer: breast cancer is one of the indications that a biosimilar and a biologic is being evaluated for. Other things include immune response, so rheumatoid arthritis, juvenile idiopathic arthritis, and psoriatic arthritis. You have issues like multiple sclerosis, which is being evaluated for biologics, and finally blood disorders, things like low red and white blood cell counts which are indicative of issues around other things like cancer. Some of the medications we have looked at that have been approved by the FDA are things in line with

those different treatments, one of which is a biosimilar infliximab product, which the reference product is REMICADE used for rheumatoid arthritis and other conditions around immune response. This is one example of something that has been approved.

Assemblywoman Carlton:
Where is insulin in the whole scheme of things? I know there is no generic for insulin because insulin is in this world or similar to this world.

Rylan Hanks:
Insulins are governed under a different provision of law under the FDA. This bill does put in place provisions that will encapsulate how the insulins will be used in the same setting. Right now there are no generic insulins on the marketplace. However, in 2020 there is a statutory provision under the Biologics Price Competition and Innovation Act where insulins will move over into a new category governed under biosimilars and biologic medicines. It is with some forethought that we understand these will be governed by the same mechanism, and we will take that into account in terms of the pharmacy practice and substitution ability.

Assemblywoman Carlton:
Insulin has been out for a very long time. It is very important to people, and they have never had an opportunity to have something at a more reasonable price. They have been held hostage at a certain price because there has been no opportunity for an option for them.

Assemblyman Daly:
I think you are saying we are ahead of the curve—there are not a lot of these products out there, but we are going to set it up similar to what we did with generics and various things. I am curious about where we are on the curve on the other side of this? We have insurance providers who are always going to want to, with generic drugs, get people to utilize the least expensive drug, which has benefit for them and their plan so you do not have to keep escalating premiums. I have experienced situations where people get some of these drugs that are $20,000 per dose, and they have to be on it for five months for cancer or something similar. If you do not have insurance, you are not getting this medication. Do we have the same protocols or similar protocols for the length of time on a patented drug or a patented biological before they can come up with an interchangeable or similar? Are all of those things similar to the other side on the generic drug, chemical drug protocols? Hopefully we are ahead of the curve.

Rylan Hanks:
The real idea here is the same construct the FDA put in place around generic drugs. What they are looking at for biosimilars and interchangeable biologics is to accelerate competition in the marketplace for off-patent innovator medicines. That idea is similar to what we saw with generic medicines. There is a spectrum right now in terms of those medicines and how they are classified. There are certain medicines that are innovator that have come off patent where biosimilars are being evaluated and approved by FDA currently. Right now with the FDA, there are ten active applications under review that could be

approved in 2017. There are currently four already approved, as we mentioned. There are over 64 in the pipeline with FDA being evaluated for 23 different innovator molecules. It gives you an idea of the breadth of what they are looking at in terms of applicability of getting these molecules into the marketplace. As innovation occurs, some medications are still under either intellectual property protection or exclusivity protection by the FDA. There are certain exclusivities and things like that which do pertain to innovator molecules, some of which are different than the generic scheme. I will not go into detail. I think the idea here is, as these medicines come off patent, they are available to be made in a more competitive marketplace in terms of being biosimilar or interchangeable. That is the intent of the federal scheme and the federal legislation. That is the idea of getting these laws in the books in each state to allow these medicines to increase competition and allow better patient access.

Assemblyman Daly:
We are here trying to be ahead of the curve and have a protocol in place in state law so when more of those drugs come online, we will be in a position for people in Nevada to have access to them and have the same process as we do on generic drugs to benefit the people.

Rylan Hanks:
Yes. The idea is that it will be put in place now. The other idea is that FDA has just released, as of this year, guidance on interchangeability, so sponsors now have guidance in place with the agency to seek interchangeability. The other part of that is FDA is not mandated to hold to guidance before they approve the first interchangeable, and FDA has said as much in different committee hearings with federal Congress. The other part of this is that sponsors developing biosimilars have proactively said on the public record they are currently seeking interchangeability. We do not have one on the marketplace today. We do not know exactly when one could be introduced. It could be introduced tomorrow or next month, but these products are moving into the marketplace. Biosimilars are already here, interchangeables are actively working their way into the system, and this has been going on for some time now. It may not be that long until we see the first interchangeable. The idea is to be proactive here, to allow patients the best access, to empower pharmacists to utilize their best authority to dispense these medicines, and to allow prescribers more access and more alternative medicines for patients. Timing is important, because without doing it now, we may run the risk that an interchangeable is introduced and there is no provision in law that allows a pharmacist to dictate what should be appropriately used and what should not.

Chair Bustamante Adams:
We are going to move into the support position for this bill. Those in support of A.B. 245 please come to the table. We will start with the two people in Las Vegas.

Eva Olech, President, Rheumatology Association of Nevada:
I am a board-certified rheumatologist practicing in Las Vegas, and I am the president of the Rheumatology Association of Nevada. I came here to testify on behalf of my rheumatology colleagues across the state in complete support of A.B. 245, which will allow the substitution of interchangeable biosimilar medications while ensuring that proper communication takes place when these drugs are used. Most of our rheumatology patients with chronic conditions such as rheumatoid arthritis, psoriatic arthritis, or ankylosing spondylitis are treated with the biological medications. These drugs are extremely powerful; they help our patients who would otherwise be disabled to have normal lives. A good example is my mother who has severe rheumatoid arthritis and at some point was in a wheelchair. Because of biologics she has been able to have a normal life. She has been active and pain-free for many years.

Sometimes treatment with biologics is not that simple. There are many patients who do not always respond to each biologic or sometimes they will respond at first, but then they lose their response because of their immunogenicity. Sometimes patients have side effects. We rheumatologists are very excited about the opportunity to use the interchangeable biosimilars and biosimilars overall as an emerging and less costly treatment option for our patients.

Since these medications are not exactly the same as the original biologics, we doctors have to ensure we have proper documentation and accurate records of our patients' medical history. For example, if I have a patient to whom I prescribe a biologic and the patient goes and gets a biosimilar, and then this patient does not respond as expected, how can I properly adjust their medication if I do not know what this patient is taking? That would be even more important if a patient has a side effect. Therefore, it is crucial that pharmacists communicate this very important medical information to physicians.

Additionally, this legislation will protect physicians' ability to write "dispense as written" in cases where the patient has some safety concerns. We rheumatologists in Nevada are excited to have the opportunity to utilize biosimilars for our patients. We truly hope that our state leaders pass this legislation so we can give our patients the best treatment available, but at the same time protect their safety.

Kim Bennett, Private Citizen, Las Vegas, Nevada:
I am here today to speak in support of A.B. 245. My 14-year-old daughter, Ellie, was diagnosed with ankylosing spondylitis two years ago when she was 12 years old. We originally had thought Ellie had injured herself in a cheerleading accident, but after some surgery, bloodwork, and a long time period, it was determined that Ellie had a form of arthritis. We were then directed to see a pediatric rheumatologist but, unfortunately, during that time Nevada did not have a pediatric rheumatologist. We went to Phoenix Children's Hospital to receive treatment. Ellie's rheumatologist started her on steroids, then

methotrexate, and then decided to aggressively treat the ankylosing spondylitis with a biologic along with nonsteroidal anti-inflammatory drugs (NSAIDS) for her pain. Initially Ellie had side effects from the biologic in which she did not feel good and she was tired. Within a month or so those side effects subsided and she started having positive results from the biologic.

While Elizabeth is no longer a cheerleader, she is active in cross country running, and she is a wonderful runner. She has not let arthritis stop her from being the active high school student she is today. Her pediatric rheumatologist has been amazing and has encouraged us to be involved with the local arthritis foundation here in Las Vegas. Our family is now very involved. We want to be the voice for 2,300 children in Nevada who have arthritis and are suffering every day.

I am here today to stress the importance of the communications component in A.B. 245. We have put our full trust in our physician. We always discuss Ellie's treatment plans at great length before we make a final plan. I have seen the utmost importance of communication—if any substitution to an interchangeable biologic should happen at the pharmacy, all of us involved should be aware—our physician and our family. Biologics have been a lifesaver to my daughter. I have seen her flourish in school, with her friends, and in cross country because of the treatment we have received. Please vote yes to A.B. 245 with the communication component included.

Chair Bustamante Adams:
Thank you, Ms. Bennett, for your testimony, and I appreciate your sharing your personal story. We will go to Carson City.

Barry Gold, Director of Government Relations, AARP:
AARP is all about increasing access to affordable, quality health care. Biologics are very expensive. This bill will do just that—it will increase access to affordable, quality health care. Medicine is a very important part of health care. On behalf of the 330,000 members across the state, we support this bill and urge you to pass it.

Tom McCoy, Nevada Governmental Relations Director, American Cancer Society Cancer Action Network:
I would like to reiterate from a patient's perspective that biologic drugs are providing cancer patients and their physicians access to improved treatment of cancer. Interchangeables and the ability to use them will increase access to lower-cost prescriptions for Nevada patients with cancer and with other serious necrotic diseases. This is why we support A.B. 245.

Ryan Beaman, representing Clark County Firefighters, Local 1908:
We run our own insurance trust fund for our actives and retirees. We do see the cost for treating the diseases mentioned earlier, especially on the prescription drug side. We see that in trying to manage our plan, and any way we can find to lower the cost for prescription drugs, we support. Biosimilars have the potential to offer a lower cost for our plan. We do support A.B. 245.

Todd Ingelsbee, representing Professional Fire Fighters of Nevada:
We, too, are in support of any healthy, affordable option for all of our members and citizens that we assist in Nevada. We fully support A.B. 245.

Chair Bustamante Adams:
Is there anyone else in Las Vegas or Carson City in support of A.B. 245? [There was no one.] We will move to opposition. Is there anyone opposed to this bill? This is your opportunity to tell us specifically if there is a section or word that needs to be changed. [There was no one.] Is there anyone in a neutral position with any information you think we might need to make a better-informed decision?

Catherine O'Mara, Executive Director, Nevada State Medical Association:
We have submitted written comments (Exhibit R) in the neutral position. We appreciate the opportunity to be here and to have worked with Majority Leader Benitez-Thompson on this bill. The reason the Nevada State Medical Association is neutral is because some of our members have experience with biologics, and they have experienced times when the patient has had an adverse reaction. We understand that the interchangeables, by the federal definition, are more similar, and the effects should be more similar to the original biologic drug. However, because we do not know what they are yet, the physician community would like immediate notification. The three days is a compromise number, so we are neutral but also asking you to preserve what is in the bill now, particularly section 4 and also section 7, which provide for patient protection and notification to the patient.

The main elements we care about are that the interchangeable biologics are available to patients. The prudent physician will write "dispense as written" on everything until she feels comfortable with it. We do not want to prevent that in cases where they could really help the patient. Until we know exactly what they are and the physicians have a comfort level with that, they would like notification as early as possible in the medical record: notification to the patient; dispense as written; and notification into the medical record that the physician can then access. We ask that you preserve sections 4 and 7 as you consider moving this bill forward.

Chair Bustamante Adams:
Thank you for your testimony. Is there anyone else in a neutral position? [There was no one.] Majority Leader Benitez-Thompson, do you have any closing comments?

Assemblywoman Benitez-Thompson:
Thank you, Madam Chair and members of the Committee on Commerce and Labor. One final closing comment on the agreed-upon amendment in which we tighten the language in section 5 with reference to the FDA's Purple Book: I have been told by the pharmacy board that it will remove the fiscal note that is attached. Their industry representative just let me know they are tied up on the Senate side, but they will be circling back to you to confirm. This way you have clarification on all impacts of the bill. Thank you for your time and your consideration. If there are any additional questions, please email, text, call me, or stop by to see me.

Chair Bustamante Adams:
We are going to close the hearing on A.B. 245. Is there anyone here for public comment? [There was no one.] Seeing no one, we will adjourn [at 4:11 p.m.].

RESPECTFULLY SUBMITTED:

Pamela Carter
Committee Secretary

APPROVED BY:

Assemblywoman Irene Bustamante Adams, Chair

DATE:

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is proposed amendment 3069 to Assembly Bill 109, dated February 26, 2017, submitted by Assemblyman John C. Ellison, Assembly District No. 33.

Exhibit D is a letter to Assemblyman John C. Ellison and Senator Pete Goicoechea, dated March 22, 2017 submitted by Laura K. Granier, Partner, David Graham & Stubbs LLC, representing Great Basin Water Co., regarding Assembly Bill 109.

Exhibit E is an Executive Agency Fiscal Note dated February 13, 2017, on Assembly Bill 109 submitted by Laura E. Freed, Executive Branch Budget Officer, Department of Administration.

Exhibit F is a report titled "Spring Creek Association Water Issues Summary," regarding Assembly Bill 109, submitted by Jessie Bahr, President, Spring Creek Association, Elko, Nevada.

Exhibit G is written testimony submitted by David Curtiss, Private Citizen, Vallejo, California, in support of Assembly Bill 109.

Exhibit H is written testimony, dated March 21, 2017, submitted by Laurie Crehan, Regional State Liaison, Office of the Deputy Assistant Secretary of Defense, United States Department of Defense, in support of Assembly Bill 282.

Exhibit I is a proposed amendment to Assembly Bill 262 submitted by Jon L. Sasser, representing Legal Aid Center of Southern Nevada.

Exhibit J is prepared testimony submitted by Sophia A. Romero, Staff Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada, in support of Assembly Bill 262.

Exhibit K is a copy of the section titled "Additional Terms and Conditions (Simple Interest)," of a Retail Installment Contract submitted by Sophia A. Romero, Staff Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada, relating to Assembly Bill 262.

Exhibit L is a copy of an "Addendum to Sales Contract," submitted by Sophia A. Romero, Staff Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada, relating to Assembly Bill 262.

Exhibit M is a copy of a contract titled "Right of Repossession" submitted by Sophia A. Romero, Staff Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada, relating to Assembly Bill 262.

Exhibit N is a copy of a contract addendum titled "Addendum No. 1 To Simple Interest Vehicle Contract and Security Agreement," submitted by Sophia A. Romero, Staff Attorney, Consumer Rights Project, Legal Aid Center of Southern Nevada, relating to Assembly Bill 262.

Exhibit O is a report titled "Who Drives to Work? Commuting by Automobile in the United States: 2013," written by Brian McKenzie, American Community Survey Reports of the United States Census Bureau, dated August 2015, submitted by George O. West III, Attorney, Consumer Attorneys Against Auto Fraud, Las Vegas, Nevada, in support of Assembly Bill 245.

Exhibit P is a collection of 15 letters, dated March 2017, from the medical community to the Assembly Committee on Commerce and Labor, in support of Assembly Bill 245, submitted by Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27.

Exhibit Q is a conceptual amendment to Assembly Bill 245, authored and submitted by Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27.

Exhibit R is a letter to the Assembly Committee on Commerce and Labor, dated March 20, 2017, in neutral of Assembly Bill 245, authored and submitted by Howard Baron, M.D., Secretary, Nevada State Medical Association.