MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY

Seventy-ninth Session
March 29, 2017

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 8:06 a.m. on Wednesday, March 29, 2017, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Kelvin Atkinson, Chair
Senator Pat Spearman, Vice Chair
Senator Nicole J. Cannizzaro
Senator Yvanna D. Cancela
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Heidi S. Gansert

GUEST LEGISLATORS PRESENT:

Senator Aaron D. Ford, Senatorial District No. 11
Senator Scott Hammond, Senatorial District No. 18

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Bryan Fernley, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Marlene Lockard, Nevada Women's Lobby; Human Services Network of Northern Nevada
Nancy Stiles, American Association of University Women
Stacey Shinn, Progressive Leadership Alliance of Nevada
Caroline Mello Roberson, Nevada State Director, NARAL Pro-Choice America

Elisa Cafferata, Nevada Advocates for Planned Parenthood Affiliates
Jared Busker, Children's Advocacy Alliance
James P. Kemp, Nevada Justice Association
Barry Gold, AARP Nevada
Gary Milliken, Nevada Contractors Association
Chris Daly
Paul Moradkhan, Las Vegas Metro Chamber of Commerce
Tray Abney, The Chamber of Reno, Sparks and Northern Nevada
Lea Tauchen, Retail Association of Nevada
Lori Judd, Chair, Certified Court Reporters' Board of Nevada
Peggy Elias, Chair, Nevada Court Reporters' Association
Craig Davis
Mark Ivey, CEO, E-Depositions, LLC
Kadie Huffman, E-Depositions, LLC
Jason Sanderson, Vice President, E-Depositions, LLC
Peter Hellman
Jenny Foley
Paul J. Malikowski
John Rutledge
Dan R. Waite, Certified Court Reporters' Board of Nevada
Randy Brown, AT&T
Marc Ellis, Communications Workers of America
Mike Eifert, Executive Director, Nevada Telecommunications Association
Garret Weir, Public Utilities Commission of Nevada
Randy Robison, CenturyLink
Eric Witkoski, Consumer's Advocate, Bureau of Consumer Protection, Office of the Attorney General
Auguste Lemaire, President, Sunvelope Solar, Inc.
Greg Lafayette, President, Pacific Energy Alternatives
Debra Gallo, Southwest Gas Corporation
Judy Stokey, Sierra Pacific Power

CHAIR ATKINSON:
I will open the hearing on Senate Bill (S.B.) 196.

SENATE BILL 196: Requires an employer in private employment to provide paid sick leave to employees under certain circumstances. (BDR 53-682)

SENATOR AARON D. FORD (Senatorial District No. 11):
Paid sick days are critical to the economic security of working families. The public increasingly recognizes this necessity for working families as well. Americans across the political spectrum have shown strong support for paid sick leave. Some may find it surprising, but almost 70 percent of those who voted for President Donald Trump support a national social insurance program for paid family and medical leave, as do 89 percent of those who voted for Hillary Clinton. Yet even as states and cities across the U.S. pass laws guaranteeing paid sick leave, too many families still do not have access to this basic workplace standard.

Americans rate paid sick leave as more important than several other workers' rights already required by law. In fact, in a recent study by the University of Chicago of 1,461 Americans, 75 percent considered it a basic workers' right; 75 percent thought employers should be required by law to provide paid sick days; 86 percent endorsed a plan that would require a minimum of 7 paid sick days a year; 70 percent backed a plan requiring a minimum of 9 days; and 71 percent to 77 percent favored plans that gave part-time workers sick days proportional to their hours. I hope those figures resonated in your minds because there are a large number of Americans, Nevadans in particular, who believe paid sick leave is an important workers' right.

There are also those who argue against paid sick days. I have heard from some of those since last Session when I first presented this bill, and I have heard from them since the beginning of this Session. Some of those opponents argue that paid sick leave makes it harder to remain competitive and hire new employees. Some business groups contend that requiring companies to provide sick leave benefits will force them to raise prices and reduce employees' hours or benefits. However, paid sick leave means employees no longer have to choose between going to work sick, fleeing a domestic abuser, or taking care of a loved one and foregoing pay.

Public health improves by keeping sick workers at home and preventing them from spreading illnesses at work. A recent survey of food workers showed that nearly 90 percent of food workers went to work when they were sick, and more than half of those said they did so frequently or always. Moreover, of those who worked while sick, almost half reported that they did so because they could not afford to lose a day's pay. Another report from the Centers for Disease Control and Prevention illustrates just how risky working while sick can

be. In one sandwich shop in Michigan, for example, one worker infected over 100 customers with norovirus.

The lack of paid sick leave also puts strains on the health care system and drives up the cost of health care. Those without paid sick days are twice as likely as those with paid sick days to use hospital emergency rooms or send a sick child to school or day care. According to the U.S. Department of Labor, workers without paid sick time are more likely than those with paid sick time to be injured on the job, especially those in health care support occupations, construction and production. In addition, businesses have been shown to profit from healthier employees and lower turnover.

Seven states, including Arizona, California, Connecticut, Massachusetts, Oregon, Vermont and Washington, as well as Washington, D.C., currently require paid sick leave. The laws vary in the number of days provided and the characteristics of the employers covered by them. Yet across the board, policies that give workers paid sick time have not been job killers.

Connecticut was the first state to enact a paid sick leave policy back in 2011. The Center for Economic and Policy Research released a report in 2014 examining the experiences of Connecticut employers with the state's paid sick leave law 18 months after the law went into effect. The survey results confirmed that the law had a modest impact on business in the state, contrary to many of the fears expressed by businesses and business interests prior to the passage of the legislation, such as potential abuse and added costs. Those same concerns have been raised regarding S.B. 196. Few employers in Connecticut reported abuse of the new law, and many noted positive benefits, such as improved morale and reductions in the spread of illness in the work place. Further, of those employers surveyed, about 67 percent reported no increase in cost or an increase of less than 2 percent. Another 12 percent did not know whether or how much it cost them, indicating that if there was any cost, it was negligible and certainly manageable. Finally, more than 75 percent of the surveyed employers expressed support for the paid sick leave law. Clearly, Connecticut's experience does not support the doom and gloom scenarios I often hear from opponents of paid sick leave.

Let me note a few facts from other jurisdictions that require paid sick leave. The law applies to employers regardless of the number of employees in four states: Arizona, California, Vermont and Washington. The original version of this bill

followed that same approach. The amended version does not. Since the start of this Legislative Session, I have reached out to business groups far and wide to get their input, suggestions and amendments, and I received them from a handful of business interest groups. I have adopted some of those amendments and suggestions. One of them is to apply it only to businesses with 50 or more employees. I tell you this so you will know efforts were made to compromise and accommodate concerns that have been raised. That should be taken into consideration.

Other states also restrict paid sick leave laws to employers with 50 or more employees. This does not include manufacturing businesses, national chartered nonprofit organizations and non-exempt workers in service occupations as defined by the U.S. Bureau of Labor Statistics.

I will highlight a few of the key provisions of S.B. 196. Please refer to Proposed Amendment 3260 (Exhibit C) for the amended version of the bill. Section 1 of the bill requires a private employer to provide employees paid sick leave at a rate of not less than 1 hour per 30 hours worked. Sick leave may be used by employees on the 90th calendar day of their employment. Section 1, subsection 7, paragraph (a) of Exhibit C adds a definition of "employer" that restricts it to private employers who have 50 or more employees in Nevada. We are trying to help out small businesses. More specifically, these employers must have had 50 employees for each working day in each of 20 or more calendar weeks in the current or immediately preceding calendar year. They must also have conducted business in Nevada for the last 12 months. This sounds convoluted, but I got this language from the Las Vegas Metro Chamber of Commerce. That was their request, and I added it in to attempt to accommodate their concerns.

Section 1, subsection 1 of the bill provides that employers who are included in these paid sick leave provisions may limit the use of paid sick leave to 24 hours a year. They may also limit the accrual of paid sick leave to a maximum of 48 hours a year and set the minimum amount of paid sick leave used at one time to 2 hours.

Exhibit C adds paragraph (e) to subsection 1 of section 1. This provision states an employer may require an employee who uses three or more consecutive days of paid sick leave to provide a reasonable certification of the need for that leave upon return to work. This was added to crack down on possible fraud and

abuse, another issue raised by business interest groups and included to accommodate their concerns.

Section 1, subsection 2, paragraph (b) of the bill requires that employees be allowed to use accrued paid sick leave to address a health condition of, or preventive care for, the employee, a member of the employee's family or household, or to obtain counseling or assistance or to participate in any court proceeding related to domestic violence or sexual assault.

Section 1, subsection 2, paragraph (c) of the bill requires employees to give reasonable advance notice of the need to use accrued sick leave. Paragraph (d) prohibits employers from denying employees the right to use accrued sick leave in accordance with the conditions of this section. They are also prohibited from requiring employees to find replacement workers as a condition of using sick leave or retaliating against employees for using sick leave. This is an effort to weigh the needs of the business with the needs of employees.

Section 1, subsection 3 of the bill requires the Labor Commissioner to prepare a bulletin setting forth these requirements. Employers will be required to post this bulletin in the workplace. This is no different from existing requirements that employers post notices about workers' rights.

Section 1, subsection 4 of the bill requires employers to maintain records of the accrual and use of paid sick leave for each employee for a three-year period and to make those records available for inspection by the Labor Commissioner. This is another requirement that is already found in our extant laws.

Section 1, subsection 5 of the bill provides an exception to the requirements of the bill for employers who provide at least an equivalent amount of sick leave or paid time off that may be used for the same purposes and under the same conditions. These exceptions apply particularly to collective bargaining agreements. If you already have a policy for paid time off that is comparable to the requirements of the bill, you are not included in this bill. Employers who do not currently offer something similar to this will be required to come up to this standard. This will give Nevada employees the option of staying home when sick, taking care of a sick child or family member, or addressing a domestic violence issue without fear of losing a paycheck.

Section 1, subsection 6 lists employees who are exempted from this bill. This list was created with input from the Las Vegas Metro Chamber of Commerce and from labor groups that want to ensure their interests are protected. Excluded employees include construction workers, seasonal workers, day or temporary workers, per diem health care workers, and employees in executive, administrative or professional capacities. I have also heard from the Boys and Girls Clubs, who want to ensure entities like them would not be included in this bill. We have an exception for them, as for other nonprofit entities.

Exhibit C removes section 1, subsection 1, paragraph (f) of the bill that required employers to provide a written accounting of accrued sick leave on each payday. Instead, Exhibit C amends section 1.5 of the bill to require this information be included in the record of wages required to be established and maintained by employers for the benefit of employees.

Section 2 of the bill requires the Labor Commissioner to enforce the provisions of the bill. It makes violation of the provisions of the bill a misdemeanor and authorizes the Labor Commissioner to impose a penalty of up to $5,000 for each violation. One of my colleagues raised concerns about this provision. We researched it and ascertained that this penalty already exists for not maintaining other required paperwork. This is nothing new.

SENATOR SETTELMEYER:
Does this bill apply to independent contractors or just to employees?

SENATOR FORD:
It applies just to employees of employers who employ 50 or more employees.

SENATOR SETTELMEYER:
How did you come to the determination of 1 hour for every 30 hours of work? Connecticut uses 40 hours; Washington, D.C., uses 43 hours; Vermont uses 52 hours; and Washington State uses 40 hours.

SENATOR FORD:
California uses 30 hours, as does a municipality in Oregon. We looked at a variety of different areas that have paid sick leave policies, which included several states and a number of cities.

SENATOR SETTELMEYER:
Was there discussion on how many hours have to be accrued before they can be used? I do not see how you would ever use just two hours if you are sick. Was there any consideration of requiring employees to save up a full day before they use sick leave?

SENATOR FORD:
The requirement is that employees earn 1 hour for every 30 hours worked and can begin using that time after 90 days. There is no requirement that they accumulate a specific amount of time before they can use it, with the exception of the employer being able to say they must use a minimum of 2 hours. If you are suggesting that we consider something that would assist the employee in that regard, I am open to hearing your amendment.

SENATOR SETTELMEYER:
My concern was that managers do not want sick employees coming in for four hours and then taking three hours off. If they are sick, you do not want them there at all, especially if you are in the food industry. I was thinking the concept needs to be adapted to make sure a sick person takes a full day off. If your kids are sick, you do not take them for half a day only; you stay home all day. I will follow up with you on this offline.

SENATOR FORD:
I would be happy to discuss that.

You remind me of an additional provision I wanted to mention because employers raised a concern about abuse. Section 1, subsection 5, paragraph (d) of Exhibit C allows employers to set up and enforce a policy against abuse. This would help employers in the event they determine someone is, for example, calling in sick the day after a three-day holiday.

CHAIR ATKINSON:
Does the bill include a definition of "private employer"?

SENATOR FORD:
By "private," we mean non-governmental. If we need to specify that further, I can work with Counsel to clarify that.

MARLENE LOCKARD (Nevada Women's Lobby; Human Services Network of Northern Nevada):
I am here today to support S.B. 196.

Paid sick leave is so important to so many, not only in Nevada but across the U.S. As indicated by testimony, we are now beginning to see businesses realize that allowing people to take time off when sick is better for everyone. It is better for the sick person to stay home, it is better for the business not to expose customers and other workers to illness, and it is better for families.

Over 40 million people in America do not have a single day of paid sick leave. If you have ever had to choose between going to work sick or not getting a paycheck, staying home is simply not an option. Losing 3.5 days of wages is the equivalent of a month's worth of grocery money. It develops into a spiral, especially for low-wage workers and families. Once an employee misses part of a paycheck because of illness, it can spiral into not having money for the next car payment or rent. When people live paycheck to paycheck, they cannot afford to be sick.

In answer to Senator Settelmeyer's question about the number of hours used, we think three days of sick leave a year is a modest beginning. We wish there was a week available. As you rightly noted, a child does not necessarily recover in a matter of four hours or a day or two. In fact, many families do not have the option to send a sick child to school. When children are sick, the school sends them home and will not allow them back in school until fully recovered. If parents do not take time off work, they have to find other resources, often at additional expense.

The need for this bill has been clearly demonstrated. On behalf of the women, children and families in Nevada, we strongly urge your support.

NANCY STILES (American Association of University Women):
I am here in support of S.B. 196. I have written testimony (Exhibit D) expressing our enthusiastic support for this concept. Everyone gets sick, but not everyone has time to get better. We stand with Senator Ford for paid sick leave, with the suggestion that it be expanded to seven days a year.

STACEY SHINN (Progressive Leadership Alliance of Nevada):
We are also part of the Nevada Coalition for Women's Equity that came together about a year and a half ago to pick five bills that promoted gender equity in the workplace. This bill is one of our top five priorities.

Paid leave is essential for a strong Nevada workforce. This is a commonsense bill that will allow workers to balance work and family responsibilities. Paid sick leave is a social justice issue. Women disproportionately bear the burden of caring for ill family members and are less likely to have access to paid leave than men. Access to paid leave also disproportionately affects people of color. Nationwide, only 43 percent of Latino workers, 61 percent of African-American workers, and 62 percent of Asian-American workers have access to paid leave. Furthermore, S.B. 196 is important for low-wage workers. When family emergencies arise, workers are often forced to quit their jobs so they can handle the emergencies, then find new jobs. Preventing this type of turnover will save employers money and allow them to retain valuable employees.

Senate Bill 196 is an ethical workplace bill that is practical. At some point, every one of us will be faced with an illness or a family medical emergency. Workers should never have to choose between paychecks and taking care of family members or themselves in a crisis.

CAROLINE MELLO ROBERSON (Nevada State Director, NARAL Pro-Choice America):
We are strongly in support of S.B. 196. As an organization dedicated to protecting reproductive freedom, we consider paid time off a significant part of that. We are hopeful this conversation will eventually evolve into a larger discussion around paid family leave.

ELISA CAFFERATA (Nevada Advocates for Planned Parenthood Affiliates):
We are a member of the Nevada Coalition for Women's Equity. We support S.B. 196. Over the ten years I have been working with Planned Parenthood Health Centers in Nevada, we have seen a growing number of patients who are covered by health insurance, thanks to policies put in place at the State and national level. Paid leave is the other part of that equation to ensure workers can take the time off they need in order to take care of themselves and their families. Because this is one of the key social determinants of health care and improved health outcomes, we support this bill and urge you to support it as well.

JARED BUSKER (Children's Advocacy Alliance):
We are in full support of S.B. 196. We believe this legislation will help working families.

JAMES P. KEMP (Nevada Justice Association):
We are in full support of S.B. 196. We think it is an excellent proposal for Nevada workers.

In response to Senator Settelmeyer's question, workers who need to take time off for medical appointments are also covered by this bill, and two hours is usually enough for most medical appointments. Elderly workers and those with chronic health conditions who have frequent medical appointments would be covered by this. They often have no control over the scheduling, and medical appointments are often scheduled during work days.

For the Nevada Justice Association, this bill is particularly important because workers' compensation claimants often have physical therapy or medical appointments that happen during the work day. If they are working light-duty jobs and have to take off time to go to those appointments, this is often unpaid time. This bill would allow injured workers to be paid for time off to get treatment.

BARRY GOLD (AARP Nevada):
Currently, in Nevada there are approximately 350,000 unpaid family caregivers. They provide over $4 billion of unpaid care for family members. About 60 percent of these family caregivers are still employed. We strongly believe that caregivers need to be able to take approved time off for caregiving. This helps them keep their jobs and provide income for their families. It helps them reduce stress, which makes them better employees. Most important, it allows them to take better care of their loved ones. We need to help caregivers do their jobs, and S.B. 196 does that.

On behalf of the more than 300,000 members of AARP Nevada, we support this bill and strongly urge the Committee to pass it. You should not have to worry about losing your job because you have to take your mother to the doctor.

GARY MILLIKEN (Nevada Contractors Association):
We are in support of S.B. 196 as amended. As most of you know, we have contractual relationships with all the unions. Paid sick leave and paid vacation time are part of our negotiated agreements. We thank Senator Ford for including this in his amendment.

CHRIS DALY:
As the author of the Nation's first paid sick leave law in San Francisco in 2006, I am here in support of S.B. 196.

When we proposed paid sick leave in San Francisco, we were met with strong and strident opposition. The main argument was that this was going to hurt low-wage workers because it would result in job losses. That can be a compelling argument. However, that is not what happened in San Francisco, and typically it has not been the experience in places that add this law. Between 2004 and 2010, there were several labor improvements made in San Francisco, including paid sick leave, increased minimum wage and mandatory health coverage. The trade associations said there were going to be job losses among the low-wage workers who were most likely to be affected by these improvements. However, between 2004 and 2011, employment among food service workers grew faster in San Francisco than the other Bay Area counties by 17.7 percent. We did not see job losses with these improvements, and that is generally the experience nationwide. Rather, we saw workers who were more invested in their jobs, with a resulting increase in productivity. We saw things working in a better way. When you hear opposition to this bill, take a look at the national examples, because we see things actually improving for employers and the economy, as well as for workers.

SENATOR SPEARMAN:
I wanted to comment on a study that was conducted by the U.S. Bureau of Labor Statistics. The average cost in 2016 to employers for offering paid sick leave was 35 cents per hour worked. That backs up your testimony, Mr. Daly.

PAUL MORADKHAN (Las Vegas Metro Chamber of Commerce):
We are opposed to S.B. 196 on behalf of our members. We appreciate Senator Ford reaching out and considering a variety of amendments from us on this bill. However, based on the feedback we have received from our members, we are not able to support the bill.

I will share some numbers with the Committee. In a survey conducted by the Las Vegas Metro Chamber of Commerce of private employers, 72.9 percent of respondents indicated they are concerned that a mandatory paid sick leave program as proposed in S.B. 196 would affect their business operations or increase their costs as employers. They are concerned about the effects of this bill on the cost of doing business, especially when taken together with other bills currently being considered by the Legislature. They are concerned about its effect on the cost of labor and the burden of complying with the reporting requirement and record-keeping for possible inspection. A total of 54.6 percent of survey respondents do not support this bill because of the burden of costs imposed on employers.

Another 25.9 percent do not support this bill because they already offer a form of paid sick leave to employees. The survey also showed that a majority of private employers offer some form of paid sick leave. Many members shared with me they offer robust benefits as part of the compensation package to recruit employees to work for them. They believe the market should drive the competitiveness of benefits offered.

It is clear from our members that they have significant concerns about the provisions of this bill. As a member organization, we are opposed because of the impact S.B. 196 will have on our members.

The Las Vegas Latin Chamber of Commerce has also asked me to register their concerns about this bill.

TRAY ABNEY (The Chamber of Reno, Sparks and Northern Nevada):
I echo the remarks of Mr. Moradkhan.

We thank Senator Ford for reaching out to us proactively. On this issue, however, we cannot get there. We are concerned any time there is a bill that costs more to create jobs, has more mandates and more fines. You do not have to take it from me. Here are some of the comments I received when I sent this bill out to them:

- More paperwork, more fines.
- One more incentive not to come to work.
- Still get paid and put more expense on the employer who is left without the necessary labor.
- More incentives to not hire more people.

- Turning team leaders into clerks.
- Tracking is onerous.
- One mistake could cost $5,000.
- Mounting record-keeping requirement.
- This bill reinforces the need to run a business with as few employees as possible.

Not one of the job-creators whom I work for said they could support this bill or this topic. For that reason, we remain opposed to S.B. 196.

LEA TAUCHEN (Retail Association of Nevada):
We are concerned with mandating a one-size-fits-all formula in this bill. It will remove the flexibility for business owners to make personnel decisions to accommodate their unique workforce, culture and circumstances. Employers can only allocate a certain amount of funds for benefits. Forcing them to fit into this particular mold will have an impact on their payroll costs and will result in real trade-offs. In many cases, that means they will have to shave off other benefits employees may have requested or would prefer to receive instead of sick leave. Every business operates using a different system.

I echo the statements of the previous two speakers. A government-imposed employment contract will take away the differentiating employment benefits for employers to offer in a competitive marketplace.

CHAIR ATKINSON:
Mr. Abney, you said none of your members supported the bill. Did those comments come from employers with 50 or more employees?

MR. ABNEY:
They came from a variety of employers and were based on the original bill. We did not see the amendments in Exhibit C until this morning. However, they are opposed to any form of government-mandated paid sick leave.

CHAIR ATKINSON:
Will you show them the amended language and get their response to it?

MR. ABNEY:
I send out a legislative email every week, and we will send Exhibit C out in our next email.

CHAIR ATKINSON:
Mr. Moradkhan, how about you?

MR. MORADKHAN:
Our survey was conducted among the entire membership. The survey results were cross-tabbed to show they were consistent regardless of the size of the business.

SENATOR SPEARMAN:
Do any of the employers currently offer sick leave?

MR. MORADKHAN:
More than half of our survey respondents offer some form of paid sick leave.

SENATOR SPEARMAN:
Is it similar to the paid sick leave in this bill?

MR. MORADKHAN:
I do not have that information. They indicated in their survey responses that they offered some form of paid sick leave through a variety of different mechanisms.

SENATOR SPEARMAN:
An article in Franchise World Magazine recently reported that the top reason many workers stay in their jobs is paid sick leave, and the second reason is health insurance.

SENATOR HARDY:
Section 1, subsection 5, paragraph (c) of Exhibit C says, "The provisions of this section do not ... [p]rohibit, preempt or discourage any contract or other agreement that provides a more generous sick leave benefit or paid time off benefit." I would like to suggest that this be amended to, "or equal to the 24 hours per year ... ."

Mr. Moradkhan, of the 25.9 percent of respondents to your survey who did not support the bill because they already had some form of sick leave, how many had more than 50 employees?

MR. MORADKHAN:
I do not have those figures with me. I know the results were consistent across the board. I will follow up with you.

SENATOR FORD:
I want to address some of the concerns raised and speak to the notion of extra paperwork. As a reminder, we have statutory requirements for recordkeeping already, and most of it is done electronically. This will require an extra click on an electronic document or an extra number written on a piece of paper. It is not going to be that burdensome.

Senator Hardy, you asked about adding the phrase "or equal to" at one point. I believe that idea is covered by section 1, subsection 6, paragraph (a), which refers to " ... at least 24 hours of paid leave per year ... ." If you feel we need to clarify the language, we can talk about a way to do that. We are not talking about people who are already doing what the bill requires, and this is an important fact to note.

Mr. Abney noted he had not seen the amendment in Exhibit C, and I would like to add some context to that. All the amended language in Exhibit C came from what was reported to me to be a joint proposed amendment from The Chamber of Reno, Sparks and Northern Nevada and the Las Vegas Metro Chamber of Commerce. I did not use all of their amendments, but all the amendments I did take were sent to the Las Vegas Metro Chamber of Commerce last week. I assumed they would send a copy to The Chamber, which was an error on my part. However, the language is not new to them; they indicated to me the two chambers were aligned, and both chambers know what is in the language.

I do appreciate the chambers. I have worked with them throughout this whole process, attempting to get them to buy in. If I were a stickler, I would have left the bill in its original form. You all know that typically, if I accept an amendment from you, I expect you to testify in support of the amended bill. They are testifying in opposition, but in an effort to show that you can be both pro-employer and pro-employee, I am still including amendments from them that I feel were good suggestions. I am looking for a balance to make things work.

It should also be noted that of all those who testified in opposition to the bill, only the chambers came to me with any suggested language or amendments. I think all of you share with me the feeling that the first version of our bills are

drafts, and we want input from associations and industry groups that can give us information on how best to proceed in order to accomplish our goals. That is what I was trying to do here. I hope the Committee will take into consideration that I have endeavored since the start of this Session to get as much buy-in as possible from business groups on this bill. It was obviously to no avail, but I do think we have arrived at a decent product that could be unanimously supported in a bipartisan way. As I indicated, nearly 70 percent of Donald Trump supporters support paid sick leave, as do 89 percent of Hillary Clinton supporters. I hope that 100 percent of us in this building support this notion too.

CHAIR ATKINSON:
The few emails I have received on S.B. 196 have been focused on the 50 employees provision in section 1, subsection 7, paragraph (a) of Exhibit C. How did you arrive at that number?

SENATOR FORD:
The first iteration of this bill said that all employers must provide paid sick leave, even those with only one employee. I researched all the locations that currently require paid sick leave. In Connecticut, the law applies to employers with 50 or more employees; in Massachusetts, it applies to employers with 11 or more employees. Four states have laws that apply to all employers. In Oregon, it applies to employers with 10 or more employees. In Washington, D.C., it applies to employers with 100 or more employees. The recommendation I got from the two chambers of commerce was 50 or more employees. I felt that was the best moderate approach and a good compromise.

CHAIR ATKINSON:
You mentioned that the amendments you received arrived through negotiations with the two chambers of commerce. Did anyone else participate in its construction?

SENATOR FORD:
Not to my knowledge. I received this language from them; I do not know if they spoke with anyone else. I do not recall receiving any suggestions from any other business group, including the Retail Association of Nevada.

CHAIR ATKINSON:
Are you asking the Committee to consider the bill under the amended language in Exhibit C?

SENATOR FORD:
Yes. I should point out that I do not say that the chambers agreed to the version of the bill in Exhibit C. However, every amendment in Exhibit C is a suggestion that came from the chambers. The chambers offered more amendments that I rejected. I will remain open to input.

CHAIR ATKINSON:
I have received written testimony from a number of people who were not able to attend the meeting today. They are Will Hansen from the ERISA Industry Committee (Exhibit E); Eva Medina from the Consumer Direct Care Network (Exhibit F); Randi Thompson from the National Federation of Independent Businesses (Exhibit G); and the Henderson Chamber of Commerce (Exhibit H).

I will close the hearing on S.B. 196 and open the hearing on S.B. 406.

SENATE BILL 406: Revises provisions relating to court reporters and court reporting firms. (BDR 54-949)

SENATOR SCOTT HAMMOND (Senatorial District No. 18):
I was approached by members of the Certified Court Reporters' Board of Nevada to present S.B. 406. The Board conducted several meetings over the course of months in order to come up with changes they believe are necessary to their practice.

I will give you a broad overview of the bill. Section 2 of S.B. 406 authorizes a natural person to obtain a temporary certificate of registration from the Board to engage in court reporting on a temporary basis if there is an acknowledged shortage or the applicant is an active member of the U.S. military or the spouse of an active member and meets certain requirements.

Section 19 of the bill sets the fee for the issuance and renewal of a temporary certificate of registration at $100.

Sections 10 through 15 of the bill prohibit the use of any identifying term by a natural person or business entity that may indicate to the public that they are

entitled to practice as court reporters or conduct business as court reporting firms.

Sections 12 through 14 of the bill revise the qualifications for a certificate of registration. These revisions include requiring an applicant to receive a passing grade on one of two national examinations. The bill also revises the requirements for admission to the exam and revises the qualifications for a certificate of registration as a certified court reporter (CCR).

Section 32 of the bill provides that only a CCR is authorized to perform the duties of an officer before whom depositions may be taken in any court in Nevada.

Section 29 of S.B. 406 authorizes the Board to impose administrative fines against, issue citations to, and issue and serve cease and desist orders on natural persons and business entities that engage in licensed practices and conduct.

Section 35 of the bill allows the Board, after notice and hearing, to impose administrative fines upon natural persons or business entities who violate any law or regulation governing CCRs and court reporting firms. These fines are to be not more than $5,000 for each violation.

SENATOR GANSERT:
Section 32 of the bill limits who can provide court reporting services to a court, is that right?

SENATOR HAMMOND:
That is correct. I will defer to those who wrote the bill to answer your concerns. I have talked to several lawyers and have heard repeatedly that if you want to get a representation of what was deposed, the best source of information comes from a court reporter. There will be those who ask why we cannot use videotaping. There will be others who talk about the validity that comes from court reporters who know their business.

LORI JUDD (Chair, Certified Court Reporters' Board of Nevada):
I have been a court reporter for 35 years. I am here today to speak on behalf of S.B. 406, which has been five years in the making by the Board, the industry, the Attorney General's office and the general public. The Board has held

13 open meetings since 2012 on the topics covered in this bill, and all the comments we received at those meetings were taken into consideration when drafting the bill.

This bill does not attempt to stop or limit taking videotaped depositions. There is nothing in S.B. 406 that will prevent any attorney from utilizing a videographer to videotape a deposition. Video depositions are a useful tool often used by litigants. This bill also does not require an attorney to order or purchase any kind of transcript from any deposition, including a video deposition.

I would like to talk about the history of the Legislature's intent concerning the practice of court reporting in Nevada. *Nevada Revised Statutes* (NRS) 656.020, subsection 2, states, "The practice of court reporting in the State of Nevada is declared to affect the public health, safety and welfare and is subject to regulation and control in the public interest." The Legislature decided years and years ago that what we do is important in the public interest and needs to be regulated. Subsection 1 of this statute states, "It is hereby declared to be the policy of the Legislature to ... [e]xtend to the courts and public the protection afforded by a standardized profession by establishing a standard of competency for those engaged in it." There are certain professions in which there is a need for those practicing them to demonstrate competence through a standardized test before they are allowed to practice in those fields. Those professions include doctors, attorneys, massage therapists, teachers, certified public accountants, cosmetologists and court reporters, among others. When this statute was enacted, the Legislature felt the public had a right to expect a certain level of competence in exchange for payment of the services. The language of the bill follows this by stating a CCR should be the one who makes the transcript, whether it is with or without a videographer.

In addition, S.B. 406 seeks to enhance and expand the testing and certification process for court reporters in Nevada. As the Board examined the cost of administering these exams since 2008, we noticed that costs were increasing, and the fees we charged to take the exam did not cover the cost of administering it. We then looked at alternate ways of administering the exam, including creating a videotaped exam. However, the cost of creating the video has not proven to be less expensive than the traditional method of giving the exam.

The National Court Reporters Association (NCRA) has been offering certification through a national exam for the better part of 40 years. Although Nevada does not recognize that exam, it is highly respected and well vetted. Concurrent with our cost problems, NCRA developed an online testing program. Court reporters can take this test if they wish, and upon passing that test, they can sit for the written exam in Nevada. They can then become certified to work as court reporters in Nevada.

We have received a very positive response from industry regarding our proposed upgraded testing method. We believe that if we adopt this national exam for the skills portion, we will experience an increase in court reporters who want to become certified in Nevada and who will eventually move here to work as CCRs. For the entirety of my time on the Board, Nevada has had many CCRs who maintain Nevada licenses but live somewhere else. In speaking with some of these licensees, we have learned that many of them had the dream of finishing their careers in their current state, then retiring and moving to practice in Nevada. They saw us as a utopia, a place with a good economy where they wanted to retire. When our economy crashed, many of those licensees let their Nevada licenses lapse. We are hoping that adopting these new testing methods will recapture some of those former Nevada CCRs and attract new ones. We are also hoping to attract court reporters who are certified elsewhere.

PEGGY ELIAS (Chair, Nevada Court Reporters Association):
We support this bill. I am here to answer any questions you might have about the bill.

CRAIG DAVIS:
I am in support of S.B. 406. I am a member of the Nevada Court Reporters Association and a CCR in Nevada. At any legal proceeding, you need to have a court reporter for accuracy.

MARK IVEY (CEO, E-Depositions, LLC):
I am opposed to S.B. 406.

My company, E-Depositions, is not a court reporting firm. We do not hold court reporting licenses, but we do perform deposition services for our clients. Over the last several years, we have recorded hundreds of depositions for some of the best attorneys in Nevada. They have chosen us because we have given them an option other than court reporting. All our depositions are recorded by

audiovisual technology. We strongly believe that audiovisual recordings are the most accurate form of testimony possible. We create a transcript from that testimony. The official record used by attorneys and courts is the audiovisual recording. The transcript is an aid to that record. We do non-stenographic depositions.

We are opposed to section 32 of S.B. 406. It will eliminate our business and leave our clients with only one option to record their depositions. According to the Bureau of Labor Statistics, employment of court reporters is projected to grow 2 percent from 2014 to 2024. That is slower than the average of all occupations. This industry is shrinking. According to the "Court Reporting Industry Outlook Report" created by Ducker Worldwide in 2014, by 2018 there will be a shortage of at least 5,000 court reporters across the Nation. This bill, especially section 32, will exacerbate that problem and make it harder for attorneys to have a deposition recorded.

If S.B. 406 passes in this form and limits the number of people who can record a deposition, it will create further strains on our court system. It will lengthen the time of litigation and add to its cost.

When we started E-Depositions, we wanted to provide our clients with an alternative to court reporting. We follow all the Rules of Civil Procedure (RCP), including rule 28, which defines a deposition officer, and rule 30, which states how a deposition is to be recorded. Our depositions are allowed into courts and have been used in courtrooms across Nevada and California.

Nevada was forward thinking when it amended its RCP in 2005, which were adopted by the Nevada Supreme Court. Rule 30, section (b), subsection 2 states that, unless a judge otherwise stipulates, a deposition " ... may be recorded by sound, sound-and-visual, or stenographic means ... ." If it is a non-stenographic deposition, any party to that case has a right to have it transcribed. In 2005, Nevada opened the door to allow attorneys to have a choice. Twelve years later, the Nevada Supreme Court has adopted these rules. The federal RCP say the same thing. Our court systems have said that non-stenographic depositions are usable and acceptable as long as they are performed in front of an office of the court as they deem it.

I urge this Committee to reject S.B. 406.

KADIE HUFFMAN (E-Depositions, LLC):
I am a deposition officer and the director of trial services at E-Depositions. Prior to that, I worked as a hearing advocate and a claims and litigation specialist for CCMSI, Inc., for the State of Nevada account. I have an extensive background as a paralegal in different areas of the law, including litigation and workers' compensation. I know and understand the RCP and can attest that E-Depositions complies with all of the RCP with regard to depositions.

As a deposition officer, I want the Committee to know that we are not just off-the-street notaries with video cameras. E-Depositions is comprised of seasoned law professionals who have a deep understanding of the RCP and the importance of the task we undertake when we record depositions. If this bill passes, it would eliminate all our positions. This would be an unfortunate event for our clients, as we bring an unrivaled level of expertise, understanding and technology that benefit them. All of us have worked in law offices as paralegals, and we have an intimate knowledge of the issues we face when working on cases that require depositions. We grasp the importance of having the best possible record of deposition testimony. It would be a disservice to our clients and their needs to take away that expertise in helping them in litigation.

JASON SANDERSON (Vice President, E-Depositions, LLC):
I am the vice president of E-Depositions. I am opposed to S.B. 406.

I was once an intern to Assemblyman Joe Dini. When I was here back then, there would have been a court reporter typing this Committee meeting. Today, this meeting is not only being recorded using audiovisual technology, it is also being streamed across Nevada for others to view. Technology is an amazing thing.

I want to address what has been referenced as "the public" in this matter. The public are the attorneys who use deposition services like ours as well as court reporters. I can testify that in all my years in sales and marketing, I have not seen a more technical and sophisticated buyer than an attorney. We consider our clients some of the best attorneys in Nevada, if not America.

I would not be here in opposition to this bill if what we were doing was not in compliance with the laws of Nevada and the U.S. Before we ever recorded a deposition, our clients did extensive background research to ensure that E-Depositions was compliant with the laws, as well as being useable and

accepted by the courts. If we did not meet one of those criteria, we would not have been given the chance to record a single deposition for them.

There is room for what we do and what court reporters do in this sandbox. We know that we will not be a preferred choice for every attorney. Court reporters should feel the same and not force attorneys to only use their services. Nevada adapted its RCPs in 2005 to open the door for this competition, and it was approved by the Nevada Supreme Court and the federal courts. I ask this Committee to trust that these courts have the best interests of the public in mind when approving rules governing depositions. A vote in favor of S.B. 206 tells the Nevada Supreme Court that you do not trust what they deem best for the public and the law.

It should not be up to court reporters, E-Depositions, or the Legislature to dictate to attorneys what they should do. These are sophisticated buyers who know what is best for them. Whether they choose to use non-stenographic recordings or stenographic recordings, we should all respect that they know what it best.

There is no record more accurate than an audiovisual recording. If that was not the case, there would be a court reporter here typing this Committee hearing today.

CHAIR ATKINSON:
Were any of you able to talk to the sponsor of the bill about your concerns?

MR. IVEY:
No, though we did try to meet with him. There have been some attorneys working behind the scenes in opposition to this bill, and they have been in touch with Senator Hammond.

SENATOR HARDY:
Is it mandatory to transcribe audiovisual depositions so attorneys can read what was said rather than having to play the entire recording?

MR. IVEY:
Our practice is to transcribe every deposition we record, and that transcript is synched to the recording so the attorneys can watch the video and read at the same time. Our transcripts have to be very accurate. If attorneys use a

non-stenographic deposition in a court proceeding, it must be accompanied by a transcript. It must also be certified by the deposition officer who took that deposition. The transcript is an important piece. Technically, however, video depositions do not have to be transcribed. We have some clients who, after a deposition, tell us to hold off on transcribing because they did not get the information they were looking for.

SENATOR HARDY:
Is it cheaper to use a court reporter or to use audiovisual recording, with or without transcription?

MR. IVEY:
Our process is that instead of having a court reporter and a videographer in the room at the same time, we have a deposition officer who acts in both roles. It cuts the cost in half for our clients. This is one reason a lot of our clients use us today. By using our services, they can depose more people, and they may be able to open the case up for further discovery.

SENATOR CANNIZZARO:
You mention that you prepare a transcript for every deposition you do. Is that a certified transcript?

MR. IVEY:
We certify the transcripts and our work product. We place a certificate on the back of the transcript with the accompanying video.

PETER HELLMAN:
I am the owner of Nevada Court Reporting. I am in support of much of S.B. 406, but there some potential negative ramifications contained within. I have written testimony (Exhibit I) outlining my concerns about the bill. I have spoken with Senator Hammond regarding my concerns.

SENATOR CANNIZZARO:
In some courts, we have court reporters who are stenographers who type up the proceedings as we speak. In other courts, we have court recorders who record the proceedings to be transcribed later. In civil proceedings, most courts require the parties to request that proceedings be transcribed or made available. What effect will this bill have on those courts that employ court recorders as

opposed to court reporters? What effect will it have on civil litigants? Will they then have to require a court reporter to show up to court for a proceeding?

MR. HELLMAN:
You bring up an interesting point. This inherently becomes the issue. Section 32 is a recent addition. It is not something that was part of the ongoing discussions; it was brought up recently and has been contentious. The Board has not reached out prior to introduction of S.B. 406 to the Nevada RCP rules committee or to the legal community as a whole. It looks to me, as a business owner, as if the Board's intent is to increase their own financial gain.

I believe court reporting is a noble profession and one that is necessary. It should not be the only means of recording a deposition. Section 32, subsection 2 of the bill says the provisions apply " ... notwithstanding any other provisions of law or court rule to the contrary." This is saying that regardless of whatever the court says, the Board determines what is the standard.

SENATOR CANNIZZARO:
I understand Mr. Hellman's point, but the question is still what effect this has on departments that employ court recorders, and how it would apply in civil cases where the court requires the litigants to make a request.

MS. ELIAS:
Section 1 will not affect the current law. Nevada RCP rule 29 reads, " ... unless otherwise directed by the court." In the courtrooms, the courts can decide whether to have electronic recording or a court reporter. It is the judge's decision.

SENATOR CANNIZZARO:
I think my question relates more to section 32 of the bill, where we have been talking about the differences in a stenographer or court reporter situation and other situations. Section 32 does not seem to be limited only to depositions. It also relates to courts, so I do not know whether court recorders are court reporters and would fall under this or if this section would affect that situation.

MS. ELIAS:
Section 32, subsection 1 of the bill reads, "... may be appointed to the position of official reporter of any court in the state." That is also covered under NRS 656.320, which is titled, "Court reporters: Current certificate required for

appointment as official reporter of any court in State." Also, Nevada's RCP rule 29 starts out, "Unless otherwise directed by the court ... ." This means the court may elect to have an official court reporter who is certified, or it may elect to use the recording system. It is the judge's decision.

SENATOR CANNIZZARO:
Section 32 of the bill says, "Only a natural person who is a certified court reporter ... [m]ay be appointed to the position of official reporter of any court in this state." The current rule says a court can elect to have either a court reporter or a court recorder, but this section seems to limit it to only someone who is a CCR. How does this affect those courts that elect to employ court recorders as opposed to court reporters?

MS. ELIAS:
My reading is that a judge cannot hire a court reporter who is not certified.

SENATOR CANNIZZARO:
I may be disagreeing with how this section is written. It seems to place limits on those judicial departments in terms of employing someone who is a CCR.

MS. ELIAS:
As it stands, NRS 656.320 reads, "No person may be appointed to the position of official court reporter of any court in the state except a court reporter who holds a current and valid certificate under the provisions of this chapter." That has not been interpreted as meaning the judge had to hire a live person with a steno machine.

SENATOR CANNIZZARO:
Are court recorders also CCRs?

MR. HELLMAN:
No. They do not have any certification. In District 8, we have more than 50 district court rooms, of which less than a dozen are served by CCRs. The vast majority are handled by court recorders, where the official record is the audiovisual recording of the proceedings. Transcripts can be created, and some jurisdictions require it. As a whole, due to the limited availability of court reporters, the courts have ruled that they have the ability to put in court recorders or use recording equipment.

JENNY FOLEY:
I have been a practicing attorney in Las Vegas for more than 12 years. As an avid consumer of deposition services, I want a choice. Sometimes it is more appropriate for my case to have a CCR. Sometimes it is more appropriate to have an audiovisual recording. In my experience, that process is significantly less expensive, often one-third to one-half the cost of hiring a stenographer. When you take into account having both a stenographer and an audiovisual person, the cost goes up by a factor of four or five. I want the option to use a recorder as opposed to a stenographer. It makes more sense.

I have found in my own practice that there have occasionally been disputes with transcripts taken by stenographers. They are human, and sometimes humans make mistakes. When there is an audiovisual recording, however, everyone can go back to it without having to rely on a human being. Almost all court reporters I have dealt with are stellar at their jobs and bang-up professionals, but sometimes people make mistakes. I want the option of being able to use a recording.

I should also mention that someone should have notified the Nevada State Bar that this change was being considered. It does not just affect depositions; it affects a number of other proceedings. We need to consider what happens with an examination under oath, or when we have an affidavit written by a client or opposing party that is actually a deposition under oath in written form. Do we have to pay a stenographer to come in and type them up? None of that is addressed in this bill. The provision requiring only CCRs for depositions is not well-thought out.

Section 32, section 2 of the bill says that it trumps all other provisions of law. You do run into other conflicts. What happens if we have a deposition out of state? What happens if we have a deposition in a federal court? What happens if we have a deposition that has to take place in China? I have had to take those depositions, and getting a CCR for such a situation is nearly impossible.

Finally, the biggest impact I see is going to be on pro bono work. As an attorney, I cannot get a CCR to take a pro bono deposition for the life of me. I have tried, but I have not been successful. I have been able to get a recorder to take a video deposition without a transcriptionist. It is cheaper, faster and easier to arrange. I want that choice.

PAUL J. MALIKOWSKI:
I am a practicing attorney licensed in Nevada since 1979. I am opposed to S.B. 406 because it will restrict my options on how to record a deposition.

The effect of the bill as I read it makes recording depositions via licensed stenographer my only choice, and it makes video depositions obsolete. New powers should not be granted to the Board. My discussion with colleagues and my personal experience informs my view that video deposition recording tends to curb abusive behavior in depositions, as the video is much more descriptive than a printed transcript as to what really went on at the proceeding. All other things being equal, there is an argument that video recording encourages civility and decorum in an otherwise private setting.

The amendment of March 1, 2014, adopted by the Nevada Supreme Court to the Nevada RCP, rule 30, section (d), subsection (1), limits the length of depositions to seven hours. That may sound like a lot, but there are some that go beyond that. A video recording can provide evidence of a deponent's slow-walking his testimony where a transcript cannot. That is, the video will show a deponent taking a very long time to ponder a question and provide a response in an attempt to deliberately delay the proceedings. In that case, the question of whether the deposition should conclude at seven hours can only be determined by a discovery officer or judge looking at the time frame the video provides. A written transcript would not be able to do that, unless the stenographer was asked to include the time each question and answer took.

MR. KEMP:
I have been a practicing attorney in Las Vegas since 1997. I am opposed to S.B. 406, section 32 in particular. Section 32 seems to needlessly usurp the power of the court to control its own proceedings and control the way things are done. The Legislature would be better off leaving this to the courts to decide how depositions should be recorded.

JOHN RUTLEDGE:
I am a Nevada attorney. I am opposed to S.B. 406.

As has been stated by other testifiers, only a portion of relevant information is captured in stenographic form. Anyone who has taken offense at a cryptic but well-intended text message or email knows that all too well. Eye-rolling, smirks, long pauses, looking at others in the room for inaudible feedback, gestures and

gesticulations, and context in general cannot be captured by a written transcript, absent comment by counsel on the record. They are captured by video recording, and to some extent by audio recording. Those media convey a more accurate, a more complete communication than verbatim words on paper ever could. Accordingly, video recordings of, for instance, a deposition with a corresponding written transcript can prove to be the only real, full embodiment of that deponent's testimony. I do not think anyone here today would deny that. The real question is whether an NRS 240 qualified notary public can be kept from certifying a transcript of a videotaped deposition. The answer is no, not if that notary's deposition work complies with Nevada RCP rules 28, 29, and 30.

The shortage of stenographers is, I respectfully suggest, in part a reflection of technological evolution. That is best addressed by ensuring the body of deposition officers be expressly allowed to include individuals who are not necessarily stenographers and/or verbatim reporters. Depositions captured on video are not only better at capturing the entirety of the deponent's communication, they are also less expensive and therefore more accessible to less-affluent litigants who might not otherwise be able to participate as extensively in the development of their cases.

Reserving videographer rights to stenographers and verbatim reporters exclusively would not expand access or the service provider marketplace. Rather, it would just expand the scope of services offered by stenographers and court reporters. In other words, this is a protectionist measure. That fact is on full display from the proponents' comments today and on their Facebook page, which prominently advertises a "Save Your Job" call to action to get folks to come and support this bill.

This bill is like the manufacturers of buggy whips buying off the exclusive rights to the automobile. If they had succeeded in doing that, imagine where we would be today. A broader market of service providers brings down costs. That makes the judicial system more accessible for redress.

SENATOR SPEARMAN:
Ms. Foley said something about pro bono work. Is that unique to your profession, or has it been applied to court reporters?

MR. RUTLEDGE:
Much of the out-of-pocket cost of litigation has to do with depositions. You have to pay the court reporter to be there, and then there is the cost of the transcript, which can be enormous depending on the length of the deposition. If 6 or 12 people are deposed in a case, that cost is often the largest. If the court reporter is not willing to serve pro bono, as the attorney is, it is often cost-prohibitive to hold those depositions.

SENATOR HAMMOND:
The person who asked me to sponsor the bill was a lawyer, and there was also a lawyer on the Board. It should be noted that section 32 was a later addition. Mr. Hellman asked me to check with a specific lawyer about this. I spoke to that lawyer and gave him the bill to look over and discuss. He felt the wording of section 32 did not restrict anyone's ability to use either a recorder or a reporter.

The question was how accurate is a recorder versus a reporter. This is a matter of opinion. Another lawyer I spoke to thought the reporter was more accurate than a recorder. That was why I sponsored the bill. As you can see, in general the bill is liked, with all the opposition comments being centered on section 32. We can work on that. The idea of holding hearings on bills is to vet them out, talk about them, see what difficulties or problems people have and work out those problems. We will certainly step back and do that.

SENATOR SPEARMAN:
So many times, large corporations can wait out people who do not have a lot of money. If the cost of litigation is prohibitive, and this particular area is part of the cost, I would like to know if the pro bono work offered by lawyers is offered by CCRs as well.

MS. JUDD:
In 2004, I launched a pro bono project for court reporters. There is an avenue through the Legal Aid Center of Southern Nevada where indigent people can get the services of a CCR pro bono. There is a very active pro bono for court reporters in southern Nevada. I have provided my services pro bono.

DAN R. WAITE (Certified Court Reporters' Board of Nevada):
I am the attorney member appointed to the Board by Governor Sandoval. My experience with pro bono CCRs has been entirely different from Ms. Foley's. I

am the pro bono chair of my law firm, which has 250 attorneys in 5 states. I have never had a court reporter decline to provide pro bono services in a pro bono case. Court reporters are civic-minded and recognize the value of the services they provide and the need to provide them pro bono when individuals cannot afford them.

SENATOR GANSERT:
Consistently, people talk about court reporters with great respect. They are professionals, and there is great appreciation for them and the work they do. We are just in a situation where technology has changed and there are options that may be more cost effective. That is why there are problems with section 32 of the bill.

CHAIR ATKINSON:
I have received various material in opposition to S.B. 406 from Kenneth Campbell. This consists of written testimony (Exhibit J), a page titled "Administrative Directive No. 172" (Exhibit K) and a copy of the "Complaint for Declaratory Relief, Injunctive Relief, and Damages" in the case of *Veritext Corporation v. Louisiana Board of Examiners of Certified Court Reporters* (Exhibit L).

I will close the hearing on S.B. 406 and open the hearing on S.B. 412.

SENATE BILL 412: Revises provisions related to lifeline service. (BDR 58-624)

RANDY BROWN (AT&T):
It is my pleasure to present S.B. 412, sponsored by Senator Atkinson. This bill is fairly simple.

There are two programs that aid low-income households with telephone service. One is the federal Universal Service Fund (USF), and the other is the Nevada USF. They are both sometimes referred to as Lifeline. Recently, the Federal Communications Commission (FCC) made changes to the federal USF. Subsequent to those changes, the Public Utilities Commission of Nevada (PUCN) held a proceeding in which they made changes to the Nevada USF. The goal of the PUCN's proceeding was to align the two programs so that if a participant qualified under the federal program, they would automatically qualify under the State program. It would be easy for participants to understand, and you would not have to understand two sets of rules. The two programs are basically

synonymous at this point. The federal program provides a discount of $9.25 a month off your telephone bill, and the State program provides a discount of an additional $3.50 a month.

When the two programs were not aligned, there was a State administrator for the Nevada USF. That administrator/verifier was a company named Solex in Kentucky. Now that the two programs are aligned, the FCC is in the process of establishing a national verifier or administrator, and that entity will be responsible for qualifying individuals and households for the federal program. Since the two programs are identical, there is no need to have a State verifier as well, once that national verifier is up and running.

This bill makes the State verifier or administrator permissive rather than required. It also puts the authority in the PUCN to make that decision. Once the national verifier is up and running and Nevada is part of that system, the PUCN can hold a proceeding and eliminate the State verifier. The State verifier costs the Nevada USF an average of $300,000 a year.

We have one small amendment to suggest (Exhibit M). In the Legislative Counsel's Digest section of S.B. 412, there are three references to "competitive suppliers." The word "competitive" should be struck. That is on page 1, lines 1, 6 and 11 of the bill. The term "competitive supplier" is a defined term in statute and refers only to AT&T, CenturyLink and portions of Frontier Communications. There are many other suppliers of lifeline service in Nevada, and this bill applies to all suppliers.

MARC ELLIS (Communications Workers of America):
We are in support of S.B. 412. As the person who installs Lifelines for elderly couples, I think this is a good bill. If it can save people a few dollars, we are in support 100 percent.

MIKE EIFERT (Executive Director, Nevada Telecommunications Association):
We are in support of this bill.

GARRET WEIR (Public Utilities Commission of Nevada):
The PUCN supports this important bill that provides necessary enabling language.

RANDY ROBISON (CenturyLink):
We are in support of this bill. We also support the amendment in Exhibit M, which would make it consistent with existing law.

> SENATOR SETTELMEYER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 412 WITH THE WORD "COMPETITIVE" REMOVED FROM THE LEGISLATIVE COUNSEL'S DIGEST.
>
> SENATOR SPEARMAN SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR ATKINSON:
I will open the hearing on S.B. 435.

SENATE BILL 435: Repeals the Solar Thermal Systems Demonstration Program. (BDR 58-338)

SENATOR JAMES A. SETTELMEYER (Senatorial District No. 17):
This bill came through the Legislative Committee on Energy. The Solar Thermal Systems Demonstration Program began in 2009 and is set to sunset in 2019. The goal was to install 3,000 solar thermal systems. In 2011, we changed the law and created four categories: schools, public and other properties, private residential, and small businesses. The PUCN established the goals, but unfortunately those goals were not met. They divided them between Southwest Gas and NV Energy. Southwest Gas's goal last year was 300 units; they only installed 6 for an expenditure of $36,000. Sierra Pacific Power's goal was 49; it installed none. In previous years, because of the way they advertised, the cost to install zero units was $203,000.

The question becomes why did the Program fail? Looking at the information from the PUCN, the Legislative Committee on Energy felt it was due to the high installation cost of $20,000 to $50,000 per unit. In northern Nevada, it required high-freeze protection for an additional $1,600. These units have a poor return on investment, with a payback of 32 to 46 years when the lifespan of the product was just 20 years. There is also the problem of the high administrative costs. Southwest Gas's administrative costs in 2015 were 61 percent, and

Sierra Pacific Power's administrative costs were 100 percent. The goal was unattainable at the current low participation rates. Southwest Gas and Sierra Pacific Power spent $2,857,183 from 2010 to 2015 to install 613 units. That comes to a price of $4,660 apiece. The residential cost of these systems is $10,000 to save users $144 a year on their bills. That creates a 56-year payback unless you add the federal tax credit, which then brings it to a 39-year payback. But again, the lifespan of the system is 20 years.

The Bureau of Consumer Protection supported discontinuation of this Program in PUCN Docket No. 16-07028. Unfortunately, they cannot save our ratepayers some money by discontinuing an unproductive program unless the Legislature gives them the ability to do that. That was the recommendation of the Legislative Committee on Energy.

ERIC WITKOSKI (Consumer's Advocate, Bureau of Consumer Protection, Office of the Attorney General):
We support S.B. 435 completely. The Program has high installation and administrative costs, and it is not a good product for the consumer.

AUGUSTE LEMAIRE (President, Sunvelope Solar, Inc.):
We oppose this bill. I am a fifth generation Nevadan. I mention that because it is important that the Committee understand I am not a fly-in, fly-out corporation. Sunvelope Solar is a Nevada-based company, and we will live or die here.

I agree with Senator Settelmeyer that the Program has not performed, but there are a lot of reasons for that. One of the reasons is the onerous requirements of duplication in permits and inspection, as well as, in the part of the Program that is still remaining, the very low rebate program that was offered.

I have probably suffered more than anyone else from the on-again off-again nature of the Program. Just about the time we start to get some momentum going and begin to build the Program up, it gets killed. It has been killed three times, and that is devastating to a company. The Program is littered like the 40-Mile Desert with the relics and bones of the people who have tried to make it work.

My wife and I have personally invested $1.5 million into developing a new technology that is freezable. This is a product that can be installed on natural gas water heaters. With the new rebate level that has been established for

NV Energy, which is only in the Reno-Sparks area, we feel we have a product that can be installed very cost-effectively. The total installed cost of the average system with our technology would be about $7,000. The rebate from NV Energy would be in the neighborhood of $3,000 to $3,500 due to the high performance of our system. In conjunction with the federal tax credit, that would allow someone who has a failing gas water heater to replace it for slightly more than it would cost to replace the water heater alone.

This is a technology Sunvelope Solar has been developing for the last ten years with the express purpose of establishing a market in Nevada that we can export into California, Arizona and the entire Southwest. It has been a difficult road because every time we start to get some momentum, we get killed off. Once again, you are about to kill the Program, and it will probably kill my company.

GREG LAFAYETTE (President, Pacific Energy Alternatives):
We are a wholesale distributor of solar products. Our engineering staff has taken on the responsibility of figuring out what rebates are available, and we do quite a bit of research. In Nevada, $14 per therm was previously available, and it went to $43 per therm as of January 1, 2017.

We are asking that the Program be extended. Give us at least 12 months to prove the Program works. I am not disagreeing with Senator Settelmeyer's numbers. I believe, from a marketing perspective, there have been a few companies, like Sunvelope Solar, who have done a tremendous amount of work to bring product to market. We have four new clients in a beta test study that are interested in having the product installed. We have a cost of approximately $10,000 for the system, though the exact cost is predicated on size, and our product integrates solar photovoltaics, which can be tied to the electrical grid or not. With the investment tax credit, there is a mitigation of cost of approximately $3,500. Additionally, the rebates that are currently available would reduce the cost another $3,000. With some financing options we have available, this gives the client payback in 4 to 10 years. This significantly reduces the challenges we have seen with solar thermal in general.

We would like the option to be heard and seen and have this Program continue for at least another year. I cannot say S.B. 435 would kill our business, but it would reduce the opportunity for Nevadans who would like to have a bit of autonomy from the utilities.

SENATOR SPEARMAN:
Senator Settelmeyer, did you say part of the issue was in the way the Program was advertised?

SENATOR SETTELMEYER:
The biggest problem was the administrative cost, the overhead. One entity had an overhead of 61 percent, another of 100 percent one year, for a total of $203,000, and no one signed up for the Program. I wish your companies would have signed up more people. If you had, this bill would never have come forward. The Interim Legislative Committee on Energy looked at the cost effectiveness of the Program and made a decision that it should not continue. The Program only has two more years to run, but at $200,000 a year plus, we were just trying to look at cost effectiveness for the ratepayers.

SENATOR SPEARMAN:
How was the Program advertised? Was there any outreach to consumers?

MR. LEMAIRE:
In addition to the advertising regarding the availability of the Program done by the utilities, which was part of the administrative costs Senator Settelmeyer mentioned, we personally did a lot of advertising. We have a Website, I attended all kinds of Earth Day events, I went to local home shows, I advertised through mailings, and I reached out to local installers, plumbers and heating people, trying to get more people involved with installation.

I want to backtrack to when this Program was first instituted. I remember the first meeting they had with 30 installers. The energy and the excitement in that room was palpable. These men and women really wanted to make a difference and bring some renewables into Nevada, take advantage of the abundant sun resource that we have. However, the number of rebates available in northern Nevada was very small, something in the neighborhood of 200 for the entire State. It was not enough to get people excited because they felt there was not going to be a large opportunity to scale up in their operations and their advertising. In the solar photovoltaic market, we saw that when advertising was scaled up, when Solar City came in and really started hammering the marketing, the result was tremendous.

With the Program and the rebate level that is currently available with NV Energy, it is very solid. We can work with it. We can fill the Program out.

But we need to know that it is going to be there. We need to know there is some stability. I have been hesitant to start marketing and buying material and gearing up to work on this with the uncertainty of getting my head chopped off again.

SENATOR SPEARMAN:
Would this issue be compatible with S.B. 204, which has to do with energy storage?

SENATE BILL 204: Requires the Public Utilities Commission of Nevada to investigate and establish biennial targets for certain electric utilities to procure energy storage systems under certain circumstances. (BDR 58-642)

MR. LEMAIRE:
Solar thermal has its own integral storage capability. There has to be a tank to store the heat being gathered through the day so you can take a shower the next morning before the sun gets up. Storage is a different kind of animal with solar thermal, and it is intrinsically in all my systems.

SENATOR SPEARMAN:
Is there any possibility of linking what you do to the energy storage bill?

MR. LEMAIRE:
It would be a completely different issue. There is no link between the two that I can see.

MR. LAFAYETTE:
Our product has been out for several years and is now being aggressively marketed. It works hand in glove with the storage aspect. Ours is actually a storage-type unit. We just would like the opportunity. We believe that with the marketing campaign we have currently, we would be able to accomplish much more than described by Senator Settelmeyer.

SENATOR SETTELMEYER:
This is only dealing with the solar thermal project, not the product you mentioned, which is not solar thermal. Southwest Gas's initial goal was 200. No one signed up. In 2011, Sierra Pacific Power had the ability to fund 46 units,

and they did 7. It just comes down to nobody signing up. If we had gotten more people to sign up, this bill would never have come forward.

MR. LAFAYETTE:
Our product is not a solar thermal product, but it does qualify for the solar thermal rebate. I can bring experts to explain why at a later date if the Committee would like.

Our goal is not just distribution; it is education. That is one of the key components missing. The new rate just started January 1, and we have not had enough time. To kill this now does not give us an adequate opportunity to step up and prove we can do it. On top of that, the gas rates have dropped, which has created a challenge. In our case, I believe we have a significant opportunity here.

DEBRA GALLO (Southwest Gas Corporation):
We are neutral on S.B. 435.

We promoted the Program. We are not asking for it to go away; that is your decision. If you decide to keep it, we will continue to promote it and work it. If you decide to eliminate it, we will accept that.

Senator Settelmeyer is correct on the administrative costs. If you have more units installed, your percentage will go down, and we did not install many units last year. As the previous speaker said, the low cost of gas and the efficiency of natural gas water heaters mean when you look at the differential in cost, it does not make as much sense. We did do fairly well in the commercial sector, and we did install quite a few of those, but they are a different part of the bill.

JUDY STOKEY (Sierra Pacific Power):
We are neutral on the bill. Senator Settelmeyer's numbers are correct. Since the inception of this Program in 2004, we have only had 19 installations. We have not had any for the last year. Since the incentive went up at the beginning of this year, a couple of people have asked to go forward with it.

SENATOR SETTELMEYER:
I think these goals are unattainable. That is why the Legislative Committee on Energy asked for this bill.

CHAIR ATKINSON:
I will close the hearing on S.B. 435 and open the work session on S.B. 162.

SENATE BILL 162: Revises provisions relating to psychological assistants, psychological interns and psychological trainees. (BDR 54-614)

MARJI PASLOV THOMAS (Policy Analyst):
I have a work session document (Exhibit N) describing the bill and including Proposed Amendment 3179, which was proposed by Michelle Paul, President, Board of Psychological Examiners.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED S.B. 162 WITH PROPOSED AMENDMENT 3179.

SENATOR CANCELA SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR ATKINSON:
I will open the work session on S.B. 291.

SENATE BILL 291: Revises provisions relating to health care records. (BDR 54-350)

MS. PASLOV THOMAS:
I have a work session document (Exhibit O) describing the bill and the amendment proposed by Chris Ferrari. In addition, Senator Hardy proposed the bill be amended with language similar to section 1 of Assembly Bill (A.B.) 339.

ASSEMBLY BILL 339: Revises provisions relating to health care. (BDR 54-729)

CHAIR ATKINSON:
Senator Hardy, are you okay with Mr. Ferrari's amendment?

SENATOR HARDY:
Yes. That amendment deletes references to the amount of the fee that may be charged for a digital copy of certain health care records. What you can charge or not charge is covered elsewhere, so that part does not need to be in the bill.

SENATOR GANSERT MOVED TO AMEND AND DO PASS AS AMENDED S.B. 291 WITH THE TWO AMENDMENTS DESCRIBED IN EXHIBIT O.

SENATOR SETTELMEYER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR ATKINSON:
Is there any public comment? Hearing none, I will adjourn the meeting at 10:56 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Kelvin Atkinson, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	9		Attendance Roster
S.B. 196	C	3	Senator Aaron Ford	Proposed Amendment 3260
S.B. 196	D	4	Nancy Stiles / American Association of University Women	Written Testimony
S.B. 196	E	4	Will Hansen / ERISA Industry Committee	Written Testimony
S.B. 196	F	2	Eva Medina / Consumer Direct Care Network Nevada	Written Testimony
S.B. 196	G	3	Randi Thompson / National Federation of Independent Businesses	Written Testimony
S.B. 196	H	1	Henderson Chamber of Commerce	Written Testimony
S.B. 406	I	4	Peter Hellman	Written Testimony
S.B. 406	J	6	Kenneth B. Campbell	Written Testimony
S.B. 406	K	1	Kenneth B. Campbell	Directive Document
S.B. 406	L	35	Kenneth B. Campbell	Complaint: Veritext v. Louisiana Board of Examiners of Certified Court Reporters
S.B. 412	M	4	Randy Brown / AT&T	Proposed Amendment
S.B. 162	N	6	Marji Paslov Thomas	Work Session Document
S.B. 291	O	2	Marji Paslov Thomas	Work Session Document