

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

**Eighty-first Session
April 1, 2021**

The Senate Committee on Commerce and Labor was called to order by Vice Chair Dina Neal at 8:14 a.m. on Thursday, April 1, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Dina Neal, Vice Chair
Senator Melanie Scheible
Senator Roberta Lange
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Keith F. Pickard

COMMITTEE MEMBERS ABSENT:

Senator Pat Spearman (Excused)

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Policy Analyst
Wil Keane, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Terry Reynolds, Director, Department of Business and Industry
Michael Brown, Executive Director, Governor's Office of Economic Development
Sheronda Strider-Barraza
Eddie Ableser, Nevada Dental Association
Brian Lauf, President, Nevada Academy of Physician Assistants
David Dazlich, Vegas Chamber
Justin Micatrotto
Richard Dragon
Nancy Jones
Bryan Wachter, Retail Association of Nevada

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Janine Hansen, President, Nevada Families for Freedom
Bob Russo
Lea Case, Board of Occupational Therapy
Gary Landry, Executive Director, State Board of Cosmetology
Lisa Grant, State Board of Oriental Medicine
Tedd Girouard, Chair, Board of Athletic Trainers
Chelsea Capurro, State Board of Oriental Medicine
Merle Lok, Executive Director, State Board of Oriental Medicine
Jeanette K. Belz, Board of Occupational Therapy
Alexandria Cannito, Board of Dental Examiners of Nevada
Dan Musgrove, Chiropractic Physicians' Board of Nevada
Elliot Malin, Nevada Board of Homeopathic Medical Examiners
Susan Fisher, State Board of Osteopathic Medicine
Michelle Cothrun, Board of Athletic Trainers
Paige Barnes, Nevada Nurses Association
Jaron Hildebrand, Executive Director, Nevada State Medical Association
Bill Head, Pharmaceutical Care Management Association

VICE CHAIR NEAL:

I will open the hearing on Senate Bill (S.B.) 335.

SENATE BILL 335: Revises provisions relating to professional and occupational licensing. (BDR 54-186)

SENATOR JOSEPH P. HARDY (Senatorial District No. 12):

I will focus on the positive side of S.B. 335. I sponsored this bill because Nevadans need confidence in our medical care in Nevada. We need to have faith in physicians of every kind. As caregivers, we need to have a commitment to serve and honor those who are sick or afflicted, and we need to have the ability to be self-sacrificing for the good of our neighbors. We need to rise to new heights without having to leave the State to get quality care. We need to foster a culture of improvement and progression in both healthcare practitioners and professional boards, showing integrity and requiring adherence to the standards of care with a consistency, predictability and adherence to the law and open government by boards and healthcare practitioners. We have to be sure we have fairness and discipline.

This is a process that we have to do together. We have to literally lift where we are and decide individually and collectively to make Nevada our medical home.

This is the first step to a foundation of a commitment to all of us. This bill is a first step in that direction.

I have an amendment ([Exhibit B](#)), a page listing all the boards that are included in this bill ([Exhibit C](#)) and a presentation titled "Breaking Down Barriers" ([Exhibit D](#)).

TERRY REYNOLDS (Director, Department of Business and Industry):

In 2017, the Executive Branch Audit Committee took a comprehensive look at occupational licensing boards and the oversight and control of those entities. C. J. Manthe and I worked with the Audit Committee to provide an internal review of the 23 boards and commissions the Department of Business and Industry (B&I) oversees.

I will start with a synopsis of the Audit Committee's findings and recommendations. The Audit Committee recommended establishing Executive Branch oversight of Nevada's independent licensing boards under B&I to give the Executive Branch awareness, guidance and review that is currently lacking. It would also enhance the confidence of the public and licensees in board activities. Boards are subject to oversight by both the Legislative and Executive Branches, according to the Office of the Attorney General (AG). Current oversight is exercised primarily by the Sunset Subcommittee of the Legislative Commission, with review and approval of regulations by the Legislative Commission and other reporting requirements.

During the 2019-2020 Interim, the Sunset Subcommittee noted many concerns about board practices involving hearing officers, training, operating reserve, fines and fee structures, electronic access and payments, use of outside counsel and lobbyists, and centralized coordination of expenditures. The Subcommittee also noted instances of financial irregularities.

Existing Executive Branch oversight of boards is lacking. As far back as 1992, a study of the structure of Nevada's government recommended that boards be under State oversight. Boards are exempt from certain financial, personnel and internal control statutes that govern the activities of other State agencies. The lack of Executive Branch oversight allows for inconsistent board practices that may not comply with State guidelines. Board members typically serve part time and may not be experienced in the best operational practices, even though they are experienced in their professions. An overreliance is placed on the executive

director to ensure boards function properly. Executive directors serve at the pleasure of the boards and have limited operational support provided by the State.

The Federal Trade Commission suggests that the actions of boards comprised of active market participants may expose the State to antitrust liability. State supervisors should be designated to provide active supervision. The supervisor may be an extension of the Executive Branch agency or an official who oversees regulatory boards and is not an active market participant. The Department of Business and Industry is one of the largest, most complex executive departments, with 23 regulatory bodies under its oversight umbrella. Currently, it issues approximately 265,000 licenses. The Department of Business and Industry is structured to provide regulatory, operational, facility and administrative support to its regulatory bodies and could expand or adapt its structure to support boards.

The best first step in establishing B&I oversight may be in joining a semiautonomous relationship by which boards retain authority for regulating professions and other board operations fall under the umbrella oversight of B&I. A phased approach may be more effective. Limited oversight may be required for boards that operate with a robust set of standards, while a more hands-on approach may be required for other boards.

In an executive oversight role, B&I could fulfill the functions envisioned by earlier studies and federal guidelines, and provide State institutional support that is currently lacking. The Department of Business and Industry could assist the Sunset Subcommittee by evaluating the effectiveness and efficiency of board operations, making recommendations that benefit boards from reorganization or consolidation and providing other information analysis to assist fulfilling statutory responsibilities. The Department of Business and Industry could provide legislative assistance, reducing board expenditures for lobbying activities.

Establishing improved oversight of the boards may result in additional costs. General Fund appropriations may be necessary initially to offset some of the costs for personnel and other resources B&I may require in its expanded executive oversight role.

The Department of Business and Industry has already established standards for the 23 regulatory bodies under its oversight umbrella. By establishing standards, Executive Branch oversight of boards through B&I will be improved by ensuring board practices are consistent and comply with statute and other statutory guidelines.

In our first report, we noted several deficiencies in financial and administrative practices, where setting standards could improve oversight. This audit identified additional areas of concern, including hearing officers, fees, fines, penalties, regulatory authority, administrative cost recovery, disciplinary reporting, board training and records retention of public records requests.

As a follow-up to the audit board recommendations, B&I has looked at the occupational and professional licensing structures of several states. Two Western states that stand out are Colorado and Utah. These two states have the occupational professional boards under the Department of Commerce or business regulation. Their occupational license structures are quite similar to the structure of administration support within B&I for licensing functions that we administer.

MICHAEL BROWN (Executive Director, Governor's Office of Economic Development):

When the audit was issued, I was then Director of B&I, and I made a trip to Utah to visit with my counterpart, the secretary of Utah's Department of Commerce, to learn more about its Division of Occupational Licensing. The main office was located in Salt Lake City in a five- to six-story building. The lobby resembles a bank, where people who need to renew occupational licenses can go in and transact routine business. The Division is set up with a central administration of the boards it oversees. It has a centralized, robust computer system, and a consolidated counting and financial system. It has an independent compliance investigation unit with approximately 30 investigators, many of whom were recruited as retirees from the state highway patrol or were subject matter experts in their areas. Each occupational area has a bureau chief who oversees several different occupations in a common area. They have a standard set of internal controls. Various deputy attorneys general are located within that facility to support the legal work.

The policy boards do not engage in the day-to-day management of the boards; they are there as subject matter experts. The employees of the boards are civil

servants and are covered under Utah's budget act. The web page for the Utah Department of Commerce, Division of Occupational and Professional Licensing is robust, user-friendly and standardized across all the different occupations. I left there truly impressed with how Utah is managing this.

We have seen some of our competitive states, particularly Utah and Arizona, reducing the barriers to make it easier for two-career couples, where one half of the couple needs an occupational license to come to the state and get the needed license in a reasonable amount of time. The expression "trailing spouse" is often used.

SENATOR SETTELMAYER:

What was the selection process for which boards would fall under this bill and which boards would not? Some of the boards in this bill have shown themselves to be problematic over the years, and some boards in the bill have been shining examples of success. I am concerned about the idea of taking money from the good boards to prop up the bad boards.

We have one board, the Nevada Board of Homeopathic Medical Examiners, that was just created last Session, and the Governor has not yet appointed anyone to that board. It seems questionable that we are going after boards when they have not been properly equipped.

MR. REYNOLDS:

Neither Mr. Brown nor I had anything to do with the drafting of the bill. We did not select those entities. The Sunset Subcommittee recommended including boards that did not have robust administrative support with their actual setup from their staff for that. That probably had something to do with this.

As you know, the boards are not all created equal. Some have good administrative support; others do not. This type of administrative control will have to be broken down into pieces, with the individual structure of each board examined in terms of where it is today and where it should be going forward.

I am not here to comment on current statutes, but rather to tell you the recommendations of the Audit Subcommittee. You have been involved with the Sunset Subcommittee for quite some time, and you know the complexities these boards and commissions present and how they have grown up over time. There needs to be an overall comprehensive look at the boards. That may be

beyond what we can do this Session. We may need to go into the next couple Sessions to determine the best route for this.

SENATOR SETTELMAYER:

In the past, people have recommended we create a penalty box and put the more problematic boards into the penalty box. If they get their stuff together and resolve their issues, they should then be allowed to get out of the penalty box.

SENATOR PICKARD:

I have been on the Sunset Subcommittee since I entered the Legislature. Before that, I was working with former Assemblyman Lynn D. Stewart on A.B. No. 328 of the 79th Session when we looked at this concept. One thing that was made clear in this process was that many of the boards are understaffed and undersupported, especially when the body of practitioners is small. When there are only 60 professionals in a field, their license fees are not enough to pay staff or even pay the bill when the AG's Office steps in to help.

With that as a backdrop, why not apply this to all boards? Why not pull all of the boards under this umbrella?

MR. REYNOLDS:

We do not like to use administrative control at this point because that will require setting up administrative and legal procedures for this process. Other states have excepted out specific boards, such as the contractors board or the medical board, from this common administrative control. We have allowed some boards to develop their own operations, controls and administrative procedures. To bring them into a common format for personnel, administration and financial regulations is going to take some time and some work.

In my opinion, this should be done for all the boards and commissions across the State. They should all be under essentially uniform financial, personnel and administrative controls within the State. It makes good sense from a standpoint of having transparency in their operations, and it is important that everyone is operating under the same rules.

MR. BROWN:

It is a matter of scale. When we talked to some folks before the pandemic about the Governor's audit recommendation about what it would take to make this

happen, it was simply a matter of scale—how much you could tackle at one time.

SENATOR PICKARD:

When we were first talking about this, I envisioned it rolling out over time, addressing the immediate issues first and the well-run boards later. But when we deal with boards that feel empowered to tell us what we should be doing, not the other way around, therein lies part of the problem: they resist oversight, and thus we run into the kind of problems that led up to the *North Carolina State Bd. of Dental Examiners v. F.T.C.*, 574 U.S. 494 (2015) decision.

How is S.B. 335 going to affect the role of the Sunset Subcommittee? Legislative oversight needs to remain in place. It is empowered to review the boards as the oversight for the State. How would you envision the Sunset Subcommittee maintaining its position under this structure?

MR. REYNOLDS:

The Sunset Subcommittee has a robust role to play. It will review the ongoing audits of these boards. It will also be instrumental in reviewing the regulations and procedures these boards have had over time to ensure they are consistent with the operational procedures you would like to see.

MR. BROWN:

The Sunset Subcommittee has a valuable role to play. This system has been built on itself decade over decade. It would be useful for the Sunset Subcommittee to consult with its counterparts in Utah and Colorado to see what their experience is, and perhaps also do a field trip to see how they are organized there. There are nuances to this. The regulating board in Utah has a different function than the State Contractors' Board in Nevada. One regulates the plumbers; the other regulates the companies. There are nuances there that would need to be considered carefully.

SENATOR PICKARD:

I appreciate that, having had licenses in both states.

I note that Senator Hardy's amendment, [Exhibit B](#), deletes the section on the State Barbers' Health and Sanitation Board. This board uses antiquated systems, and its numbers are so small that it is having a hard time keeping up. This would fix that problem. It would allow the Board to have current

technology support at the participant level so licensees could turn their applications in online, instead of waiting in someone's barber shop until the board member who was responsible to administer the test finished cutting someone's hair. It is just too small and underfunded to have a current day, modernized review and licensing system. This bill will fix that.

I have other questions, but I will take them offline.

VICE CHAIR NEAL:

Section 10, subsection 1, paragraph (a) of S.B. 335 speaks of determining the form and manner in which applications for licenses are submitted. Has there been discussion about reformatting the applications themselves? Section 90, subsection 3 talks about whether an application is sufficient. What review of applications and licensing forms is being considered?

MR. REYNOLDS:

One of the issues we wanted to address is to standardize the format for license applications so they can use a common computer platform, which would allow licensees fill out applications online, which will expedite the application process. Right now, every application is unique. Each board has its own type of application; some of them are sophisticated, and others are not. The intention was to have a common platform for those.

It should be noted that each one of these boards has its own section in the *Nevada Revised Statutes* (NRS). That makes getting some commonality of procedure difficult and complex, and what you get is a 173-page bill with a different section for each board. Each board has its own section within the *Nevada Administrative Code* as well.

VICE CHAIR NEAL:

Section 25, subsection 5 says that 5 percent of the fees received by the board will be collected. This is per board, yes?

MR. REYNOLDS:

That is my understanding. There will also be contributions from other entities to pay for the operation of the Division. As we add additional boards, that would provide a base funding for the administrative work needed going forward. I cannot comment on the wording; we were not involved in putting the language together.

VICE CHAIR NEAL:

My next question is about sections 33 and 35. Section 33 says the Division may employ the attorneys, investigators, hearing officers, experts and so on needed by the boards. How will you choose those folks? Do the boards have a say in this selection?

MR. REYNOLDS:

I will go back to what we do in B&I. We have 23 boards and commissions; 13 of those are policy and licensing boards. We use a common attorney through the AG's Office to represent us. If we have to use outside counsel, we go through a Request for Qualifications process and hire counsel. That is approved by the relevant board of examiners. Outside counsel is approved through that process. With regard to information technology, we use our internal staff. We employ contracts for software development for our boards and commissions. We use our own financial people. We assign management analysts or administrative services officers to review the budgets, make recommendations on the budgets and work with the entities on their budgets. We do probably 90 percent of that work in-house. That is what I would recommend for the new Division.

From a policy standpoint, the policy boards are going to be the most knowledgeable about what should happen in terms of hearings on regulations and so on. We will also consult and work with the AG's Office to oversee that process and make sure we are complying with the administrative hearing process.

VICE CHAIR NEAL:

That brings me to my next question. Section 35 of S.B. 335 says the Division will hold hearings and conduct investigations, and section 127 talks about the money received by the Division; it seems to be talking about the collection of fines and fees. How will the hearings and investigations be conducted, and how will the fines and fees be handled?

MR. REYNOLDS:

At B&I, all fines and penalties go to the General Fund, not to B&I. We hold administrative hearings. The cost for those hearings and the operation of the boards are set up in different budget accounts so we can track the boards individually. For example, the Real Estate Commission and the Commission for Common-Interest Communities and Condominium Hotels have separate budget

accounts. We do not commingle the funds for our boards and commissions. Penalties do not go back into supporting the boards; they are excepted out and go to the General Fund.

VICE CHAIR NEAL:

Section 127, subsection 4 of the bill strikes out language that said fines would be deposited with the State Treasurer for credit to the General Fund. The new language says fines will be deposited with the State Treasurer for credit to the Occupational Licensing Account for the Division. That is why I wanted that clarified.

Section 87 strikes out language dealing with salaries going to members of the board. Does that mean board members will not receive salaries?

MR. REYNOLDS:

Once again, we did not draft the language. Our board members receive a per diem rate, and they are paid according to the number of meetings they attend. That is consistent across all of our boards and commissions.

From our perspective, the members of our boards and commissions are not all equal. Some board members put in a tremendous amount of time; others do not. We need to take a comprehensive look at the rates we pay board members for their time on the boards. Utah has a standardized approach to the amount they pay board members; it is basically a per diem rate for the time they spend preparing for and attending meetings and hearings.

WIL KEANE (Counsel):

With regard to the 5 percent, under this bill the healthcare-related boards, such as the Board of Medical Examiners, will be paying 5 percent of the incoming fees into the newly created Occupational Licensing Account. That is not all the boards, just the ones related to health care.

With regard to section 127, that has to do with the Board of Dental Examiners of Nevada. For the boards being abolished, there will be no board members, so there will not be any salaries to be paid. As for those NRS chapters, such as NRS 631 regarding the Board of Dental Examiners, the bill was drafted to have the newly created Division step into the shoes of those existing boards.

In section 127, the board is being deleted, the Division is being put in, and the money will go to the newly created Occupational Licensing Account to the extent it would have gone into the Dental account. There is the nuance that in some cases, when boards assess fines against individual licensees, the money had to go to the General Fund, depending on how they went about structuring their proceedings. But for the most part, the boards have created proceedings where fines go back into the board's individual accounts. Here in section 127, the money would go into the new Occupational Licensing Account because the Division is essentially acting as the Dental Board within this section.

VICE CHAIR NEAL:

If a board being abolished has a building, what happens to those obligations? Is there any bonding associated with these boards that we have to be worried about? Is that an issue?

MR. KEANE:

For the boards being abolished, the Division is simply stepping into the shoes of the boards. The obligations of those boards will be taken on by the Division. I am not aware of any bonding done by particular boards. There are no provisions about that in the board chapters or in the bill, but given the way the bill is drafted, the assumption would be that whatever obligations these boards have will be taken on by the Division.

SHERONDA STRIDER-BARRAZA:

I am a dentist in Las Vegas and a delegate to the Nevada Dental Association. I am calling in support on S.B. 335 but with reservations. We look forward to working with Senator Hardy on amending the bill. We support the intent to oversee dental licensure.

EDDIE ABLESER (Nevada Dental Association):

We are pleased to support S.B. 335 and the work done by Mr. Reynolds and Mr. Brown on occupational licensing reform. The State Board of Dental Examiners has had a history fraught with controversy and abuses, and the Nevada Dental Association stands with the efforts to reform boards across the State. We have some questions and concerns that we have communicated to Senator Hardy and look forward to continuing to engage with him on possible amendments to clarify specifically industry-focused oversight and involvement in the development of licensing and discipline.

BRIAN LAUF (President, Nevada Academy of Physician Assistants):
We are in support of this bill. I have written testimony ([Exhibit E](#)) expressing our support.

DAVID DAZLICH (Vegas Chamber):
We are in support of S.B. 335. This bill was brought in part to address the goals of the Southern Nevada Forum, one of which was the retention and ease of licensing for medical caregivers throughout the State. Over the past year, we have seen the need for an increase in the number of licensed and professional medical caregivers within the State and within our medical market. We believe this bill will do a lot to ease licensing and encourage retention of all medical professionals throughout Nevada.

JUSTIN MICATROTTO:
I am in support of this bill, minus the amendment in [Exhibit B](#) that excluded the State Barbers' Health and Sanitation Board.

I am the franchise partner of Floyd's 99 Cuts and Colors in Las Vegas. We opened our first location on June 1, 2020, in the midst of the pandemic and demonstrations because the State allowed us to open and I had good people ready to work. We were not able to open under the same name as our franchise partner, Floyd's 99 Barbershop, due to the barriers placed in our way by the Board specifically prohibiting barbers and cosmetologists from working side by side. For too long in this State, aspiring cosmetologists and barbers have been held back by the antiquated practices of the Board, which do not enhance safety and sanitation, such as requiring a wall and separate business licenses.

This bill is not a change in what makes a barber a barber; rather, it would make Nevada like 48 other states, allowing the practice of barbering and cosmetology side by side. The simple existence of the Board makes this dynamic impossible.

From the perspective of Floyd's, if this bill does not pass, we will likely not be able to provide a place for five to ten barbers per shop in any shops we open, and I have plans and leases in hand for 15 to 20 shops right now. I will continue to be a salon operator overseen by the State Board of Cosmetology, but without this bill, 150 to 200 barbers will have to find another place to work. That is about 15 percent of the current license holders in Nevada.

In my previous profession as a franchise operator for Raising Cane's Chicken Fingers, I learned the value of regular oversight from the Clark County Health Department and other agencies. We worked hand in hand for 15 years to uphold standards and practices to keep our guests safe, employing over 1,500 Nevadans north and south.

As I said earlier, the Board is antiquated. There is no reliable computer base system, and it has no ability to comprehensively inspect all shops like the Health Department or Cosmetology Board do. There is also a conflict of interest in having the Board that has the ability to approve and deny licenses run out of an active barbershop.

We do not have to figure this out on our own; as was pointed out by Mr. Brown, there is a great example to our north in Utah.

I have learned in the past year that there is opposition to this change in the barber community. As someone who provides barber jobs, I do not understand why this opposition exists. The inability to practice both of these licensed professions side by side is prohibiting job growth.

I have spoken to salon owners and barbering brands in other states that are avoiding Nevada specifically because of the existence of the Board. There seems to be a culture of competition in the barbering community. Perhaps this is driven by the myopic narrative that working side by side is a bad thing, rather than seeing additional venues as an opportunity.

RICHARD DRAGON:

I am a practicing dentist in Douglas County and have been in practice here since 1985. I am the immediate past president of the Nevada Dental Association. I am in support of S.B. 335 with an amendment that we have spoken to the sponsor about.

With the current state of our existing board, the overreaching, the inability to get regulations written and the lack of understanding of the regulatory process has become a major issue. This board does not understand what it means to stay in its lane. Having professional oversight such as the Division would benefit the dentists of the State. Something has to change for our board. It is not being run efficiently or fairly.

NANCY JONES:

I am in opposition to this bill. It sounds like some professionals would be served by this change, but I choose to use homeopathic physicians and oriental medicine practitioners. For my own family's experience, it would not serve us or those industries to be put into a centralized board.

I am also opposed to this bill from the stance of further centralizing bureaucracy. When you centralize things and put power in the hands of people who are not elected and are not as directly accountable to the people they serve, you have less transparency and less accountability. I would like to see the government decentralize power and allow industries to regulate themselves.

We need the support of the Governor to fix what is going wrong in the Nevada Board of Homeopathic Medical Examiners and not to simply lump it in together with dentists, barbers and other professions that have nothing to do with homeopathy.

BRYAN WACHTER (Retail Association of Nevada):

We are opposed to this legislation. We represent several different industries that are regulated by these types of boards. We have great concerns regarding the financing. A lot of these boards are paid for by fees directly from those professionals. We have questions about how those funds would be commingled.

We look forward to working with the bill's sponsor.

JANINE HANSEN (President, Nevada Families for Freedom):

We are opposed to S.B. 335. I have a written statement ([Exhibit F](#)) explaining our objections to the bill.

BOB RUSSO:

I oppose this bill. I have a letter ([Exhibit G](#)) laying out my concerns.

LEA CASE (Board of Occupational Therapy):

I am testifying on behalf of the Board of Occupational Therapy. The Board has specific concerns about five sections of S.B. 335. Sections 12 and 13 are duplicative of the existing work done by the Sunset Subcommittee to justify the continuation, consolidation or abolishment of boards. These reviews have been conducted every interim since 2011. Boards are also subject to annual or

biennial financial audits at their expense as well as special audits as requested by the Executive Branch and by legislative directive.

Health care licensing boards are subject to regulations under section 15 regarding the creation, retention and public disclosure of records. Laws about these topics already exist in NRS 239, Public Records, and NRS 241, Open Meeting Law. It is unclear why these are not sufficient and further clarification is needed for healthcare boards only. Section 190 requires the Board of Occupational Therapy to comply with these regulations.

Section 191 requires the Board of Occupational Therapy to take 5 percent of fees paid by its licensees to fund the Occupational Licensing Account for the benefit of the operations of the new division. This is troubling. It is specifically stated in NRS 640A.190, subsection 3, that fees must be set aside in such an amount as to reimburse the board for the cost of carrying out the provisions of this chapter. This clearly does not include as permissible a transfer of funds to an Executive Branch division to cover its expenses. The reduction in revenue could result in the need to increase licensing fees for occupational therapists to offset the funds transfer mandated in this legislation.

It is for these reasons that the Board of Occupational Therapy is opposed to S.B. 335.

GARY LANDRY (Executive Director, State Board of Cosmetology):
We are in opposition to the bill.

My testimony is directed to sections 12 and 13 of S.B. 335. Section 12 allows the newly created Division of Occupational Licensing to review the activities of any Title 54 of NRS board by inspecting and reviewing records, reports and documents as requested. Section 13 allows the Division to develop recommendations to the Legislature regarding the abolishment of any Title 54 of NRS board and measures to improve and standardize the procedures for issuing licenses.

My concern is regarding the overlap between these sections and the responsibility and work of the Sunset Subcommittee. The Cosmetology Board has been reviewed by the Sunset Subcommittee twice since this group was formed. In both instances, the recommendation was that the Board continue its operation. Our Board has also been subject to audits by the Executive Branch

Audit Committee, as have other boards. The oversight of our operation has been extensive and thorough, and we do not understand why another level of scrutiny is necessary. It is for this reason that we oppose S.B. 335.

LISA GRANT (State Board of Oriental Medicine):

I am the secretary treasurer of the State Board of Oriental Medicine. I have been a licensed practitioner in Nevada since 2009.

The 1973 regulation that established oriental medicine as a regulated profession recognized that oriental medicine doctors were on a par with allopathic doctors. It wanted to ensure that oriental medicine was recognized as a legal, legitimate and effective medical profession with unique modalities and treatments. Abolishing the Board and subsuming alternative medicine to allopathic medicine runs the risk of diluting the independent, legitimate effectiveness of this profession. Traditional Chinese medicine utilizes unique methods of diagnosis and treatment based on acupuncture and herbs that are different from Western medicine. Understanding the language and concepts of oriental medicine is critical to ensuring that the uniqueness of the practice translates into effective regulation.

We are growing quickly as a profession in Nevada as a result of the efforts of the current Board to align to national standards and licensure transparency. The legislation we introduced last Session aligned all of our licensing processes with national certification and education standards. We want more people to use oriental medicine, and we need more qualified practitioners. We are working hard to make this happen. We are literally in the final stages of contracting for an online licensing system to modernize and standardize licensing processes even further. We are taking all possible steps to make the regulation of oriental medicine modern, effective, standardized and transparent.

We oppose this bill because eliminating the Board will eliminate the deep level of expertise necessary to ensure that public safety and effective regulation on a governmental level are created. Eliminating the Board and subsuming all of the functions of the Board to a government committee that does not necessarily understand the specifics of the medication runs the risk of decreasing public safety and effective regulation.

TEDD GIROUARD (Chair, Board of Athletic Trainers):

I am here to speak in opposition to S.B. 335, notably the section abolishing the Board of Athletic Trainers. I would like it on the record that since given the gift of licensure by the State in 2005, the Board has overseen the profession in Nevada with the utmost professionalism and integrity. The Board has worked diligently in its role to protect the public and oversee licensees as efficiently as possible. The Board is financially self-sufficient with appropriate administrative support, as the Board has a coworking arrangement with other boards. Our executive secretary is also part of this administrative collaboration to take advantage of more experienced executive directors for best practices. The Board is using an expedited process for licensing. The Board recently progressed through the Sunset Subcommittee with a positive review.

I am concerned that this bill will negatively affect the athletic trainers in Nevada. We are concerned that the Board has been unjustly and unfairly chosen to be abolished. We do not understand the metrics that put us in this situation.

CHELSEA CAPURRO (State Board of Oriental Medicine):

We are here today in opposition to this bill. Prior to the release of the bill, we were not included in any conversation about what a consolidation or elimination of our board might look like, not only for our licensees but for the safety of the public. While we understand the intent of the bill, we cannot support something that has not taken all the stakeholders into account.

Many of my points have already been made by others, but I will add that the Board of Oriental Medicine has come a long way in ensuring public safety and improving standards for our profession. We continue to update the statutes and regulations to ensure that professional standards are maintained. We appreciate the purpose of the bill, but we want to make sure we are taking a complete look at this and are part of the solution. Our opposition is not to the intent of the bill but to the way it is structured. We would have appreciated being included in this vital conversation.

At this time, we are unable to support this legislation.

MERLE LOK (Executive Director, State Board of Oriental Medicine):

I have held this position for approximately five years. In that time, I have seen our licensees grow from 56 to 87 while maintaining our high educational

standards with national board certification. We expect to welcome three more licensees after the state exam at our next board meeting in April.

Since I have been the executive director of the Board, I have had to rely on the expertise of our board members. Our board members consist of four licensees, a member from the Wongu University of Oriental Medicine, Nevada's only school of oriental medicine, and a member of the public. We constantly review and update our statutes and regulations to make sure contemporary issues involving oriental medicine, oriental medicine education and public safety are being addressed.

We oppose this bill because this expertise and deep understanding of our licensees and the practice of oriental medicine are vital to make sure the public stays safe. It does not make sense to combine these boards. While some may think that oriental medicine doctors are a small group and it may be more efficient if we were part of a generalized occupational licensing division, we strongly disagree. The Board needs to appear independent, with the ability to meet the special, ongoing challenges that appear. The issues we face range from working with applicants from oriental medical schools before there was an accreditation board to understanding the need for an endorsement for advanced techniques such as herbal acupuncture trigger point injection, which we have recently codified.

It is in Nevada's best interests to keep our board independent, as it has the unique ability to ensure highly qualified licensees for public safety and to work with prospective applicants to ensure Nevada has an ever-growing number of licensees to serve the population. We are self-funded with reserves of over 25 months. We are fiscally responsible and do not rely on State funding. There is no reason for us to be consolidated along with the other boards.

JEANETTE K. BELZ (Board of Occupational Therapy):

We are in concert with others who have voiced their opposition to sections 12 and 13 of S.B. 335.

ALEXANDRIA CANNITO (Board of Dental Examiners of Nevada):

While the Board of Dental Examiners has not yet taken an official position on S.B. 335, we have general concerns about its concept. We understand this bill is an attempt to find better methods to operate occupational boards and commissions. However, most states do not include medical and health-related

boards in hybrid models, as contemplated by this bill. The expertise our doctors, dentists and other members have in their fields cannot be replaced by the layperson. A study comparing the different models in various states should be a top priority to determine what works and what does not. I certainly do not have the expertise to decide whether other boards should be included or excluded. However, for public safety reasons, it may be prudent for this Committee to remove the Dental Board and other medical and health-related boards from the bill while the issue is studied.

DAN MUSGROVE (Chiropractic Physicians' Board of Nevada):

We are neutral on S.B. 335 but do have some concerns. I want to thank Senator Hardy for our discussion yesterday. We believe his intent is laudable, and all boards should be heading in the direction this bill proposes.

For the last three Sessions, we have brought bills to make it easier for folks who are skilled and excellent in their craft to come practice in Nevada. We have worked hand in hand with the Sunset Subcommittee to make sure we are a responsive and fiscally responsible board.

Our biggest concern is moving the Board under B&I. While Mr. Reynolds, Mr. Brown and all their staff are excellent at what they do, they have no ability or expertise in healthcare oversight. Their mission is the promotion of business and industry, and we are concerned that might actually cause a lessening of consumer protection for those who seek proper health care in Nevada.

While we are not under this bill currently, section 12 is concerning to us, in that there is no standard, no criteria against which our performance will be judged by the administrator before he or she abolishes our board or any other board.

ELLIOT MALIN (Nevada Board of Homeopathic Medical Examiners):

We are neutral on S.B. 335. I have written testimony ([Exhibit H](#)) explaining our position on the bill.

SUSAN FISHER (State Board of Osteopathic Medicine):

We are neutral on S.B. 335 with concerns. The sections of the bill that impact us are sections 147, 148 and 150. Section 148 adds a new board member and would take us from seven members to eight, adding a physician's assistant (PA). The Board does not have an official position on this yet because it has not

vetted the bill under the open meeting law. We have invited PAs to sit on our board as advisory members in the past, and they have declined to do so.

This bill takes 5 percent of our fees to help fund the new administration. I wonder if the Legislative Counsel Bureau (LCB) has opined on whether the conversion of licensing fees to the General Fund constitutes a new tax that would trigger the two-thirds voting requirement. As the bill is written, our licensees are losing 5 percent of their dedicated fees for the use of other professions to fund a new General Fund bureaucracy.

MICHELLE COTHRUN (Board of Athletic Trainers):

We are neutral on S.B. 335. As the current executive secretary of the Board of Athletic Trainers, I am not opposed to additional oversight, and neither is our board, which has protected the public to the best of its abilities.

I want to address section 11, subsection 1, paragraph (e), which states the Division will impose fines and penalties against licensees. However, as the bill is written, the Division will not have the needed authority to do the same for unlicensed activity, as the statutes of NRS 640B do not allow the Board to issue citations or impose fines and penalties.

I want to make the new Division aware of the biggest obstacle the Board contends with, which is unlicensed activity. This issue has escalated in response to the Covid-19 pandemic. Institutions that have athletic trainers on their staff are hiring other licensed professionals to fill the position of a licensed athletic trainer to the potential detriment of the public, which in some instances includes athletes who are minors. For instance, a physical therapist cannot fill the position of an athletic trainer or vice versa. The training and education of these two professionals are similar, but their practice acts are different. The same is true for an occupational therapist, a nurse, a physician's assistant, a massage therapist, a chiropractor or other such licensed medical professionals.

As written, NRS 640B does not allow the Board to penalize unlicensed individuals who are practicing or holding themselves out as athletic trainers. As the bill is written, the new Division will be powerless to stop or discourage unlicensed activity as well. This continues to be a problem. Considering that athletic programs are suffering as a result of the pandemic, it is my professional opinion that unlicensed activity will persist.

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VICE CHAIR NEAL:

Mr. Keane, would you comment on the two-thirds vote question?

MR. KEANE:

The two-thirds issue was considered by LCB's Legal Division. There is no two-thirds vote required here because the amount of money coming in to the government is the same. The boards are considered to be the same as the Executive Branch for the purpose of two-thirds calculation, and the money coming in is exactly the same. It is just being diverted to a slightly different place.

SENATOR PICKARD:

It seems a lot of the opposition has to do with abolishing boards and the fear that in so doing, we will lose the expertise on those boards. As I read section 9, it allows the administrator to maintain experts so we do not lose their expertise within the oversight and application or administration of these boards. Do I have that right, that we are not losing any expertise, we are just trying to homogenize the process and streamline the administration of these boards?

SENATOR HARDY:

Yes. The new Division has the ability to incorporate the advice and systematic involvement of people who have expertise in the field. That is not just in section 9. This is not going to happen all at once; rather, it will be an ongoing process.

Again, there is no increase in fees. That would need to be approved by the Legislature before anything is done. I talked to the people in Utah about how this works for them. My impression of the Utah model is that it not only works, but it is efficient. This will give constancy, consistency and a common platform. Experts will still be involved.

If this bill is passed, all of the present members of every board will go immediately into the advisory board, so the advisory board is in a position to help create the regulations we will need. This bill was not meant to be a punishment; rather, it is an opportunity to figure out how we can do better with our boards. Our fears will be allayed when we see how it is working.

VICE CHAIR NEAL:

I will close the hearing on S.B. 335 and open the hearing on S.B. 290.

SENATE BILL 290: Enacts provisions relating to prescription drugs for the treatment of cancer. (BDR 57-973)

SENATOR ROBERTA LANGE (Senatorial District No. 7):

Senate Bill 290 seeks to allow persons diagnosed with stage 3 or stage 4 cancer to be granted an exception to step therapy protocols. Cancer is the second-leading cause of death in Nevada and the United States, and we can expect a rise by 34 percent by the year 2030. The incidence of cancer is exacerbated by the lifestyles of the State's population, according to the American Cancer Society. Approximately 16,970 new cancer cases will be diagnosed in Nevada in this year alone. Approximately 5,410 cancer deaths will occur in this State this year, and the average annual adjusted mortality rate for cancer deaths per 100,000 persons in Nevada is 157, compared to the national rate of 155.5.

From 2012 to 2016, African-American men were 1.2 times more likely to get colon cancer and 1.7 times more likely to get prostate cancer than non-Hispanic White men. They were 1.7 times more likely to get stomach cancer than non-Hispanic men and 2.5 times more likely to die from stomach cancer. African-American men have a lower five-year cancer survival rate for most cancers than non-Hispanic White men, and African-American men are twice as likely to die from prostate cancer. Cancer mortality in Black males is twice that in Asian Americans and Pacific Islanders, who have the lowest rates.

From 2012 to 2016, African-American women had a 40 percent higher breast cancer death rate. African-American women are twice as likely to be diagnosed with stomach cancer, and they are 2.2 times more likely to die from stomach cancer.

Eliminating disparity because of socioeconomic status should be our goal. Disparities arise from work, wealth, education, housing, and overall standard of living, as well as social barriers to high-quality cancer prevention, early detection and treatment services. Disparities in cancer mortality among impoverished persons also stem from lower survival rates because of the higher likelihood of advanced stage cancer diagnoses and a lower likelihood of receiving standard treatment. Barriers that prevent care, early detection and optimum treatment in underserved populations include inadequate health insurance; financial, structural and personal obstacles to health care; low health literacy rates; and delays in dissemination of advances in early detection treatment.

Let us take a moment to talk about people in the military. Incidence rates of breast cancer and prostate cancer are significantly higher across race and gender. Breast cancer is 20 percent to 40 percent higher for those in our military services.

Individuals with cancer face tremendous financial burdens to treat the disease. Even if they have health insurance, they may still find themselves owing thousands of dollars to healthcare practitioners and facilities. Individuals without health insurance face the additional burden of not being treated adequately for their disease because of their lack of insurance. In fact, the United Health Foundation reports that 15 percent of Nevada's population avoids seeking care because of the cost.

Health insurers provide coverage for health-related services, including prescription drugs, but patients must also follow certain utilized management processes before coverage or service begins. These practices are commonly known as step therapy or fail-first protocols. Generally, health insurance uses step therapy to lower costs. Healthcare practitioners tend to prescribe the most effective treatment for their patients but may not place a priority on prescribing low-cost treatment. However, the health insurer's step therapy policy may override the practitioner's recommendation for a certain treatment.

Step therapy requires patients to try less expensive treatment options first and restricts coverage for certain prescriber types such as treatment conducted by a specialist. As a result, expensive treatments that might be the most effective can only be prescribed if more inexpensive treatments first prove to be ineffective. At least 12 states have enacted legislation addressing step therapy practices, some of which require health insurers to use evidence-based research when considering placing a drug in the formulary.

During the Interim, the Committee to Conduct an Interim Study Concerning the Costs of Prescription Drugs received written testimony from various stakeholders demonstrating the step therapy causes barriers to patients' access to care and advocating for changes to the current policy. Too many of our residents will unfortunately face a cancer diagnosis, and advocates request the Legislature remove any unnecessary barriers to the cancer drugs they need.

I will provide an overview of S.B. 290. The bill requires health insurers to grant an exemption from its step therapy protocol upon receipt of an application from

an insured or attending physician of an insured who has been diagnosed with stage 3 or stage 4 cancer. That includes supporting clinical rationale and documentation if:

- A treatment under step therapy has not been effective at treating the cancer or symptoms of the insured;
- A delay of effective treatment would have severe or irreversible consequences for the insured and the treatment under step therapy is not reasonably expected to be effective;
- A treatment under step therapy is contraindicated or, based on peer-reviewed clinical evidence, will likely cause an adverse reaction or other physical harm to the insured or prevent the insured from performing his or her occupational or daily activities;
- The insured is stable under treatment on the prescription drug for which the exemption is requested, and the insured has previously received approval for coverage of that drug; or
- Any other condition for exemption is met, as prescribed in regulations adopted by the interim commissioner.

Health insurers must respond to a step therapy exemption request within 72 hours of the request. A health insurer is required to respond within 24 hours of a request if the attending practitioner determines that the step therapy process may seriously jeopardize the life or health of an insured. Health insurers may request supporting documentation, the insured's medical records demonstrating that the insured has tried other drugs included in the step therapy protocol without success or that the insured has taken the requested drug for a clinically appropriate amount of time to establish stability in relation to the cancer.

Health insurers are required to provide coverage for requested prescription drugs in accordance with the terms of the applicable health insurance policy. The insured may limit the coverage to a one-week supply but must cover the drug for as long as necessary to treat the insured if the attending practitioner determines after one week that the drug is effective.

Health insurers are also required to post on their websites the procedures and forms to apply for exemption from step therapy protocols.

We have accepted an amendment on this bill that insurers could use the forms already on their websites as long as the form is accessible to patients.

Finally, a health insurer's policy issued or renewed after October 1, 2021, must include the coverage required by this bill, and any provisions or policies that conflict with it are void.

I know S.B. 290 is complex. It has taken me a lot of research and discussion to understand this issue. This is important legislation that will support many medical professions. I urge your support.

VICE CHAIR NEAL:

Regarding section 3, subsection 7, I want to get an understanding on the cost of the drug and what the insurers have to say about that provision. I understand what you are doing; I just want to know the real-life application of that provision.

SENATOR LANGE:

Before we wrote the bill, we met with all the stakeholders, and once it was printed we sent it to them to get their input. This section came out of conversations we had with the insurance companies. The situation is by the time you get to stage 3 and stage 4 cancer, the drugs can cost \$1,000 per pill. That is \$30,000 a month for those medications. Sometimes patients can have an adverse reaction to a medication. Instead of wasting three weeks worth of medicine that is worth a lot of money, we thought it would be better to prescribe for one week, then have the doctor confirm that this works for the patient and is doing what we want it to do, after which they can get the rest of the prescription.

VICE CHAIR NEAL:

If the insurer fails to approve the application, is there an appeal process? What is the patient's recourse on denial?

SENATOR LANGE:

Most insurance policies have an appeal process in place already, so we did not deal with it specifically in this bill. If the Committee thinks we should add it, I am happy to do that.

VICE CHAIR NEAL:

When you are this sick, it is hard to face the prospect of having to go back through the process to fight for what you have been denied. If there is a way to simplify the process and get a quicker response, that seems worth doing. You just do not have the bandwidth for it when you are super sick.

SENATOR LANGE:

I will have some conversations to see if we can make that possible.

SENATOR PICKARD:

I brought a bill last Session on chronic medications that ran into opposition from pharmacy benefit managers and the Public Employees' Benefits Program because it affected the formularies. Have you heard similar concerns about this bill?

SENATOR LANGE:

I worked with all the stakeholders early on, before I crafted the bill, in fact. There were lots of concerns; but when we put in the exceptions and the controls around the exceptions, it was more palatable for the stakeholders. I am not familiar with your bill, but I would just say that putting in some of those controls eased some of their concerns.

SENATOR PICKARD:

I support the bill, and I am glad to know you were proactive. Hopefully, we will be able to get this through this time.

SENATOR LANGE:

There are a lot of illnesses affected by step therapy. In this bill, I decided it was too much to go after everything, so we chose to concentrate on cancer. We then tightened it further to just stage 3 and stage 4 cancer, because that is when people are really sick and need to go straight to the medicine they need. That made the bill more palatable to the partners.

PAIGE BARNES (Nevada Nurses Association):

We are here in support of S.B. 290. We believe patients should get the right treatment determined by the provider as soon as possible. This bill will make that possible for patients diagnosed with stage 3 and stage 4 cancer. As Senator Lange said, this will especially help our most vulnerable populations, including communities of color and members of the military. As nurses, we see the negative impact of step therapy. We want to make access to the right treatment for our patients as easy and quick as possible.

JARON HILDEBRAND (Executive Director, Nevada State Medical Association):

We support S.B. 290 wholeheartedly. This is a major step in the right direction.

BILL HEAD (Pharmaceutical Care Management Association):

We are neutral on this bill. We appreciate working with Senator Lange to make this as manageable a bill as possible while still meeting her aims. We look forward to continuing to work with her to find a resolution that works for all parties.

SENATOR LANGE:

I will close by saying my father had lymphoma. When he went to the doctor, we knew he was bad. His doctor tried to get him the medicine he needed, but his insurance company told him he was not sick enough to get that medicine. He died six months later. Those are the people this bill will help: the people who go to the doctor, are really sick and need to jump to a higher level.

I hope you will support S.B. 290 so we can get people the help they need when faced with a life or death situation.

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VICE CHAIR NEAL:

I will close the hearing on S.B. 290. Is there any public comment? Hearing none,
we are adjourned at 10:18 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Dina Neal, Vice Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B. 335	B	1	Senator Joseph P. Hardy	Amendment
S.B. 335	C	1	Senator Joseph P. Hardy	Nevada Occupational Licensing Boards Included
S.B. 335	D	1	Senator Joseph P. Hardy	Breaking Down Barriers presentation
S.B. 335	E	1	Brian Lauf / Nevada Academy of Physician Assistants	Support Testimony
S.B. 335	F	1	Janine Hansen / Nevada Families for Freedom	Opposition Statement
S.B. 335	G	1	Bob Russo	Opposition Letter
S.B. 335	H	1	Elliot Malin/ Nevada Board of Homeopathic Medical Examiners	Testimony