MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-third Session
April 8, 2005

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 7:02 a.m. on Friday, April 8, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 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 at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Sandra J. Tiffany
Senator Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

GUEST LEGISLATORS PRESENT:

Maurice E. Washington, Washoe County Senatorial District No. 2

STAFF MEMBERS PRESENT:

Lynn Hendricks, Committee Secretary
Kevin Powers, Committee Counsel
Scott Young, Committee Policy Analyst
Donna Winter, Committee Secretary

OTHERS PRESENT:

Judy Stokey, Nevada Power Company; Sierra Pacific Power Company
Don Soderberg, Chairman, Public Utilities Commission of Nevada
Adriana Escobar-Chanos, Chief Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General
Fred J. Schmidt, Ormat Nevada, Incorporated

Jon B. Wellinghoff, MGM Mirage; Freus Corporation
Ernest Figueroa, Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General
Debra Jacobson, Southwest Gas Corporation
Thelma Clark, American Association of Retired Persons, Nevada
Barry Gold, American Association of Retired Persons, Nevada
Lin Wippel, President, Desert Springs Pools and Spas, Incorporated
Joseph M. Vassallo, Certified Building Professional, President, Paragon Pools
Don Rowland, President, Southern Nevada Chapter, Association of Pool and Spa Professionals
Stephen A. Treese, Blue Haven Pools
Eric Maughan, President, Whitewater Pools
Margi A. Grein, Executive Officer, State Contractors' Board
George Lyford, Director, Investigations, State Contractors' Board
J. David Fraser, Nevada League of Cities and Municipalities
Nicholas P. Miller, Managing Partner, Miller and Van Eaton P.L.L.C.; Nevada League of Cities and Municipalities
Marvin A. Leavitt, Urban Consortium
Thomas Clark
Janice C. Pine, Saint Mary's Health Plans
Helen A. Foley, PacifiCare Health Systems

CHAIR TOWNSEND:
We will start the meeting by hearing reports from the two subcommittees. Senator Heck will report first on Senate Bill (S.B.) 29.

SENATE BILL 29: Requires policies of health insurance to provide coverage for certain treatments for cancer. (BDR 57-265)

SENATOR HECK:
The subcommittee met and reviewed the proposed amendments to S.B. 29 (Exhibit C, original is on file at the Research Library). In summary, the amendments will restrict where Phase I clinical trials can be performed to facilities authorized to conduct Phase I clinical trials as now defined in section 2, subsection 9 of the bill. This amendment was at my recommendation with the premise that with Phase I trials, perhaps being the first in-human trials at the locations where they are performed, should be a little more restrictive than the Phase II, Phase III or Phase IV clinical trials. In addition, the amendments clarify that all clinical studies must be therapeutic in nature. This has always been the

intent but has never been specified, and this is to make sure the trials that are performed are not experimental in nature. The amendments also provide that coverage of health care service is limited to those routine services which the insured is already entitled to and not directly related to the clinical trial or study. The same amendments are made throughout the bill in each succeeding section that deals with different chapters concerning different types of insurance plans. I would like to publicly commend both Denise Miller and Jack Kim for their diligent work on these amendments. This bill will now allow Nevadans to receive the latest, cutting-edge cancer treatments in Nevada and help the Cancer Institute become a world-class center of excellence in the treatment of cancer. The subcommittee recommends amend and do pass.

SENATOR HARDY:
I would like to commend Senator Heck's work on this bill. This was a difficult issue that seemingly had no compromise. Senator Heck did a phenomenal job of putting both sides together. The last thing we want to do in Nevada is discourage clinical trials from occurring in our State, and this bill is a great compromise that will allow this to continue.

CHAIR TOWNSEND:
Since this was Senator Mathews' bill, has she seen the amendments?

SENATOR HECK:
Yes, she was given a copy of the amendments and is in agreement with the changes.

SENATOR HECK MOVED TO AMEND AND DO PASS S.B. 29.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SCHNEIDER WAS ABSENT FOR THE VOTE.)

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SCOTT YOUNG (Committee Policy Analyst):
Senator Lee will report on the second subcommittee on S.B. 80.

SENATE BILL 80: Establishes requirements and procedures for consumers to place security alerts and security freezes in certain files maintained by credit reporting agencies. (BDR 52-284)

SENATOR LEE:
This bill was introduced by Senator Beers, who wanted to make sure people could freeze their credit histories and take preventive measures if they felt someone was stealing their identity. I will go over the proposed amendments of S.B. 80 (Exhibit D). The federal law applies to the first sections of the bill. We adopted the California code as we went through the process in our two or three subcommittees. The industry was already prepared to do this and understood how to do so. We did change some of the fees to make them more reasonable to the person who wanted to place a security alert in their file. These fees should not be passed on to everybody else who is a credit card holder. A provision was put in the bill so victims of identity theft could access the system at no cost initially. So immediately the file can be frozen at no charge for the service. A gaming-industry component was put in the bill so the gaming industry would have some access to the security-freeze accounts if they needed to extend credit to people and had to make sure they were given the information they needed. The people who will take advantage of the bill and use the security-freeze issue will be very happy to use it in the State of Nevada.

SENATOR CARLTON:
Section 11, subsection 1 of the bill discusses all related subsequent fees for placing a security freeze on a person's credit file. How will these persons know about these fees when they place the freeze?

SENATOR LEE:
When a person places a freeze, someone in that department will explain the freezing application and also will send the information. When the person decides to take off the freeze, a letter will be sent so the person understands the freeze is being taken off and someone else cannot do it for them. The fees addressed in section 11, subsection 1 of the bill cover the labor to do the freezing. We opted out of the three-month program where a victim of identity theft would have to go back every three months and put the freeze back on as was intended in the first bill. The industry can do it for less, but they cannot exceed these fees. This is what it would cost to put on a freeze and have the account monitored by the industry.

SENATOR CARLTON:
I know you did a lot of hard work on this, but I have concerns that this will be confusing to a lot of consumers.

SENATOR LEE:
The people who are reaching out will understand the process.

SENATOR HARDY:
The reality of this is that the consumer has to be proactive in the freezing process. The consumer has to take the responsibility to understand what they are doing, what they are getting themselves into and ask questions.

SENATOR CARLTON:
My other question was if the consumer does not initiate the process, does it come back to them with someone saying because you did not do this, you are going to be liable for certain things that happen on your credit report? Do you think the boomerang effect will come back to them, because they did not utilize the process?

SENATOR LEE:
No, nothing will change that is currently happening in business today. This can be used as a tool if a person thinks they have a problem, or something has happened regarding their credit account.

SENATOR LEE MOVED TO AMEND AND DO PASS S.B. 80.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO.)

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CHAIR TOWNSEND:
"Let us move to S.B. 188."

SENATE BILL 188: Makes various changes relating to energy. (BDR 58-364)

MR. YOUNG:

> ... I will pass out the amendment (Exhibit E) that was prepared, but my understanding is there had been some questions about whether the amendment was actually what everybody really wanted ... . Maybe the parties that were involved can come forward, and if there are any concerns, they can express them.

CHAIR TOWNSEND:

> ... I believe Sierra Pacific Resources is here, Southwest Gas is here, the Commission is here, someone from the Governor's Office is here and I know the Consumer Advocate is here. ... ; why don't all the people I have named come on up ... you get copies of this ... . And this is different than the mock-up we were given, Mr. Young?

MR. YOUNG:
"No, Senator, this is actually the official amendment. It should mirror that mock-up."

CHAIR TOWNSEND:

> It should mirror the mock-up. ... Committee, if you retained your mock-up on S.B. 188, that is the one we will make reference to. ... For those of you that have never participated in a work session, since this is a bill that was worked on by most of the parties that are at the table or in Las Vegas, the intent of going through this amendment is not to retry any of the issues. We hope that you have all had a chance to review this. Mr. Young, I am not sure the mock-up that I have matches, ... maybe, I have an earlier mock-up? Mine is stated prepared for Senate Commerce and Labor on March 23.

MR. YOUNG:

> Senator, I think that that should still be correct. I am not 100-percent sure, but the blue version is the one that was adopted or actually that was drafted as a result of the Committee's action. My understanding is that the questions that arose came up in connection with section 12, subsection 3.

CHAIR TOWNSEND:
"... . I am not sure this mock-up matches that amendment."

MR. YOUNG:
"Your mock-up that you refer to does not match the amendment. The mock-up was, I believe, what we discussed and the amendment was based on our discussions and superceded the mock-up."

KEVIN POWERS (Committee Counsel):

> Mr. Chairman, as I understand the issue that we brought the amendment back for, it would be on page 2 of the actual line-by-line amendment, the blue document, and in the middle of the page where it says amend section 12, page 7 by deleting line 16-25. What the Committee did when it voted to amend and do pass was to return subsection 3 of section 12 of the bill back to existing language and as you see on the middle of the page ... this should show all this existing language that is currently in the statute. What I believe the issue ... is ... on the first line of that existing language where it says has subsidized in whole or in part. I believe the parties have discussed that the language should read, "has directly reimbursed in whole or in part the acquisition or installation" and then the section would continue as it is.

CHAIR TOWNSEND:
"... We need to redraft the amendment, or do we have to have a second amendment drafted that would encompass that as well ...?"

MR. POWERS:
"The Committee would need to direct me to create a replacement amendment and I would have a new amendment number and it would replace this amendment."

CHAIR TOWNSEND:

> Committee, are you understanding the middle ... of page 2 of the amendment where the original language says, "this State, the provider has subsidized," it would say, "has reimbursed in whole or in part" is that to replace reimburse, Mr. Powers, with subsidize?

MR. POWERS:

> Yes, Mr. Chairman, it would be, "has directly reimbursed in whole or in part" and then before "acquisition" it would be the "cost of" to be consistent with other language in the bill. So again, the first

> line of that amendment would read, "this State, the provider has directly reimbursed in whole or in part the cost of the acquisition or installation of a solar."

CHAIR TOWNSEND:
"Has directly reimbursed in whole or in part the cost of the acquisition, is that correct?"

MR. POWERS:
"That is correct, Mr. Chairman."

JUDY STOKEY (Nevada Power Company; Sierra Pacific Power Company):
"... . This document looks like what we discussed except ... on that section."

CHAIR TOWNSEND:
"Can we just deal with what he said first and then we will go to your concerns?"

MS. STOKEY:
> Yes, ... it is that same paragraph on page 7 of the original bill, line 15, or ..., line 19. It looks like on the original bill the bold-added piece has been deleted on the amendment and my understanding was that the piece was to stay in.

CHAIR TOWNSEND:
"We'll try this again. Can you just address what he said then we'll go to your concerns?"

MS. STOKEY:
"..., A couple of lines before that, that is fine, yes."

CHAIR TOWNSEND:
"That is fine. ..., then we'll come back to your concerns. Mr. Commissioner."

DON SODERBERG (Chairman, Public Utilities Commission of Nevada):
"For the record, Don Soderberg, Chairman of the Public Utilities Commission, we're good with what Mr. Powers has said."

ADRIANA ESCOBAR CHANOS (Chief Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General):
"... Adriana Escobar Chanos of the Bureau of Consumer Protection and we're fine with that as well."

FRED J. SCHMIDT (Ormat Nevada, Incorporated):

> ... . When I presented the amendments last time, I was directed to use the word "reimburse" rather than "subsidized" because it was preferred. ... when the amendment came out, I made this catch that in this other section we had inadvertently allowed the word "subsidized" to be retained and so I think all we are doing is correcting that and that is fine with me.

CHAIR TOWNSEND:
"Mr. Wellinghoff, you understand the area we are dealing with at the moment?"

JON B. WELLINGHOFF (MGM Mirage; Freus Corporation):
"Yes, Mr. Chairman. ... . Yes, I do and I agree with Mr. Powers' indication of the changes that should be made and Mr. Schmidt's representation relative to those changes."

MS. STOKEY:
"... . Mr. Young just showed me a document that where we have agreed, somebody in our company has agreed, that that is okay the way that it reads."

CHAIR TOWNSEND:
"In the original bill?"

MS. STOKEY:
"As in the amendment."

CHAIR TOWNSEND:
"... as the amendment, ... but which part now?"

MS. STOKEY:
"We are okay. ... ."

CHAIR TOWNSEND:

> ... You are okay. ... So far, the only thing was what was caught and to be consistent in the bill for purpose of finding a replacement amendment, Committee, would be just the issue we talked about. We have already processed the amendment and so we have to ask for a replacement amendment, ... Committee, it would be my recommendation based on that group that worked together that we accept those changes and ask Mr. Powers to give us a replacement amendment for S.B. 188.
>
> SENATOR HARDY MOVED TO AMEND S.B. 188 WITH A REPLACEMENT AMENDMENT FROM MR. POWERS.
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> SENATOR SCHNEIDER SECONDED THE MOTION.
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> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
Committee, let us take up S.B. 256.

SENATE BILL 256: Revises certain provisions relating to regulation of public utilities. (BDR 58-655)

This was the Public Utility Commission of Nevada's (PUCN) bill regarding their large effort to try to streamline the work flow. As we went through the iterations of evolution regarding deregulation, regulation, reregulation and the split between gas, electric and telecommunications, we inadvertently created time lines that not only were problematic for the PUCN but, were substantially problematic for the companies in terms of their filings. Everyone was doing it all at once. Between overloading the Chairman's staff, the Bureau of Consumer Protection's (BCP) staff or any interested party, the work flow was not one with which anyone could deal. So, this was an attempt by the PUCN to redo that. There are other concerns based on some policy questions that came up in this amendment. We will first deal with the amendment (Exhibit F). The issue in question is on the second page of the amendment, section 4, page 8, line 11 of the bill. This was recommended by the BCP through Ms. Escobar-Chanos. The question I would have for her is if we did nothing and if that section was not in

the bill, in a normal rate-design case, would customers have the same status as this would provide if we changed this in a normal rate-design case?

MR. SODERBERG:
Mr. Chairman, in a deferred-energy case, which is the area that we are looking at, we would not normally have a rate-design component. There has been some disagreement among those who practiced before us whether we should or should not and whether we can or cannot have a rate-design component. At a recent deferred-energy case, some of the utilities' larger customers urged us to take a look at rate design in that manner. The PUCN struck that evidence from the case and it did not feel it had the authority to do so. This bill is attempting to give the PUCN an opportunity to take a look at rate design under certain circumstances. When it appears prices are going down, there is some room to address some subsidies that are inherent in the rate structure between large customers and small customers. The amendment to the bill agreed to by the parties at your last meeting is an attempt to put a fail-safe on that exercise so if we do have a rate decrease, residential customers do not wind up not receiving the rate decrease because we are looking at rate-design issues and trying to deal with subsidies. When you take the two provisions together, what we initially came forward with and then what we added at your last meeting, you can argue that they are in conflict with each other. You would have to do either one or the other. The PUCN's perspective is that we like to have as much flexibility as possible so we do not create anger one way or the other concerning the whole concept. We do understand there is a need to make sure that if rates are going down, there is rate relief to all customers at the same time. There are subsidies that we need to address.

CHAIR TOWNSEND:
I am addressing this to the Advocate. Parties in a deferred case thought there was authority to discuss rate design. The PUCN determined there was not, and they did not accept the evidence presented. Therefore, the PUCN came forward with the language that states, "... shall consider information relating to rate design ... and may enter an order that adjusts the rate design for the electric utility ... ." That is pretty flexible and that gives the authority to look at rate design. The Advocate came forward and said if there is going to be a rate decrease, we want our piece and put this in which gives a proportional rate decrease. This creates a problem because the statute would dictate what goes into a rate design. This is the way I read this. Am I wrong?

MS. ESCOBAR-CHANOS:
The policy behind this is to safeguard the ability of the small customers to be able to share in any decrease. This is an assurance that the smaller customers, which compose a significant amount of the population as far as electric-users are concerned, can share and it is proportional.

CHAIR TOWNSEND:
In deliberations of the PUCN, the consumer shall receive full due consideration. However, this language is stepping into rate design. It says, "Whatever you do, they will get a proportional share of the decrease allocated by usage." That is the first time, unless I am mistaken, that the Legislature would be entering into rate design as opposed to allowing the PUCN to agree with the Advocate on this rate-design issue and state what the PUCN is going to do. An example would be if you set this a certain way, there is no flexibility for the PUCN, even if you make the greatest case in the world, to give you more than your proportionate share.

MS. ESCOBAR-CHANOS:
Our original amendment was different. It said "however, in any rate-design order, residential ratepayers shall receive no less than 50 percent of the benefit associated with the substantial decrease," reference paragraph 9 and forward, "or in excess of 50 percent if deemed reasonable by the Commission." That would be a bit more flexible. The goal is to have some kind of a cap.

CHAIR TOWNSEND:
You are asking the Legislature to step into rate design. This is a Committee process and the Committee will make the decision. I do not know if you have something there to offer.

MS. ESCOBAR-CHANOS:
We do have another alternative (Exhibit G). The residential ratepayers would receive a reduction under this scheme, but there is more flexibility for the PUCN to determine the share.

CHAIR TOWNSEND:
Why would you say residential only since your responsibility is also to small commercial users?

MS. ESCOBAR-CHANOS:
Residential ratepayers are the largest group of the consumers that we represent.

CHAIR TOWNSEND:
Mr. Soderberg, you understand my concern about the Legislature getting into the rate business. Does that language still hamstring your flexibility?

MR. SODERBERG:
The new revised language in Exhibit G that has just been read gives us more flexibility than what we had written before in Exhibit F. The issue is if there is going to be rate decrease overall, what do we do with that? The initial amendment brought forward by the Consumer Advocate gave us a certain amount of flexibility. The utility felt that did not create any flexibility and applied that language differently than I did. The provision was read two different ways and that brings us to what we have written in Exhibit F. On second look, it does tell us we have to do everything proportional which means it negates the entire concept of considering rate design in these situations. The language in Exhibit G gives the PUCN some discretion in order to manipulate rates if they believe there was a rate-design problem. At the same time, the language would guarantee Ms. Escobar-Chanos' core clients would receive some benefit.

MR. WELLINGHOFF:
I am concerned with the original amendment and that subsequent amendment Ms. Escobar-Chanos has proposed. The original bill gave the PUCN the maximum amount of flexibility with respect to rate design and class cost of service issues in a deferred case. We would like the PUCN to be able to preserve that flexibility in a deferred case. It is important with respect to the existing amendment regarding proportional share to residential-class users. They actually do not receive that now; they receive more than a proportional share with respect to the Hoover B portion of the rates. That amendment would hurt Ms. Escobar-Chanos' clients. With respect to the subsequent amendment depicted in Exhibit G that she just proposed, I would have to look at it in more detail, and take it back to my clients before I could give you an answer. I believe my clients would prefer the original language of the bill that provides the PUCN with the maximum flexibility with respect to rate-design issues and deferred case.

CHAIR TOWNSEND:
Mr. Schmidt, was this another one of your catches?

MR. SCHMIDT:
It was a catch of mine that the amendment defeats the purpose of the original section of the bill. Mr. Soderberg has correctly described that the PUCN was somewhat hamstrung in recent deferred-energy cases. Traditionally, in general rate cases, the objective is to determine which class of customer is responsible for what share of the cost. However, in deferred-energy cases, everybody gets the same rate in every case with the exception of Hoover B energy, which is allocated to residential customers to help them out.

Large customers traditionally have larger energy consumption and higher load factors. Over the last 10 to 15 years, we went through a period of all rate increases occurring through the energy rate. The high-load-factor customer, in terms of revenue, received a larger portion of the increases in cost. This Committee has heard about this many times since the 1980s. There is a subsidy built into the rates in which the commercial class is subsidizing the residential user. When I was the Consumer Advocate, I argued against that as aggressively as I could and presented witnesses to try to minimize the subsidy. In the 1990s, I ended up conceding that there was a subsidy and asking what we could do about it. In one case, in the mid-to-late 1990s, we stipulated that the large customers would get most of the decrease and residential rates would not be reduced. Then, during the energy crisis, we were not dealing with any rate decreases.

Since we are beyond the energy crisis, there are some surcharges built into the rates that customers now pay which are likely to come down in the next few years. Does the PUCN have an opportunity to adjust or get rid of these subsidies? The size of the subsidies has driven the desire and the need for the large customers to want to exit the system. The subsidies in the last general rate case were stipulated to by all parties, including the Consumer Advocate and their expert witness. It is in the range of $100 million.

MR. SCHMIDT (continuing):
The original attempt in the bill was not meant to treat the residential ratepayer unfairly. If rates decline, is that not an opportunity to do something about the subsidies, particularly in southern Nevada? The original intent of the bill was to give the PUCN the ability to do a rate-design change in a deferred case when the surcharges from the energy crisis disappear; this would allow them to correct subsidies. The Consumer Advocate can still go in and argue, particularly if the rate design shows there are not large subsidies, or if they somehow disappeared. The purpose of the bill was to give them that flexibility. If you change that and add that residential ratepayers must get 50 percent of the rate decrease, which is what the amendment says now, you eliminate the need to do the rate design.

There are only two classes dealt with in the deferred case, residential and nonresidential. If the residential user gets the same as the nonresidential user, it eliminates the flexibility that was intended to be created. If the residential user must receive a "substantial portion," as the Consumer Advocate has just said, that is better. The PUCN can then decide what would be a "substantial portion." The original intent of the bill is reasonable, and it is not directly adverse to residential interest. However, I can understand why the Consumer Advocate wants to put language in the bill to protect the residential ratepayer more directly.

MS. ESCOBAR-CHANOS:
Based on my experience as a former Commissioner and my involvement in many deferred-energy cases over the last four years, this bill would not hamper the ability of the PUCN in any way. Especially with this last alternative, it is not just necessarily a proportionate share.

ERNEST FIGUEROA (Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General):
Mr. Schmidt is correct that the original change of the statute was meant to address the residential-subsidy issue, which is a permanent issue in southern Nevada. Parties tend to disagree as to the size and the amount of the subsidy. The range would be around $25 million to $100 million. The latest amendment regarding the change here still accommodates Mr. Schmidt’s original intent that the subsidy issue will be addressed. The question is how do we address the subsidy issue? Do we attack it immediately or approach it from a gradual perspective?

CHAIR TOWNSEND:
Did not your original statement make the case for not making any change in the original bill? You are saying it is $25 million and Mr. Schmidt is saying it is $100 million. Why should the Legislature decide anything with regard to the subsidy? That is a hugely technical issue. It is the responsibility of the office to make the case. This does not mandate the PUCN do rate design. It gives them the authority to consider rate designs. This is part of the issue because they never before had the authority.

SENATOR HARDY:
I have not seen any evidence that the PUCN has abused this type of flexibility in other areas. The system is working.

MR. WELLINGHOFF:
The flexibility that the PUCN is provided in S.B. 256 is appropriate. There is no evidence that the PUCN has ever or would ever abuse their flexibility with respect to the residential customers. My client would support the original bill and be willing to look at other alternatives and amendments if that is the wish of the Committee. I would like to see the original bill passed.

SENATOR CARLTON:
Originally, the Consumer Advocate had no standing in a deferred-rate case when it came to dealing with the design. Now, with this bill, can they participate?

MR. SODERBERG:
The Consumer Advocate has standing by law in all of our cases, including deferred-energy cases. The PUCN has interpreted existing statutes to mean it cannot deal with rate design in deferred-energy cases. The language in this bill would give us that ability under certain circumstances when the rates are going down. If the rate stays the same or goes up, we cannot deal with that issue. It creates a great deal of flexibility for the PUCN's ability to deal with that. These were things that were involved with the group that put together legislation you have seen on energy items. It was my intent to preserve as much flexibility for the PUCN so we would not have to do something that was not comfortable. Many of these discussions took place prior to Ms. Escobar-Chanos' appointment. When she had an opportunity to look at the provision, she felt there needed to be some level of statutory protection. If we are going to exercise that discretion, we should have some mandate from you about how we

exercise that discretion. The proposed amendment discusses the flexibility that is in the original statute without tying our hands.

SENATOR CARLTON:
As the bill stands now, will Ms. Escobar Chanos' voice for the consumers be heard when this discussion happens?

MR. SODERBERG:
Yes.

CHAIR TOWNSEND:
Mr. Soderberg, can you explain what kind of case must come before the PUCN, or can you open a docket on your own to discuss rate design?

MR. SODERBERG:
We do not believe we have the flexibility currently under statute to just open up a docket on rate design. That is an issue we deal with in general rate cases only at this point.

CHAIR TOWNSEND:
What are the parameters and guidelines relative to all the classes of customers that you must follow in a general rate case? Is there any language that dictates, directs, hints or suggests what the advocate is trying to say in this?

MR. SODERBERG:
No.

CHAIR TOWNSEND:
We respect and consider the argument. I am comfortable in leaving the language that is in the bill for at least two years. If there are no decreases, we can take this up again. If there are decreases, we can see what the PUCN did and see how well they performed. My recommendation is to reconsider Amendment No. 109. If the reconsideration of the amendment fails, then the amendment stands. If the reconsideration passes, then we accept the amendment minus the change on page 8, section 4, line 11 of the bill. Would the motion be to reconsider or to withdraw?

MR. POWERS:
"This is a motion to reconsider."

SENATOR HARDY MOVED TO RECONSIDER THE ACTION WHEREBY S.B. 256 WAS AMENDED WITH AMENDMENT NO. 109.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
My recommendation is to have Committee Counsel draft an amendment for S.B. 256 that is currently in front of us in the form of Amendment No. 109 and it would be minus the language on page 2 of the amendment that reflects page 8, section 4 of the bill.

SENATOR HARDY MOVED TO HAVE COMMITTEE COUNSEL DRAFT AN AMENDMENT FOR S.B. 256 IN THE FORM OF AMENDMENT NO. 109 MINUS THE LANGUAGE ON PAGE 2 OF THE AMENDMENT THAT REFLECTS PAGE 8, SECTION 4 OF THE BILL.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
Mr. Powers, do we need to do anything else regarding that bill?

MR. POWERS:
"No, Mr. Chairman"

CHAIR TOWNSEND:
Let us ... take up S.B. 238. ... Committee, you have in front of you from Ms. Jacobsen a S.B. 238 joint amendment by the Bureau of Consumer Protection (BCP), Southwest Gas and the Public Utility Commission of Nevada (Exhibit H). Is there an assumption that we have found resolution to a difficult problem?

SENATE BILL 238: Revises provisions governing regulation of certain public utilities. (BDR 58-1156)

DEBRA JACOBSON (Southwest Gas Corporation):
"Chairman Townsend, for the record, Debra Jacobson representing Southwest Gas and I do apologize, Sierra Pacific, their gas portion of their utility, is also a party to that in the rush to get it done."

CHAIR TOWNSEND:
What do we call that? Is it that only on the Sierra Pacific side? Inside the Sierra Pacific operating company there is a gas division? Is that how it is divided up so I do not make a misrepresentation? ... Committee if you will pull up S.B. 238, then let us proceed.

MS. JACOBSON:
... Yes, this is a joint amendment that we worked on over the last week that deals with the subject of periodic gas-cost rate adjustments. The amendment does a couple of things. It would revise the word "periodic" to "quarterly." What it would be is four quarterly rate adjustments that would not require the normal consumer sessions or the legal-noticing portion of the statute which is what we requested. It would require a customer notification which we planned to do, but this actually puts that into the law. There would be a customer notification, I think 30 days before it would actually go into effect, so the customer will know it would be stand-alone. There would be no mix-up on what the cost of gas would be. The cost of gas, that would still annually be a gas-supply report filed, prudency reviews, consumer sessions and the results of that annual prudency review would then be reflected in rates. So there would never be a time when the prudency of the cost would not be reviewed and the Commission makes a ruling on at some point. Did I forget anything? I think that is basically what it does.

MR. FIGUEROA:
... Ms. Jacobson was correct; that is the gist of the amendments. We got to bear in mind that the purpose of this was to help minimize the carrying cost associated with the ... large gas cost that are expected in the near future.

CHAIR TOWNSEND:

Is it fair to say that those carrying costs are directly given back as a cost to the customer? I do not want to mischaracterize, but I think everyone has to understand it. It is probably the hardest thing the Advocate's Office has to deal with, is balance that, and that to me, of all the years sitting here, is the hardest thing to figure out how to do. It is all those costs and to figure out how that fits into the customer's bill, short-term and long-term.

MR. FIGUEROA:

That is correct. Whenever there is a large balance growing and there is an accumulated time associated with these large balances, there is a carrying cost. ... That carrying cost is substantial when you are dealing with millions of dollars, and those costs will be set in rates for ratepayers to pay back in addition to the actual purchase price of the gas.

CHAIR TOWNSEND:

Senator Schneider was nice enough to pull up for this Committee a headline story this morning on MSN News that talks about "How to kick our huge oil habit" and talking about becoming completely independent by 2050. That, of course, is sidebar by the headline that talks about $100-a-barrel oil. So you know everyone has to understand. You understand it, but when a guy stops me walking into the grocery store and asks me questions about his utility bill, that is a huge mistake ... if they are going to ask me, I am going to give them the long answer. By the time he's gone through every aisle and I have followed him giving him an answer, he will probably never call me again, but he got a legitimate answer. When you talk about a commodity that you deal with, the Commission deals with and the gas company, you are talking about, in essence, ... oil, gas and coal and then you are talking about purchase-power agreements. These deferred-energy issues and fuel issues and purchase-power contracts, these are a hugely complex issue. Unfortunately, a lot of these just follow each other. If oil goes up, gas goes up, coal goes up, it is a commodity issue. It is very tough for you folks. Those are all completely out of your control. That is part of the problem. Even if you buy, make the greatest decision to buy the best contract for the consumer, the price is still going up

so it still costs money. That is the problem. I think you guys do a remarkable job anyway. Mr. Chairman, do you want to add something to the explanation Mr. Figueroa and Ms. Jacobson gave?

MR. SODERBERG:

... I do not know that I need to add anything. I think this amendment represents a good and thoughtful discussion among the parties who were interested in this bill, and the language works very well. I think it addresses the concerns the Consumer Advocate had and still creates a mechanism where we cannot run up these essentially credit charges on balances.

CHAIR TOWNSEND:
"Ms. Jacobson, is the spelling of 'prudencE' in your amendment a slight typo?"

MS. JACOBSON:
"Yes."

CHAIR TOWNSEND:
"... Ms. Clark, ... have you had a chance to see this amendment?"

THELMA CLARK (American Association of Retired Persons, Nevada):
"No, we have not, and I cannot agree with it until I see it."

CHAIR TOWNSEND:
"Okay, well, we will get it down there to you."

MS. CLARK:

The way the bill is, I do not agree with it at all. Mr. Chairman. I have had a dozen telephone calls about this bill since it was printed, since it was announced in the paper that it came out. ... People do not understand the difference between deferred energy and a rate case. This surely does not help. We think deferred energy; the PUCN should approve every deferred-energy case instead of letting them.

CHAIR TOWNSEND:

We will have you take a look at this ... I think the Advocate and the Commission have both agreed to reach out to the people you represent and try to have some educational meeting to just help people understand the complexities, ..., when they read something in the paper they do not have to agree with it, but at least they will have a better understanding of it. This stuff is ..., very complex and I think many times that is why it is put on the back page of the business section in almost every newspaper in the country. A lot of people do not want to read it. It is too hard, too complex, and unless you wrote every penny down at the top of the headline, you would never get anyone to read them. I respect what you are saying and let us see if we can get this down to you to take a look. Do you want to try, Ms. Escobar-Chanos, do you want to try to walk Ms. Clark through this a little bit while they are waiting for it to come down?

MS. ESCOBAR-CHANOS:

Certainly, Mr. Chairman. Essentially, Ms. Clark, what has happened here is in an effort to avoid significant carrying charges for the consumers that would pretty much go straight through into their bills and with the knowledge of the volatility and how natural gas is peaking, what we have tried to do here is ... give the company the ability to change the rates quarterly with simply an application or notification to the Commission. However, the consumer session and a prudency review and the entire hearing will be held once a year at the end of the year. We will have all the safeguards that we have had historically. What this does is facilitate the marketplace but not only will there be a yearly prudency review, it will also be a review of the quarterly increases. We still have those provisions and safeguards in place for the consumers.

MS. CLARK:

I am worrying about the PUCN, not the Public Service Commission, I keep calling them the old name, will not have the authority to check the rate increases quarterly and make a decision whether they're prudent or not. That is our concern and all the education I can do for anybody, all the education, people do not come out anymore to the public hearings because they think it does not do

> them any good ... to tell the PUCN what the problem is. They do not think it does any good.

CHAIR TOWNSEND:
"Let me ask you this Ms. Clark. Do you have this thing in front of you now?"

MS. CLARK:
"No."

CHAIR TOWNSEND:
> ... . Let me read this to you. We'll get it to you, but let me read this to you. "The Commission shall determine the reasonableness and prudency of the fuel cost included in the quarterly adjustments and shall not allow the public utility to recover any costs for purchase fuel that were the result of any practice or transaction that was undertaken, managed or performed imprudently by the public utility. Commission shall order the public utility to adjust its rates if the Commission determines that any fuel cost included in the quarterly or annual rate adjustment were not reasonable or prudent." So, the Commission retains complete authority.

MS. CLARK:
"They will review the quarterly."

CHAIR TOWNSEND:
"Yes, it says that right here, included in the quarterly or the annual rate adjustments."

MS. CLARK:
"I would rather it said quarterly and yearly. Would they agree to a change from 'or' to and'?"

CHAIR TOWNSEND:
"I do not know. ... Then what happens is you are adding more cost to it. Then you pay for it."

MS. CLARK:
> I think that cost is minimal. The rates increases we have had have been gigantic, to say the least, and I think the PUCN review of the

quarterly and the yearly would not increase the rates that much. It would be an insignificant amount, I believe.

CHAIR TOWNSEND:
"We will start with Ms. Escobar-Chanos and then go to the Commission."

MS. ESCOBAR-CHANOS:
Certainly, Ms. Clark, I understand your concerns for the safeguards because I too have the same concern and the same agenda. However, if we do this once a year at the end, ... not unlike other cases that we have, ... it will be a thorough review of the quarterly adjustments and the yearly review. So that coming in four times, I think, will in a sense defeat this. I actually considered that at the beginning when I was thinking about this amendment. I thought that we could really provide for that issue ... in our yearly review of the prudency and definitely review each quarter. There would not be anything that would not be reviewed. I think it will take care of a lot of regulatory lack that the company has and also, more important to our constituents or clients, reduce other costs that may be incurred in reviewing it more often. By the time you hold that hearing, the rates continue to change and it sort of defeats this thought, this concept.

MS. CLARK:
"... . Will all the other three quarters of the year be included in a yearly rate for review? Is that what you said?"

MS. ESCOBAR-CHANOS:
"Absolutely, we will be reviewing the prudency of all four quarters in the yearly review."

MS. CLARK:
"In a yearly review?"

MS. ESCOBAR-CHANOS:
"Yes"

CHAIR TOWNSEND:

> ... Committee, ... this amendment does not have a number, but it is the document prepared by Ms. Jacobson on behalf of the joint amendment, BCP, Southwest Gas, PUCN and Sierra Pacific Resources Gas Division.
>
> SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS S.B. 238.
>
> SENATOR HARDY SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

* * * * *

MS. ESCOBAR-CHANOS:
"Mr. Chairman, I have a question about the procedure, forgive me for interrupting. There is another proposed amendment that we have not discussed yet. Is that different?"

CHAIR TOWNSEND:
"Yes, let us take it up now."

MS. ESCOBAR-CHANOS:
"... . I do not know if Ms. Jacobson wants to introduce it ... ."

CHAIR TOWNSEND:
"How do you want to proceed?"

MS. ESCOBAR-CHANOS:

> Forgive me for perhaps not understanding the procedure. I understand that in S.B. 238 there is a proposed future test year. We have not come to an agreement and in fact the BCP vehemently opposes that, and I would like to discuss that with the Committee. I do not know if this is the time or if you are just voting on that one section that we discussed.

CHAIR TOWNSEND:
"We did just vote on it, but you can go ahead and make your case."

MS. ESCOBAR-CHANOS:
"... I did not realize we voted on the entire thing, I apologize."

CHAIR TOWNSEND:
"It is not your fault. ... . Go ahead and make your case."

MS. ESCOBAR-CHANOS:

> ..., I think that this is really worth considering. A future test year is something that has occurred in 17 jurisdictions or 17 states so far and you know while it is sort of an interesting concept, we in Nevada have not researched this sufficiently. I have read reports from other states, for instance Iowa, and it is much more complicated than we realize. There are costs that are incurred and it is very expensive to implement and transition into. Sometimes, it is so complicated that the normal industrial users, even the large ones, find it costly to intervene, and stay away from it. The other system has not been fully tested as we have discussed before. I think a better way to address this would be to add, perhaps make that more of a hybrid, to the traditional year that we have and add three more months to the certification period so that the company could capture more time. The future test year does away with the traditional used and useful standard that has been used since the 1930s, I believe.
>
> There is a weatherization docket before us. I believe Commissioner Carl Linvill is in charge of that docket ... that the BCP would support and that is one of the most important things that we understand is tied to the problems as far as a lag in the ability for the company to collect money in a stable manner. The weatherization docket would help; adding to the traditional test year would help and also what we have just passed or what you have just passed are quarterly adjustment deals with it now helps the company with a regulatory lag. It is just not ripe yet. My recommendation would be to study this, come back to you in 2007 and give you a recommendation, and that is something that has occurred in other states. We are really jumping into unknown water and I do not think a regulatory, just a docket before the PUCN right now to know how to implement it, is sufficient. We need to know whether this scheme is appropriate for Nevada and how it works

with other regulatory schemes in the *Nevada Revised Statutes* (NRS). I think this is not ripe yet. I think in my opinion the better thing to do is to study it and if it looks like it is something that works, then we should implement it. I really think you do not have enough information, none of us do, for how this would work in our State. There is a lot of information that suggested it could be a detriment to the consumers. I am not saying do not pass a future test year. I am saying let us study it, let us give you recommendations and then let us do it in a methodical, intelligent way with evidence. I really would ask that you consider that.

CHAIR TOWNSEND:

Chairman Soderberg, you ... and your two colleagues and your staff are the ones who have to deal with this. Ms. Escobar-Chanos has made, I think, not just a passionate but a very interesting argument about ... what do you do? Could you kind of give your sense of this please?

MR. SODERBERG:

... . The language that is in the original bill before you, we feel, gives us adequate time and discretion to address the issue, come up with regulations that will ensure that we have a smooth transition from the historical test-year concept which I kind of view as the analog way of doing things, versus the future test year which I kind of look at as the digital way of doing things. A number of states have moved forward to this. I must disagree with the Consumer Advocate. I believe it is working very well in those states and they have come up with some creative ways of transition and some states are actually using a little bit of each. When we worked with Southwest Gas to come up with that portion of the bill, we wanted to make sure we had flexibility. We wanted to make sure that we did not do anything too soon and we wanted to make sure that we had ample time for everybody to weigh in on how we do it, including the Consumer Advocate's office. We think that the alternative that is being proposed where we have no mandate to move forward to a future test year and we continue to do things in the old way but try to manipulate that better so it maybe gets a little bit closer or less stale data into the system, is well-intended but it does not solve our problem that we

are doing things quite frankly in a way that is outmoded. We would respectfully disagree with the Consumer Advocate and would urge you to move forward with the bill as it is written.

MS. ESCOBAR-CHANOS:

... . First of all, the basic questions that we need to answer before we even get into a future test year is: "Will this be cost-effective for our State and, will this projected test year increase the accuracy of current rates to the current cost of the utility"? We do not even know the answers to that before we implement it. For instance in Arizona, we have heard on this other amendment that we just passed that they have monthly increases. We have gone to quarterly to try to step forward. They do not have a future test year in Arizona. They have not adopted that there although they are very progressive about the monthly adjustments without a lot of the safeguards yet they have not embraced the future test year for reasons that do not mesh with their state yet. Yes, there are states where this is working but those states do not have the same regulatory scheme necessarily that we do and there is a different regulatory lag. Some of those cases do not come to fruition for two years. There are a lot of distinctions that we have not examined why they may be working in other states that are not necessarily occurring in our State.

CHAIR TOWNSEND:

"Chairman Soderberg, if the bill gets through both Houses and the Governor decides this is the kind of thing he likes and signs the bill; tell us what the next 12 months would look like; 24 months, in your shop, relative to this issue?"

MR. SODERBERG:

... Mr. Chairman, what would happen if this bill were enacted and became law is we would immediately open up an investigatory rule-making docket which would allow us to do the broad examination that we need to do to come up with the rules of the road in not only the transition for gas utilities as well as how we would approach them after the transition. That would be an exhaustive and time-consuming docket in which we would examine all aspects of the future test year, the historical test year and the

> time in between. I would assume that would be something that would take up the first 12 months of the time frame we talked about. It is not going to be a quick endeavor. There is lots of details. There is lots of things we need to flesh out and it would not be something I would recommend that we do quickly or as you have seen with other legislation that has come up to you in past Sessions where you actually give us a time frame to do that. I would not recommend that, because there are things that need to be done and there are voices that need to be heard on this. I would assume roughly about the 12-month time frame, from that we would be able to have some rules to the road that would go before the Legislative Commission to be reviewed. Then, we would at that point, the utility would file a general rate case based on a future test year.

MS. CLARK:
"I am wondering if I, as a regular customer, would be able to go to the regulatory hearings and have any input in them. Is that allowed?"

CHAIR TOWNSEND:
"I do not know why it would not be. It is not any different than any other regulatory hearing."

MS. CLARK:
"… I have an eyesight problem and I would have to put everything in writing and intervene and all the interveners are attorneys so it puts me in a disadvantage. I have some good ideas sometimes."

CHAIR TOWNSEND:
"Can Ms. Domenici from the [Silver Haired Legislative] Forum be helpful to you?"

MS. CLARK:
"… She is a lot of help but this is not a Forum issue … ."

CHAIR TOWNSEND:
"… Can you not make it a Forum issue and then she can help you?"

MS. CLARK:
"I am not the president any longer."

CHAIR TOWNSEND:
"Well, you are still on there, aren't you?"

MS. CLARK:
"Yes."

CHAIR TOWNSEND:
"I thought so. You are Senator Coffin's appointment?"

MS. CLARK:
"Yes."

CHAIR TOWNSEND:
> Well, I would think that if you put this issue in front of the Forum to ... make it a Forum issue, Ms. Domenici and/or her staff can be helpful ... in terms of printing up testimony and helping understand some of the submissions; ... that you would have the staff you need to feel more comfortable to be part of an intervention.

MS. CLARK:
"Of course, we do not have any money in the Forum."

CHAIR TOWNSEND:
> ... We understand that, but you know we are not asking you to expend any money. We have given you staff to help deal with the issues that are important to the Forum is what I am saying, rather than you just coming as a gas customer. That might give you a little more opportunity to participate and understand what some of the submissions are.

MS. CLARK:
"... I am working on the utilities with [American Association of Retired Persons] AARP, and I promised I would look at all the utility bills this year and give them a little advice."

BARRY GOLD (American Association of Retired Persons):

> ... . We just received the amendments in front of us. I think while they answer a lot of the questions about the rate increases on how often they are going to happen and especially on the notification, I think we are very concerned about the notification issue. I think I might agree with the Consumer Advocate in terms of the future test more in lines of this bill is doing; what I call two conceptual changes. We are changing the structure on how rates could be increased and also on kind of the format for doing that on whether it is on past dividends or future year. There are two conceptual changes and maybe we should look at one thing at a time. The AARP concerns are expressed in (Exhibit I).

CHAIR TOWNSEND:

> Mr. Gold, I do not disagree with your approach to that, but I am going to try to put this in a simplistic term. It might have taken me 20 years to learn this. You probably have more than one credit card in your wallet, ... and they are likely to have different rates with which you can borrow money. The problem for the consumer, and everything I believe the Advocate has said with regard to future test year, is legitimate. I think it has value, but here is what the Commission, the company and the Advocate face. That is, whenever you borrow money you provide a service in a regulated entity. The cost of that money is passed on to the consumer. Whenever you make a purchase, whether it is for fuel or purchase power, if you have to borrow money to do that, that is also included. Now, where do you get your money? Well, you get your money from the financial markets and if they do not feel that they are going to get a chance at a decent return or that you are in a weakened financial condition, the ability to borrow that money starts to go up. Your ability goes down. The costs go up and those costs are passed back to the consumer. That is why I gave the Advocate my commendation with regard to the balance. It is finding the best return for the consumer versus overcharging for borrowing money. It could not be more difficult. It could not be more simple. It is very easy to understand on a credit card if you want to buy a new sweater and you have a 19-percent credit card maybe you do not need that new sweater. You do not have to buy it. In the case of energy, ... the lights, ..., the air conditioner, the

heater or whatever, ... it means they do not really have an option. If the market is closed to them, then the consumer pays whatever cost are associated with that borrowing. I know that is simplistic but ... that is the tough thing for the Advocate ... to figure out and the Commission has the same responsibility. Figure out where to draw that line in terms of the cost to borrow money versus spreading out the cost over time. That is an extremely difficult task.

MR. GOLD:
"I do not claim to fully understand these issues, that is why I ask these questions and raise these concerns."

CHAIR TOWNSEND:

... . Ms. Escobar-Chanos, do you want to say anything else on this issue? This is a very hard and by the way, your opening remarks about studying. Mr. Wellinghoff, Mr. Schmidt and ... Mr. Craigie ..., the four of us have dealt with this issue for 25 years. I wish that I had an answer for you.

MS. ESCOBAR-CHANOS:

Mr. Chairman, my sincere fear is that without having specific information and studying this issue properly before we implement it ..., frankly could lead, ... to higher rates on top of higher fuel costs. You know, before walking into a forum that could lead to that, I think it is wise to study, ... understand and have empirical evidence of how this would work and if it would work in our regulatory scheme. It has nothing to really do with other states.

MR. SCHMIDT:

... . My wife would not forgive me if I did not come today and speak about this bill, because I have spoken about this issue many Sessions before. Unfortunately, it is long before many of you have heard me speak about it because it was back in the 1980s, although Senator Townsend was there for many of those discussions.

The last time this type of legislation for future test year was tried was back in the mid-to-late 1980s and early 1990s and it was unsuccessful. I was on the PUCN at the time and opposed it.

I will tell you that I do not have a position on the other part of the bill. It sounds like the amendments that have been proposed make some sense because I will not deny the utilities in the natural gas industry ... also ... our energy utilities ..., have faced dramatically rising fuel cost and the mechanism in the other parts of the bill are there to ensure they get full recovery of that. When they get full recovery of that, they also get carrying charges so to the extent you base that on known and measurable information from the past, you get fully reimbursed in the future. So, it is not as if they cannot keep up, particularly if you are going to do it as rapidly as the bill now provides for.

... Section 4, subsection 3 on page 5 and subsection 4 that is on the bottom of page 5 and top of page 6, the bill proposes bad public policy for consumers. I fully support the instincts of the new Consumer Advocate. She is right to oppose this bill. This bill is not a bill that will protect the businesses that you work for ... and will not protect the consumers, the residential consumers of which I am one. We have all seen rapidly increasing natural gas prices. The reason the bill is bad public policy is because if you look at subsection 3 ... I am going to give you five reasons I think this is bad public policy to adopt. In subsection 3 of the current law, that is the section that gives the Commission specific authority to require the information about what their results of operations have been in all categories; expenses, revenues and so forth. The last part of subsection 3 says that they do not if it is a utility that purchases natural gas for resale ... .

MR. SCHMIDT (continuing):

So now where does Mr. Soderberg get his authority? Well, he may, ... through a general section or somewhere else ... get to require that information but if you pass this law you are essentially saying the public utility that sells natural gas for resale does not have to supply that information. They get an exemption from it. Worse yet, it says a public utility which purchases natural gas for resale. Well, why is it natural gas; what is different about natural gas than electricity? If you are going to do this as a public policy, it should be done for all the energy utilities or none of the energy utilities. It is not even clear which ones this applies to because Sierra Pacific Power Company ... is a utility which purchases natural gas for resale but it also has an electric division. ... do you exempt the electric division by passing this in northern Nevada? I do not know, the bill is not clear on that. ..., I believe the language is too general; it is sloppy and it creates a limitation, if anything, on the information that the Commission should have the ability to fully require. It should not create that type of limitation.

Second problem with the bill, go to subsection 4. ... Instead of saying it allows the Commission to define the future test year or the Commission to set what period they are going to look at if this idea is such a good one, to use for future rates, it says the utility may, so you are empowering the utility to pick the period. ..., I will give you an example of how that was done recently. We deregulated the Truckee Meadows Water Authority (TMWA). They picked the period. They decided they wanted to do future test year. They picked the period three to five years out. They said, we need the money for then and it is going to be a large amount. They did not even pick the next year. Well, did that make sense; was that fair? I do not know, no one knows. They are not being regulated right now. We got a large rate hike in the Reno-Sparks area out of water rates because of something like that. If the utility is empowered to pick the period, I do not see how that gives better flexibility or power to the Commission. Then you turn to subsection 4, paragraph (a) and worse yet, it says the Commission shall establish rates based on that projective period. It does not say they may, ... it tells them they have to. ... if the utility picks the period and the Commission has to do it, what flexibility does that give the

Commission to make a good and just and reasonable decision based on appropriate period?

MR. SCHMIDT (continuing):

I appreciate Chairman Soderberg's suggestion that he will take a year and develop regulations and do all this but the way the language is drafted here, I can tell you the lawyers will have a field day. If I had a client in this industry, and I do not, I do not have a natural gas customer client or anything like that; if I had a client, I'd probably support this bill if I was just trying to make money, because this is going to be a huge mess to try and deal with developing regulations and doing this system. The Consumer Advocate has very good instincts here. This is the kind of issue that should not be pushed through with this type of non-flexible language. If you want to empower the gas company and/or the Commission to do future-test-year rate making, then just do that simply so that they can consider it or study, or ask them to study it and report back to you on what it would do. Because you have no idea what this is going to do to your utility rates, and you have no idea what this is going to do to the budgets of the Commission. I frankly opposed future test year in the past because we have, as a general rule, accountants and people who look at historic data. Even when we are setting budget for a State agency or something like that, you have fiscally responsible accountants ... go in there and check all numbers.

Future test year, in those states where I have looked at it and where I have dealt with my colleagues in other states from prior jobs is you need more economists, you need more other resources, people who are good at estimating, because you are basing rates on estimates not on known and measurable data as subsection 3 says is the current Nevada law and standard. ... if you are going to do something like that, let us see what the impact is on how we set our staffs and budgets and so forth. I frankly am surprised there is no fiscal note related to this because I frankly think that the resources, although they may be flexible, have to be changed. But more importantly, you are going to do it two different ways. If you do this policy, the electric utilities are still going to do it on the old way so you are going to have people doing rate cases based on

one method and you are going to have the gas companies come in and do it on another method. I just do not think that makes good public policy.

MR. SCHMIDT (continuing):

I am a natural gas customer who has seen the dramatic increases in my bills in the last few years the same as all of you. None of us are happy about it. The real reason for that is because of fuel costs. Fuel costs are a whole separate method of doing rates than what this section; section 4, subsection 3 and subsection 4, are intended to do and that is not necessary to deal with the rising price of the fuel costs that the gas company has to acquire and pass on to you. If there is some other reason why all of a sudden now the gas company as opposed to the electric company needs to base rates on some future estimates, I have not heard that case. I have not heard it for 20 to 25 years and I think our system has worked pretty well over the time so why change it? That is my impassioned plea as a private citizen.

CHAIR TOWNSEND:
"So ... Mrs. Schmidt, ... she is against this ...?"

MR. SCHMIDT:
"She is against it. Fred is against it. I hope you will be against it too Senator as I know you voted against it back in the 1980s."

MS. JACOBSON:

... . First of all, I think it is too bad that Mr. Schmidt was not here when Mr. Shaw was here and gave testimony at the hearing. He addressed, or tried to address, a lot of concerns that were brought up and I would like to address a few things.

First of all, as far as historic data not being given and exempting natural gas utilities from this, I think it was subsection 4 that he talked about for the historic test year what is required in a historic test year. That is true because that would not work for a historic test year. It was always our intent, our thinking, that this would enable the Commission to do what chairman has talked about, which is open a rule-making where you deal with all these issues,

where every party can come in, including Ms. Clark. This is just a rule-making; they hold a series of workshops, anyone can come in, any consumers, any groups. Normally, I do not believe a lawyer is required in some parts of the workshop, if any parts of the workshop. At that time, that is when the rules and regulations of what would be required when you file a future test year. You know, I can tell you we do have future test year in another jurisdiction and historic data is given.

CHAIR TOWNSEND:

Can I ask you this question ...? Is it possible that over ..., is a year debate regarding what a Commission would do? He is talking about it is going to take a year, if we give him the authority. ... Perhaps, this debate should really be taking place between the parties over the next 18 months and then come back and say ... we have a bill and will tell you exactly what the rules are going to be because we just spent 2 years developing it. Then, this Committee and the other House can decide whether we like the policy at all. ... . I cannot imagine what Mr. Wellinghoff would have said because you know he was Mr. Schmidt's predecessor when Mr. Schmidt was on the Commission. I remember his testimony was almost as intense as Ms. Escobar-Chanos ... .

Maybe, that is a debate that needs to take place. Maybe, we have a little bit of the cart before the horse. ... Mr. Schmidt says there are some serious flaws in the way this component is drafted if we decided to go forward. But maybe, what has to happen is you have to find out what the procedure would be and let us decide, is there a policy. If we accept the policy, then at least we would have a procedure in place that everyone knows.

The term "uncharted territory" is not a favorite term of mine, but this grants some authority to the Commission. We give them a lot of flexibility but this may ... be giving them authority to develop policy. That is our job. ... .

Just because I am familiar with this issue does not mean my colleagues like it, love it, hate it, can live with it and I would not

want to ask them to make a great leap of faith or not make a leap based on just myself. I would want it based on their comfort levels.

... I would recommend ... you go back to your chairman and say ... we have run into some concerns here and perhaps they are willing to look at it in two years but there has to be a mechanism. This Chairman and the advocate and I am not talking about study the issue, ..., we know what the issue is. ... Look ... in terms of, does it have applicability in the State of Nevada. If it does, what is the mechanism that is going to be used? What is the issue with which this company has a problem, and let us be very specific?

One of the things Mr. Schmidt said that ... is the way this is with purchases which purchases natural gas for resale. Well, we can spend an hour talking about that so obviously we cannot submit this language because this has got some problems. The amendment we adopted, I think the Committee unanimously agreed that amendment has some value, but these components probably should be discussed. Certainly, between the Advocate and the Commission and any of the parties, particularly the proponent, ... what I would ask, Committee, is that we just simply not report this to the floor. We have already adopted the amendment we think is good public policy as agreed to be by the parties. Not report this to the floor until a dialogue has gone on between these parties ... if your chairman says I want to vote up or down, then we'll vote up or down. If you decide you want to look at it and say ... in order for the Legislature to look at the policy as Mr. Schmidt so articulated, that then scoops in all the electric people because if the policy is good for gas, is it good for electric. If it is good for electric, is it a good policy at all. That is the issue.

CHAIR TOWNSEND (continuing):

Now this is your bill, Ms. Jacobson; do you want to vote ... up or down? We will give it to you. I have no idea, as you know I have not talked to any of these folks, ... They are very smart and are very quick studies. They talk to people and they work hard. It is your call. It is your bill. Senator Washington, no matter what happens, is still going to have to explain it on the floor.

MS. JACOBSON:

..., I think at one point, I wonder if you would be willing to consider, ..., when we were meeting with the Consumer Advocate and the Commission, a modification, another amendment to the bill that would basically push out the implementation of this subsection to July 1 of 2007. It has some language in it that we felt at the time was a good compromise. It had some more specific language in but basically did not make that provision effective until July 1 of 2007, which would allow the time for the rule making and regulations to talk about, as you said, not a study but where you talk about exactly what would be filed. If some party still had a problem with it since it is enabling, it could be brought back before the next Legislative Session. I think the Chairman has that amendment, ... that is something we would be willing to offer if that would address concerns.

MS. ESCOBAR-CHANOS:

..., Mr. Chairman, we looked at that very closely and it does not really deal with what we feel is necessary because it is already accepting ... the policy of ... embracing a future year test year without taking a look at how it works in Nevada. ... It deals with how to put the mechanics together and how to do the procedures but it does not address the initial questions and the information that we need. Is that policy good for this State and does it work for us ...? I think that is really the point we need to start with.

CHAIR TOWNSEND:

... Let me ask you this, because those are two separate questions. ... If the Committee were to decide ... they do not want to make this leap; ... not ... they do not endorse it, or ... not think it is a great idea, just do not want to make the leap yet, you have

two tracks. You have the policy track, whether a future test year has any value for the State of Nevada, for any utility. Then, if the discussion is had on the mechanics of it, in this case what we are asking for, what Ms. Jacobson is asking for, is to make the determination first, then the mechanics.

What I am suggesting is that perhaps the interim should be ... a dual-track basis and that is the participants look at the policy but ... also the participants say if a decision is made by the Legislature you will go forward. We have to be able to hand them a mechanism because if you spend two years studying whether we should or we should not, you will never get to a mechanism if the Legislature decides.

Some of us may not be here when that decision is made. You know what the mechanics are, you know what it is going to take; the cost Mr. Schmidt alluded to. Just because energy prices have gone up and we tend to accumulate more mills for potential use does not mean they ought to be used.

We also are not going to bust your budget for his budget. ... Not go back and put in here that we are going to put more mills in for administration. No, ... that was a well-fought issue and we knew as energy prices moved, revenue would increase under the mill tax. We have kind of stuck to that and I do not want to have to go out and find ... we just added a new, ... futurist division for, you would have to have one too, you would have to go hire one too. I am really reluctant to increase that.

MS. ESCOBAR-CHANOS:
"Yes, we would."

CHAIR TOWNSEND:
"I am reluctant to increase that. Mr. Chairman, do you want to say something then ... move on?"

MR. SODERBERG:
Mr. Chairman, we do have, and we do understand you have time constraints. We do have a proposed amendment that was

> discussed and drafted essentially to address the concerns that were articulated at your last hearing by the Consumer Advocate. Typically, when you have those types of discussions, when we agreed that we could not agree, we basically were not going to bring that forward but it does seem to address some of the concerns that you have articulated. My suggestion would be ... we distribute that to you. Mr. Hinckley has copies of it and we can either discuss that now or if you want to continue this at another utility session?

CHAIR TOWNSEND:
"I would like you to come back on ... Tuesday; Mr. Young, do you remember who we asked to come back?"

MR. YOUNG:
"The bill we have up is S.B. 455 which is a new electric resource transaction. That is actually the only bill other than the workers' comp bill on a work session."

SENATE BILL 455: Revises provisions governing transactions between eligible customers and providers of new electric resources. (BDR 58-1317)

CHAIR TOWNSEND:
"We will have you come back for a work session on this on Tuesday."

MR. SODERBERG:
"I think that is a great idea."

CHAIR TOWNSEND:
"Can you come back then Thelma (Ms. Clark) on Tuesday for a work session on this?"

MS. CLARK:
"Yes sir."

CHAIR TOWNSEND:
"..., We will close the work session on S.B. 238 and open up the hearing on S.B. 434."

SENATE BILL 434: Revises provisions governing regulation of contractors. (BDR 52-1103)

LIN WIPPEL (President, Desert Springs Pools and Spas, Incorporated):
I would like to thank Senator Hardy for helping sponsor this bill. The purpose of this amendment is to aid some of the pool contractors, such as new contractors who are under some limiting conditions. They have to get bonded on every job and these bonds could cost between $1,000 and $2,000. When working with adjusted-gross margins under 20 percent, a $2,000 bond could be an extremely high expense. What we are trying to do with new contractors is to allow them a three-year period in which they have to be bonded. Once that three-year period is over, they can go before the board and request this bonding be eliminated. At this point the State Contractors' Board would have the authority to say yes or no.

The second purpose of this amendment is to allow a pool contractor the ability to better serve a community. Larger pool contractors like Mr. Treese from Blue Haven Pools and I, who do between 600 to 900 pools a year, now need to have licensed gas plumbers install our equipment. In the past, we have been able to install the equipment ourselves. What we used to supply the jurisdictions with for approval and inspection was the gas piping, the sizing and the British Thermal Unit (BTU) ratings. Thirdly, the gas companies would do the hookups. Everything we would do was approved by the jurisdiction and is everything a licensed plumber would be required to do. There is no difference. It is very difficult to go out and get a plumbing license. At this time, I have five different licenses to build a pool and I do not wish to go out and have to get a plumbing license. I would have to get one master plumber's license or two separate licenses, one for potable water and one for gas plumbing. Most other states still allow pool contractors to do this work without getting a plumber's license because it is inspected by the jurisdictions.

The third major component of S.B. 434 is when a pool contractor receives more than 5 complaints in a 30-day period, he has to go before the court. What happens is at the discretion of the Board. My complaint average is 1.5 percent and half of those complaints are invalid. If I get five complaints in a row, which is a possibility, I could go before the board and have my license suspended. I do not believe that is fair. I do not mind a percentage; we put in 5 percent of my gross, whatever I do in a year. If I have more than that in a year, maybe I do

need to be reviewed, or any contractor having more complaints than that needs to be reviewed.

There are provisions in this bill that would allow a pool contractor to better service the community and be able to compete better, especially new contractors.

SENATOR HARDY:
Mr. Wippel, section 10, subsection 9 of the bill will allow construction-control accounts in lieu of the bonds as well. Can you speak on that or did you and I miss it?

MR. WIPPEL:
No, I did not address that. Mr. Vassallo would address this better, because he has been dealing with the issue of bonding as a new contractor.

SENATOR HARDY:
The Committee should know this is a provision that is appearing in a number of other bills in the Legislature, because the surety bond market is really drying up in southern Nevada. A recent movement in the industry is to go to construction-control accounts which provide a similar level of protection to the consumer.

JOSEPH M. VASSALLO, Certified Building Professional (President, Paragon Pools):
This part of the provision allows a little more flexibility to the pool contractor. We can go outside the scope of the payment and performance bond. These are difficult to get, as you described, especially if you are a new pool builder and do not have a history of credit or financial stability. There are a limited amount of places where you can go to obtain these bonds. The spirit in which that original bill was written was to provide consumer protection. We can do this in other ways. We have tried to set up a third-party intervention to act as a buffer between the consumer and the contractor. The third party would be governed by all the laws that are written under the construction control. They would have to do inspections and collect lien releases to protect the consumer. That part broadens the scope and gives us more flexibility to work under that provision.

DON ROWLAND (President, Southern Nevada Chapter, Association of Pool and Spa Professionals):
In section 13, subsection 2 of the bill, we have written into law two weeks' notice on complaints. Many contractors now are brought before the Board without being notified that they have a complaint until they actually get a complaint from the Board. The current policy of the Board is to give us a two-week notice to correct the complaint before it becomes a Board issue. We would like to see that part of the law allow the contractors to correct their problems before it becomes an issue with the Board. This would also eliminate a certain amount of investigations that would be taking place as well as funds needed to take care of these complaints. The pool industry has reduced its amount of complaints and become more professional. These complaints should be handled within the industry itself and the Association of Pool and Spa Professionals (APSP) has set up a committee that will investigate these complaints if necessary. The Board would receive a written letter on these complaints as it becomes a complaint to the Board.

The only issue I have on section 13, subsection 4 of the bill is that it states the Board would have the ability to give administrative complaints or citations. We would like to have that taken out of the two-week period also. This would allow it to be a non-issue for the Board until it becomes an actual issue after two weeks.

STEPHEN A. TREESE (Blue Haven Pools):
We have tried in this bill to allow pool contractors in Nevada a little more freedom to be able to do their work. In the past six to seven years, there have been quite a few laws passed to overcome some of the problems the contractors have had and the laws have worked. The pool business is a better business because of these laws. We are trying to refine some of the laws that allow us to do a better job for our customers. In case of complaints, require fewer hours of the Board by allowing us to take care of the complaints ahead of time. We want to help the Board in regulating some of the non-licensed pool builders who have become prevalent in southern Nevada. There were well over 800 pools built in southern Nevada using owner-builder permits. I do not think there are 800 people in southern Nevada who know how to build a swimming pool. This is a result of these so-called consultants. It is becoming a problem and will become more of a problem because someday someone will get hurt on a job. The homeowner will not realize the liability or responsibility they have and it will cause more problems for the State and local governments to regulate.

ERIC MAUGHAN (President, Whitewater Pools):
We are a new company in Nevada and have been licensed for one year now in Nevada and seven years in Arizona. There are differences in the way Arizona has dealt with the challenges of the pool industry and the way Nevada has dealt with the challenges.

The bills passed before address contractors who were not scrupulous, who were not trying to serve their customers and took advantage of the naivete of customers or the inexperience with contracting. These laws have been centered on resolving these issues.

The challenge I have run into in Nevada thus far is that the laws have hindered my ability to focus on my customers. I am running around with paperwork constantly trying to get things signed off for different contractors so I can apply for different permitting.

The bonding issue is challenging to us and puts my company out of the market, price-wise. The only source we are aware of to bond us is the Small Business Administration. There are conflicting challenges in that the registered contractors require us to warrant our pools for four years but the Small Business Administration will not issue bonds on any contract that has more than a one-year warranty. On the bond issue, the current law is set up that anybody who did not get their license prior to July 31, 2001, is required to bond every project.

What helped in Arizona and California was adjusting the payment schedule so the homeowner was not paying ahead of the project. Therefore, if the contractor does not perform, the customer has the funds to hire another reputable contractor. I am concerned because the law is written to keep new contractors from coming in the business and establishing themselves. I am in favor of requiring any contractor who receives a certain amount of complaints to comply with the bonding issue. This is a better approach than limiting only those who are new.

SENATOR HARDY:
In 1999, we passed a bill that significantly turned up the heat on the pool industry. Every kind of issue you could imagine was occurring in the pool industry. I would characterize this bill as backing off the heat now. The bill has worked very well, but there are some marketing conditions that are causing

problems with the bill we passed in 1999. The bill largely addresses some of those issues.

SENATOR CARLTON:
My concern is in the change of the definition of work concerning a residential swimming pool or spa. I though it was a minor term we were changing but as I read the actual definition it seems to be a significant change. Is this the change to get at the owner-builders?

MR. WIPPEL:
Yes, it is. There are even contractors out there who are acting as owner-builders and we want to put an end to that. This is where the consumer can get into a great deal of trouble and difficulty when they hire someone to act as a consultant. We want to give the Board the authority to go after those people and put an end to that practice.

SENATOR CARLTON:
I am concerned that the Board cannot discipline them for being a contractor but misrepresenting themselves when they pull the permits or do whatever needs to be done. I thought the Board had the opportunity to do this.

MR. WIPPEL:
This would give the Board authority to go after those people who are designing, selling and constructing a pool.

SENATOR CARLTON:
In a hypothetical situation, a contractor could tell a customer they are getting a great deal on a pool and all the customer has to do is put in some effort to obtain permits. The project could then be called an owner-builder project and that would enable the contractor to get around some of the regulations.

MR. WIPPEL:
The homeowner does not have to do anything. The homeowner has to give the alleged contractor a letter stating that individual has the authority to obtain a permit in their name. They do not even have to obtain the permit. Hopefully, this will give the Board some teeth to eliminate those kinds of functions.

SENATOR LEE:
I am a plumbing contractor and tile and marble contractor in southern Nevada. I did an owner-builder pool myself and you do not have to be a rocket scientist to build a pool. It is very basic and if you can find good quality people, why remove the option from Senator Hardy to build his own pool? If he can build his own house in Clark County, but cannot build his own pool, I think that is a little onerous. I do agree the time has come for pool contractors to be recognized as the qualified people to do gas lines, potable water and things like that. The same entities that inspect me inspect you. We have given up the fire sprinkler and lawn sprinkler business in plumbing. I do agree with that but I would have to work with the county to make sure there was a way to license people within your realm.

You said in Arizona you do not pay ahead. If you are asking for a $2,000 down payment, that is a pay-ahead in Nevada. The customer has given you $1,000 as a deposit, but in most trades we do not get any money up front in construction. We perform, we draw materials and then we get draws. You get 10 percent down, but most trades do not; so to increase the down payment is questionable.

There are certain things about this bill with which I take umbrage based upon you thinking you are treated differently than a lot of other people. The Board gives me 14 days to respond to complaints, just as it does you. If a contractor has 20 to 30 complaints, why do you have to give them 20 to 30 letters to go out and give them 14 days' notice? This contractor is a poor performer and could lose that opportunity to have that professional relationship with the Board.

I question section 10, subsection 9 of the bill with regard to the third-party issue. I know a lot of banks that make loans. Their escrow agent does not come out to inspect a pool; they give the homeowners four or five checks and tell them to write the checks. They would not be able to hire enough people to go out and inspect pools. The performance bonds are put in to protect the customer. You act like it is costing you a lot of money. It is a pass-through; it does not cost you a dime. There might be some bonding issues on surety or things I can learn about, but for the most part you do not absorb the cost of a lot of the bonding. The rebar, tile, gunite, et cetera, are the transitional costs of doing business that a customer needs to expect.

The bill should be worked in subcommittee. I would like to study their request with them and get their side of the issue. I have not heard the Board's side yet.

SENATOR HARDY:
The Chair has indicated we will submit it to work session. This is not my bill. The individuals met with me, and I have worked with them in the past and helped them in the 1999 bill.

MARGI A. GREIN (Executive Officer, State Contractors' Board):
We are in opposition to S.B. 434. It diminishes the laws that this body put into place in 2001 to protect the public. Section 1, subsection 1 defines the scope of work for an A10 commercial and residential pools contractor. We would be willing to look at adopting change to that by regulation. All classifications and scopes of work are done through regulation rather than Nevada law. We would be willing to meet with the contractors and try to find some common ground in that area.

Under section 3, subsection 1 of the bill, it amends the deposit amount to $2,000 or 10 percent of the contract, whichever is less; we are opposed to that.

Section 10 concerning performance bonds is based on the number of complaints equaling more than 5 percent of the number of permits issued to a contractor. That would mean a contractor who pulls 373 permits for pools would have to have 19 complaints the previous year in order for us to take any action on it. That is not a proper way to decide if someone has to put up bonds or not. We would be opposed to section 10, subsection 9 of the bill because construction control companies are not closely regulated, as Senator Lee indicated.

With regard to section 10, subsection 10 of the bill, the Board does not feel 3 years is sufficient time to evaluate a pool contractor's business and his standards and determine if he is a threat to the public or not. There is no other prerequisite unless complaints are filed equal to more than 5 percent of the permits issued. We would consider putting on a limitation so after a period of five years a contractor could ask the Board to consider relieving him of the payment and performance bond. The Board has this on their regular bond. We would consider that if the contractor proves they are financially stable, we would get the requirement of the payment of the performance bond lifted.

Sections 13 and 14 of S.B. 434 are the most troubling particularly amending the statute of limitation to the warranty period or 4 years, whichever is shorter. Most warranties provided by contractors vary from 30 days for landscaping to 2 to 10 years for structural work. Limiting the ability for all contractors, not just pool contractors, and all homeowners to file complaints is saying the Board cannot help get the problem fixed. If the only resource available after the warranty is over is to file a court action, it will increase lawsuits. I am opposed to this section.

SENATOR LEE:
There is a four-year period in statute now. You are okay saying that if a contractor builds a pool and tells the customer he can get the pool done in two months if the customer backs off on the warranty period for six months. If the customer agrees to this because the contractor puts him at the head of the list, then because that is in his contract, does that then say the customer only gets a six-month warranty on that pool?

MS. GREIN:
For the proposed change that is in the bill, yes. That would not only be for a pool but also a home. There is no set standard that anyone offers a warranty on anything and the time is at the discretion of the two parties and the contract. It will drag it right into court by limiting it to the warranty period for filing a complaint.

SENATOR LEE:
Then we would have inexperienced contractors relieving themselves of warranty issues at that expense of inexperienced customers. I will let you handle that at work session.

GEORGE LYFORD (Director, Investigations, State Contractors' Board):
I believe we can work on the wording in this bill with the work session.

SENATOR LEE:
Can you explain the fiscal note on this?

MS. GREIN:
I was requested by the Legislative Counsel Bureau (LCB) to put in a fiscal note on this (Exhibit J).

CHAIR TOWNSEND:
I will close the hearing on S.B. 434 and open the hearing on S.B. 277.

SENATE BILL 277: Restricts and takes away authority of cities and counties to impose franchise fees and other similar fees upon certain public utilities. (BDR 58-366)

CHAIR TOWNSEND:
What I am about to hand you, Committee, are the copies of the slides (Exhibit K) you are about to see ... . First of all, to get a couple of things on the record, Committee, you should be aware that this is something that has been driven by my conversation. There is no utility that has ever come to me and asked me to reduce their franchise fee. This is driven entirely by me. You know there is a bill in the other House that deals with parity and the cable issue; a legitimate proposal in the other House that we may or may not see in some form, but this is a debate about consumers. This debate should have taken place years ago. It did not so I bring it ... today for your consideration. This is about utilities in general. I do not want to keep going until you have whatever you are going to get. Why talk about utility franchise fees in Nevada? I will show you why.

They currently pay $141,245,000 a year; that is what consumers pay in ... Nevada. Now let us make quite clear ... what they get in return. Let us go to the next slide, that $141 million translates into $230 for a family of 4 per year, $150 per household and ... $60 per capita. Again, I reiterate, what do they get in return? ..., The answer is nothing and that is why it is here. It is a consumer tax that is paid and I have all of the backup material that anyone would like. They receive nothing. They receive no benefit from the utility that paid it. The utility does not keep the money; it is passed on to someone else, and in this particular case, local government. Local government, I hope, will come to the table and show consumers what they are providing in return for the $141 million. I have yet to find out what it is.

..., what are these franchise fees? They are fees charged to utility companies by cities and counties for permission to provide services

to the community. Again, the government has no investment in these utilities and yet they are paying a fee for the right for the investor-owned utility to take a risk and provide you and your constituents a service ... they either need or they would like to have.

Generally, the fees in telecommunications and cable are considered to be expenses of land-based delivery service such as telephone, cable and wireless. ... As you all well know, that market changes every day, every hour and yet we have an arcane ... franchise-fee system that does not reflect in the telephony and information world of today ... what is going on in terms of what needs to be provided.

Obviously, there has been a debate concerning franchise fees and municipalities' right to compensation for the "renting" of public rights-of-way. I would submit to you that the renting of a right-of-way by the people who own the right-of-way is the most bizarre thing this Committee may have ever seen.

Obviously, in order to receive a franchise, and the municipality requires the utility to pay a percentage, usually of the utility's gross receipts, and we will discuss that in a minute; that will be passed through the consumers on their utility bills. The fee is demanded each time the contract is renewed. Let us ... go to the next slide.

Gross receipts, and we'll get into this, does not include certain advertising, promotional marketing agreements or pass-through fees collected by the utility on behalf of a government entity. ... To this day, this issue alone on what is a gross receipt has been litigated, argued and will continue to be argued in order to keep the fee at a minimum level. The percentage of gross receipts passed through to customers does not necessarily reflect the cost to a municipality of maintaining utilities' rights-of way. ... . Next ... .

CHAIR TOWNSEND (continuing):

Let us look at what the federal authority says and why we are where we are. Telecommunications Act of 1996 ... . It required the operating companies to open their networks to competitors. It gave the Federal Communications Commission (FCC) the general authority to set the rules and policies for local competition, while assigning the states the responsibility of implementing the statutory and federal regulatory requirements of the Act. In 2004, the U.S. Supreme Court held that the Telecommunications Act, that very Act of 1996, does not limit the powers of states to restrict their own public entities from delivering telecommunications services.

Congress adopted the Cable Communications Act in 1984. The Act defined jurisdictional boundaries among federal, state and local authorities for regulating cable television systems. For various reasons in many communities, ... rates for cable grew much faster than inflation. Congress subsequently enacted the Cable Television Consumer Protection and Competition Act of 1992. Since that time, basic cable rates have been subject to local regulation based on standards set by the FCC.

Our statutory authority lies in NRS 709, first obviously in 1909, allowing cities and counties to work franchises. ... Utility companies to run equipment along public rights-of-way. In 1985, local government may grant a franchise to a cable company pursuant to chapter 711 of the NRS. ... . The amount of franchise fees varied by county or city within a maximum set at 5 percent by the utility's gross receipts as prescribed by our law, NRS 354. The percentage was set by us. Let me repeat that we set the percentage.

CHAIR TOWNSEND (continuing):

Why eliminate these? Proponents of franchise fees contend that municipalities have the legal right to charge for the rent for the use of the public rights-of-way and it is just another cost of doing business. Franchise fees, however, allow local governments to generate huge, I repeat huge, amounts of money; $141 million in the State of Nevada. Large amount of revenue, while circumventing limitations on local taxing power. Revenue increases as gas and electric bills increase. When we saw skyrocketing electric bills, people came to me and said do you know what, what about the PUCN, do they not get a mill tax on that? We did look at their revenues and we looked at the Consumer Advocate's revenues as a result of that and nobody bothered ... to look at how much additional revenue was generated for local government. Revenue increases as gas and electric bills increases, I have said, allowing an energy crisis to create a windfall for local government at the expense of consumers. Conversely, an increase in competition, and this is the anomaly; the increase in competition in telephony and data as the result of the advancements in those areas will decrease the revenue that local government can be dependent upon because you are going to have all kinds of things for which you cannot tax. I think if you follow this issue at all, particularly at the federal level, you will find that is becoming a more true statement.

This is a quote from Mr. Gillespie in his article in the *Dickinson Law Review*. If you have not read it, it is excellent. "The golden goose is again being plucked. Across the country, municipalities are supplementing their general fund revenues through 'fees', 'taxes' and 'rents' charged to wire-line communications and cable television companies occupying municipal rights-of-way.... As the companies' revenues increase with consumer acceptance of high-speed internet access, data, digital video and other 'broadband' services, municipalities are eagerly pocketing their share."

CHAIR TOWNSEND (continuing):

There is a Georgia franchise-fee study that looked at the same issues "ongoing technological developments continue to redefine the boundaries, ... of telecommunications and dramatizes the inconsistent treatment of franchise fees of wireless versus wired, cable versus satellite and requires a consistent treatment of potential new entrants into local markets, as well as an assessment of how to treat cable companies that provide phone service, phone companies that provide television services and other variations in an era in which 'monopoly franchises' cease to be meaningful." That is absolutely crucial. Customers, the great thing about this country, how this country was built, was by consumer demand, capital entrepreneurship and technology melding together to meet that demand. That is how this country not only was built, is being built and will continue to be built in the future. The world geographic boundaries drop, you find that that becomes more and more important every day and this Committee sees it every day. Whenever someone comes in from that area of utilities and they walk into this room, they are looking for a way to make sure they can answer the demand of their customers. If you have not been to an electronic store lately or been to your cable company or talked to your satellite provider to find out what is out there, you really should take advantage of that. They are responding wholeheartedly. Capital markets are bringing billions of dollars into these arenas to provide the necessary financing to meet customer demand. Every year the Consumer Electronics Show (CES) gets bigger, more exciting, because customers want different things. The ability to be wireless for your information, your voice over, be in touch with your family, continues to grow at an ever-increasing rate; go ahead.

CHAIR TOWNSEND (continuing):

The Texas Legislative Committee on Municipal Franchise Agreements for Telecommunications, ... recommended that the municipalities adopt a per-access-line fee, rather than a gross-receipts mechanism. The fee would not reflect the market value of the municipal rights-of-way, but would instead allow the cities to collect enough to cover the cost of maintenance, as the Committee found the franchise fees based on gross receipts did not appropriately reimburse municipalities for those costs.

Let me reiterate as we go to the next slide, the fees that are paid are independent from the requirements that if you dig a trench, put up a line, cross a road, those are paid for independently. You have to put the public rights-of-way back exactly the way you found them. Let us look at this, franchise-fee revenue in 2004: Clark County, $42 million; Henderson, $21 million; City of Las Vegas, $42 million. It is ... $116 million in southern Nevada. Washoe County, City of Reno, City of Sparks, balance of the State, obviously are what is now known as, I was just recently educated, Washoe County is now a rural county and everything else in the State is frontier. We have a new tier now. The rest of the State is $2.3 million. Why is that so low? ... Obviously, it is because of the lack of people but the penetration of satellite, which is not taxed, is not contributed to that $2.3 million.

Here is the franchise-fee revenue broken down; telecommunications is 5 percent of the total, electric is $23 million. This is Clark County, this is not the subdivision, ... Gas is $4 million, personal wireless, for those of you who do not think that being wireless does not have a tax associated with it, there it is. Cable television in Clark County alone is over $5.5 million. Total franchise-fee revenue is $42 million. Franchise fees comprise 5 percent of Clark County's annual budgeted revenue. That is something; a local government, ... believe me this has nothing to do with Clark or Las Vegas or Reno, ... I am talking about the facts. These are the facts. That percentage of revenue and that hard figure increases every year with the increased cost of energy and gas and telephony without local government having to do anything. They simply accept the revenue; next slide.

CHAIR TOWNSEND (continuing):

To remind you, ... last year Senator Raggio presented a bill called S.B. No. 308 [of the 72nd Session]. This is a slide from that. This is local government and K-12 employee growth. In the last 20 years in the State of Nevada versus the State growth and University employees, ... just to remind you that the State has struggled and it is one of the problems we faced in the last session.

These are pulled off their Web sites. These are the ending-fund balances ... they are going to come and give us all of these ... reasons why these figures are not true, but if they are not true, why do they put them on a Web site? I recommend it to the leadership of both Houses that, one of the ending bills when we have plenty of time, that we need to process is one that says that there will be a common format; a common format for all government to post their Web site financial statements so the public can actually compare them and read them. Every single one of those you see up there have a different format and for us to pull that off and gather, it took our staff and particularly Ms. Gregory who worked on this so diligently, and for that I thank her. That is a remarkable effort ... for the average taxpayer, they are never going to be able to figure this out. Hopefully, that bill will get drafted. We have asked for an exemption for that and I think leadership will allow us to do it. You can see what is left over so if somebody thinks we are trying to take some money away even after ..., the property tax bill that was passed here ..., I am sorry, my sympathy right now is not at its highest level. We will go to the next slide.

CHAIR TOWNSEND (continuing):

In order to be fair, if you think ... I am being draconian ... the bill is very clear. It says right now you can bring up to 5 percent for local utilities. The first year that would drop to 3 percent, the second year to 1 percent and the third year it would be eliminated. So you do not think that I am being draconian, I would add an amendment to this bill. That would simply allow local government "may reinstate franchise fee eliminated by this measure by putting a question on the ballot and allowing the people to decide whether the fees should be approved." If that is not acceptable to you, whether this Committee agrees with this bill or not, I want you to know in ... those of us who sit here want to be responsible for what we're responsible. We do not want to be responsible for you. You are all in here telling us, "do not get into your business." ... . Do not take any money away but ... when you want something you are in here... quickly. I respect that. I am not being divisive. I am not being disrespectful. ... The one thing we all have, the same boss, and that boss is the public. I think we owe it to them. I think you owe it to them that if you need more money, and you may be able to make that case, ... you will simply be able to go to them and ask them for it. You will be able to put it back on, and with that I will close. Committee, I will answer any questions.

J. DAVID FRASER (Nevada League of Cities and Municipalities):

... Let me indicate first, of course, that the Nevada League of Cities respectfully opposes S.B. 277 for the reasons that we will be enouncing. To my immediate right is a guest of the League, ... Nicholas Miller, ... who is ... partner at the Miller and Van Eaton, ... will be a valuable asset to the Committee today as he brings a wealth of knowledge on this subject to the table. Mr. Miller has served as counsel to the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, as well as serving as communications counsel to the U.S. Senate Committee on Commerce as well as special consultant to the White House. So again, he is nationally recognized as an expert on these matters and if it pleases the Chair I would like to turn the microphone over to Mr. Miller to address the topic after which Mr. Leavitt would address some of the financial aspects of the bill.

NICHOLAS P. MILLER (Managing Partner, Miller and Van Eaton P.L.L.C.; Nevada League of Cities and Municipalities):

… I am pleased to present my testimony (Exhibit L, original is on file at the Research Library) today on behalf of the Nevada League whose membership includes several jurisdictions I represent directly in cable television and telecommunications matters. Let me start, Mr. Chairman, by saying the League does support the goal you have here. The problem we have is the mechanism. This is a debate and you will see in attachments to my testimony, three separate attachments, testimony I gave to American Legislative Exchange Council in 1995 when they first started to look at the issue of tax rationalization for telecommunications projects and right-of-way fees. I think the debate, that testimony, shapes the argument and is very consistent with many of the points the Chairman made in his PowerPoint.

There is also another attachment to my testimony, which is [an] evaluation study done of right-of-way, and I would actually like to start there. The federal government states that state and local right-of-way in the United States has a book value, an un-depreciated book value, of $1.7 trillion. A fair-value evaluation of the real estate involved takes that evaluation up to about $8 trillion. This is the most valuable, most important social, publicly owned asset in the United States today. In this time of pressure on local governments to behave more like businesses, to use their assets in a way that a business would use them, and as cities and counties are trying to become more consumer-oriented and more customer-oriented in the way they deliver services. This is the time that they should be encouraged, not discouraged, from using the assets they own in the manner that the private sector would use those assets. Specifically, it is important that local governments be held to the standard that free-market rule should apply. What does the free market tell us in the area of right-of-way management, right-of-way access, right-of-way ownership? It suggests if you are a landlord and you have a valuable piece of real estate, you should charge reasonable rent for the use of that real estate because if you do not, the real estate, like any other input into production will be overused. If you take a good that has value and turned it into a free good, you will have overuse. What does

that mean for the taxpayer? It means longer traffic jams. It means more taxes because you got to build more right-of-way. It means more and more disruption and externalities in cost to the abutting landlords. For example, if I allow ten different rights-of-way, ten different telecommunications companies, to trench my right-of-way, the dry cleaner on that right-of-way has a severe impact on their business. I, as a local government, have responsibility to manage that right-of-way, to allocate it, to manage the resource and asset for the highest and best use of the community and, just like any other piece of real estate, if I do not charge appropriate rents, I send the wrong signals into the marketplace into how to use it. That is really the essence of the position the League brings to you today, Mr. Chairman.

MR. MILLER (continuing):

We ask you to distinguish the issue of taxation from the issue of asset-management and charging appropriate uses for assets that are committed to private use for private profit even though they are publicly owned. It is absolutely true that in the history of the State of Nevada there has not been a tradition of excise taxes for utilities. It is also true that in the history of the State of Nevada, roads and highways are as important as anything involved in economic development of the State. So it is not surprising that the Legislature made a decision over time that it is important to allocate that resource and price that resource in a way that is not overused. That money is available, rather than as general taxes, that money is available to local governments to use for general fund purposes. That is no different than you would expect a landlord of a high-rise office building to behave. We do not demand that the rents that are realized from a high-rise office building be spent exclusively for the benefit of the tenants of that high-rise building. It is an investment. It generates a cash flow return and the landlord is expected to use it. If they misuse it, if they misprice it in the marketplace, they get punished. So where we come out on this is if the issue is taxation, let us talk about taxes, but if the issue is about compensation for use of a public asset, allow us to use the signals the marketplace sends us.

Do not make us choose winners and losers in this new technology area. For example, why should someone who does not use right-of-way have to pay the right-of-way user fee? They should not. On the other hand, why should someone who uses right-of-way not have to pay a right-of-way user fee and thereby get a governmental subsidy in the form of free real estate that their competitor that is not using right-of-way does not have to pay. Again, if you, I think if you ask, if you poll the mayors and council members and your district Senator, I think you would find uniformly they would be pleased to see the utilities get out of the right-of-way. Because the more utility use there is of the right-of-way the more expensive that right-of-way is to maintain. The more disruption there is to everybody and ultimately the more money it cost taxpayers. That is our point; if you do not charge the utilities what the right-of-way use is worth, they will overuse it and that creates a distorted signal in the marketplace. That is really the essence of my testimony.

MARVIN A. LEAVITT (Urban Consortium):

…, I represent Urban Consortium cities. Let me just make a couple of comments in general, … I can remember testifying against this bill … I think it was 1979 or 1981 when it was introduced by Senator Hernstadt. Chairman is probably the only one that remembers Senator Hernstadt now but he had recommended this bill, … I believe it was 1979 or 1981, testifying on this same bill. This, I think is as the Chairman indicated, this has become an important revenue source for local governments around the State, particularly around the two larger counties.

… I had passed around a sheet showing the cities that are in the consortium (Exhibit M), … . I have to write quite a bit of information on this so you can … see how it all fits. … Let me just go quickly over … those numbers …; this is for the City of Henderson, out of total revenues of $151 million, $21 million of those are from franchise fees and that represents 14 percent of their total revenue structure of their general fund. For Las Vegas … a general fund of revenues of $401 million; $41 million is from franchise fees and that represents, of course, just over 10 percent of their revenue. For North Las Vegas with

total revenues of $107 million, they have $9.9 million, essentially $10 million, 9.28 percent of their revenues come from franchise fees. For the City of Reno with their revenues of $144.5 million, they have $12.9 million or almost 9 percent of their revenues from franchise, and Sparks of $50 million, $4.2 million from franchise or 8.43 percent. The total of all of those together is essentially 10.45 percent of their total revenues come from franchise fees. ... Right now, I would say that most local governments in the State are in good financial condition. I do not think we have argued that because we have talked about finances this Session. I think the same revenue increases that have affected the State have in large measure affected local government.

... Also ... you just did something and we did not object to it because we recognized it is something you had to do; that you have just reduced the rate for the future of property-tax growth below what that rate of growth has been in the past, even ... ignoring this one big year.

Our problem is that when we start to see various revenues eroded and we start to be concerned about the future revenue picture for local government entities. ..., I have been told by numerous people this Session that sales tax is doing so well right now that you ought to be able to give up ... revenues and simply ... live on sales tax. I can remember two years ago when you were talking about enacting $800 million in additional revenue for the State when sales tax was not doing very well and you were trying to make it up.

... Let me just go over some of the numbers ..., I am talking about percentages for these cities and just talk about how this varies from month to month and then even ask you a rhetorical question: would you like to base your whole budgets and future on this kind of situation? In Henderson, for instance, sales tax was up by 16 percent in July, 13 percent in August, 30 percent in September and October, that was down to 13 percent, clear up to 31 percent in December. This is compared to the prior year but in January was down to 5 percent. In Sparks, we went as high as 15 percent one month, but the January number was down to 1.91 percent. So the

question is, how long is what we are doing now going to ... last? You know we seem to have a belief in the State somewhere or other when times are good they are going to last forever. We also believe that when times are bad, they are going to last forever. Neither one of which is true and so we fall into that game.

MR. LEAVITT (continuing):

... What I am going to say next should not be taken as a criticism but if you notice that even both of us, living essentially on the same revenue structure with the major revenues during the last Session, you passed substantial additional revenue to balance the State budget. You did not pass any additional revenue for local governments in the same situation nor did we request you to. At ... present ... I do not hear much discussion about reducing any of the revenues for the State that were passed last time. I do hear several discussions about reducing local government revenues when they were not increased last time. ... That is a concern ... when we talk about the property tax in the State now. ... We should draw attention to the fact that when you reduce property taxes, even though the State levies only 17 cents on your behalf, you also levy on behalf of the school 75 cents which essentially is going to come back ..., you are going to be the beneficiaries, having to make up any deficits. It is true, the property-tax side you have got some obligations.

Now it is to fund balances. I have just taken a look at the fund balances of the local governments that I represent. Let me just give you some numbers and then talk in general about the numbers that the Chairman presented in his slides, and by the way, Mr. Chairman, I believe those numbers are accurate ... . Henderson, in their general fund, had an ending-fund balance equal to 16.89 percent; Las Vegas, 13.91 percent; North Las Vegas, 20 percent; Reno, 10 percent and Sparks, 18 percent and the city average is 16.06 percent of the general fund expenditures. ... If we look at that, what we are talking about is two months' operating. ... When we talked about fund balances, we are not talking about cash. We are talking about book fund balances and cash usually is substantially less than that. So, if something actually did happen,

we do not have anybody really with more than two months of operating cash ... this is their total nest egg ... .

MR. LEAVITT (continuing):

... The numbers the Chairman indicated on his slides, which are some big numbers for various local governments, are essentially akin to what would happen if you took the State of Nevada and used not that General Fund of the State but included in that the Highway Trust Fund, all of the highway monies that have been put aside from Highway Funds to do the state roads. These amount to a lot of money but they are all committed for projects. They cannot be used for other things. That is essentially what we have in local government. We have monies that have come from bond issues that have to be used for specific purposes. We have money that comes from sewer plants that have to be used for sewer funds. We have monies that come from the transportation-system monies down south that have to be used for that purpose. So even though there is actually large fund balances, they are restricting, and cannot be used for general operations.

... The Chairman made an important point ... . Essentially, there is a limited amount that local government, and the State, too, does for any of our revenues. For instance, if you look at the major revenues that are received by local government, we essentially do not do anything to receive most of them. You think the major revenue source for local government in the State comes from sales tax. We do not do anything; we do not even collect the sales tax. State collects it and we pay out of the money we get to help to assist the State in the collection of the sales tax. It is a tax; we do not do anything necessarily in return for it. It is a way we have of getting revenue to operate on. I think there is more of a direct relationship between property taxes, but a lot of the other taxes, local governments does minimal amounts. You know, if you talk about cigarette tax, liquor tax and vehicle tax that are all part of the consolidated tax, they become revenue sources for us. That is where we get money to operate on. ... .

MR. LEAVITT (continuing):

> ... . When Mayor Goodman first became mayor of Las Vegas, he called me in one day and said I would like you to explain to me how finances work. He said I am new to government; I have never had any experience. In business, I know that what we wanted was to have, what I wanted us to have, is as big a revenue as I could and as big a bottom line as I could get with expenditures being as small as they could be. I said that does not work in government. What you would want of course and what you get credit for is what you expend money for, and the projects that come to the people. I think that is an important consideration when we think about these things.
>
> It is to what the money goes for. The money from essentially all the cities goes into their general fund. It becomes a part; it is not identified after it gets into the general fund. The general fund is used for various things but essentially approximately 60 percent of all our general funds are for public safety. That is really where the majority of the money goes. At the local government level, we are heavily into police and fire. ... If you look at our situation, and I have looked specifically at the cities, ... 60 percent of our total revenue goes into public safety. If you look at our revenue in general, our largest revenue comes from consolidated tax. Our next largest revenue comes from property tax and our third largest is this particular source that we are talking about right now.
>
> Mr. Chairman, I do not think I should ... belabor this any more, just mention that it would be a severe shock to the local government financial system if this revenue is removed.
>
> ... My own philosophy ... is that we ought to be able to have a certain level of revenue that provides services without this constant going back and forth to the voters to get their approval. You go to the voters, you strike them in the mood they happen to be on that particular day ... and ... the State does not go regularly ... to the voters to verify what you have done. We have not gone to the voters, either of us, on property taxes, although we might and you know question 13 is on the horizon. We have not gone to

the voters on sales tax since 1956 when the original 2 percent was passed. ... .

SENATOR HECK:

..., I guess this question would be for Mr. Miller. I understand you would like us to look at these as rents and not taxes and fundamentally I would have to respectfully disagree. If I rent the property, my monthly rent does not fluctuate based on how much time I spend in that property. I want to know why this tax or rent should fluctuate based on how much electricity I draw from a line or natural gas that I draw from a pipe; to me that does not fundamentally go with being a rent. I would also like to if possible find out if this is a rent, exactly what, and the rent is supposed to be used to maintain these rights-of-way, what is the cost expended to maintain these rights-of-way versus the amount of revenue collected on these franchise fees? The last question I would pose, I also note that there are franchise fees for ambulance services and trash-and sanitation-collection services and other than utilizing the public roadways like anyone else would use, I would like to know what rights-of-way those franchise fees are paying for?

MR. MILLER:

... . Let me respond to your first and third. I do not feel confident to really address the numbers' issues and I will ask Marvin to address that if that is all right, Senator.

Your first question really is how can gross revenues be called rent; some say it looks like a tax, it feels like a tax. One of my clients is the Association of Shopping Centers. There are very few retail tenants in a shopping center that do not pay a gross-revenue rent; in other words, the deal you do when you open a retail shop with the landlord of the shopping center. The shopping-center developer says I am going to take this piece of real estate; I am going to organize it in a very special way that is going to create an enhanced business opportunity for me and for you as the tenant and because of that I have a right to enjoy some of the benefits that you reap as the retail outlet. That is the philosophy how shopping centers work and if the shopping center manager does a good job, they make a lot of money because those gross revenues

are high. If they do not do a good job, they do not make much money because the gross revenues are not very high. In other words, gross revenues are a reasonable surrogate for the value conveyed by the leasehold. I would argue in a right-of-way context, it is the same thing. We are taking a very special piece of real estate, very unique in this society and very important to the way the society as a whole and the economy as a whole functions. If the city organizes it and manages it correctly, it is going to be less expensive for the utility, less expensive for the utility consumer and less expensive for all the other utility users. The gross revenues the utility realizes out of that special benefit, that is the right to permanently occupy this piece of real estate, it is of good surrogate of the business opportunity that the city created by managing by creating and managing the right-of-way.

Your second question is franchise fees on ambulance. Let me respond, I think there is a lot of confusion about the word franchise. McDonald's gives a franchise to its operators. The city gives a franchise to an ambulance company. Those really are business licenses to engage in a particular line of business. When I am talking about franchise fees related to right-of-way, it is a very different body of law. It really goes to the government that owns the piece of real estate and licenses an individual in a very special way to use that piece of real estate and that is really the franchise fee we are talking about. So, although the words are the same, they really ... mean quite different things.

MR. LEAVITT:

In answer to your question, best answer I can give you is I do not know. I do not know that any local government has ever attempted to compute the actual cost of maintaining this specific right-of-way. ... We do have cost associated, of course, with how much it costs us to maintain roadways and we can give you that kind of information. Of course, as we know, these things go on roadways and to the side of roadways and all over; ... it would be a fairly complex operation, I think. I would be happy to provide you with the cost that we incur for the maintenance of roads and ... the streets along the sides of roads, if that will be any help to you.

That is the best I think I can probably do in a short run, if it could be meaningful to you anyway.

SENATOR HECK:

I guess I would appreciate that, but to me if the premise of these fees is to ... provide the cost of maintaining something, then we should know what the cost of maintaining that item is if we want to compare it to the revenues collected. In going back to the idea ... on the use of the gross revenues as an indicator, if we look at the concept of using gross revenue synonymous with receipts, it is a concept that I think was overwhelmingly not embraced by this Legislature in the previous Legislative Session.

CHAIR TOWNSEND:

... Last point, Mr. Leavitt; the person who tracks some bills for you, whoever that is, can probably give you a list of a least five with which I am familiar that are tax reductions. You have made the statement that you do not know that we are going to give any back. Well, there is at least five that I am aware of, I have asked the majority leaders. The reason we took a ... recess ... on the floor yesterday was to explain that the Tax Committee [Senate Committee on Taxation] should marshal all of those for the debate in order to see which is the best policy in terms of giving that back. I believe that would also be the Governor's proposal for a one-time rebate check. There is multiple things out there. There is some on banks, there is some on this, there is Senator Beer's bill on annuities, so they are out there.

MR. LEAVITT:

"I am afraid I have seen them too."

CHAIR TOWNSEND:

..., I think the best way to manage it relative to these issues is exactly as Senator Heck said, which is if there is a cost associated, you have a measurability of that cost. ... . With a percentage fee, it is just an ongoing revenue stream and the accountability is the cost to maintain those. ... .

... . The reason that amendment is there is so that if local government ... , if you do take it away, it should be an option for local government to be able to get it back. That is why that is in there.

The last thing that is problematic ..., I just want you to know the mechanism is set up. ... That is the biggest problem I have with local government, and not just the revenue, which I think is a very serious issue, that is why I brought this bill. It is the fact that in terms of some of these franchise agreements, they end up being an open book and an open checkbook to extract things. ... . To extract things from either the telephone or the cable company which is independent from the fee they pay, ... are ..., very serious things that I believe cross the bounds of the federal standard ... . You cannot say ... we'll sign this 10- to 15-year agreement. We want you to be the finest cable operator in the world, we want 300 channels, we never want you to have a complaint; if somebody calls you, you ... be out there in an hour and a half. Even when your landscaper digs up the cable, we are going to blame you and hold you accountable ... . Now that we have your attention, let us tell you what we really want; we want four channels at the low end of your cable ..., we want this, we want free internal TV, we want free phones, we want this. That is the other thing that I think is stepping over the bounds. I would hope that if we do nothing else with this debate today, we resolve some of those ... serious issues. Mr. Miller, I do not know whether you ever got involved in that side of it, but that... is unconscionable and if the State did ... that, I would certainly want to know about it and I think that ought to be stopped. You do not browbeat business into signing a document and extracting things from them under the threat that they cannot keep a franchise, particularly if they met certain standards. Those are serious issues. ... .

MR. MILLER:
"Mr. Chairman, a point of personal privilege."

CHAIR TOWNSEND:
"Yes, absolutely"

MR. MILLER:

> ..., ..., I am sure your colleagues know this but, I am not sure the general public understands the leadership you have been showing in this area. ... As a member of the FCC advisory committee on intergovernmental affairs, ... come back to Washington, D.C., and we can have this discussion. ... .

CHAIR TOWNSEND:
"I would love to. ... ."

MR. MILLER:
"Mr. Chairman, my only concluding comment was that we all live with the law of economics. That is got to be the guiding principle that guides all of us."

CHAIR TOWNSEND:
"Point well taken, ... We will close the hearing on that and take it up in subcommittee."

We will open up the hearing on S.B. 240.

SENATE BILL 240: Requires health insurers to provide policies of health insurance which have high deductibles with health savings account. (BDR 57-47)

SENATOR MAURICE E. WASHINGTON (Washoe County Senatorial District No. 2):
Senate Bill 240 deals with health savings accounts. I have written testimony (Exhibit N). Mr. Chair and Committee members, we urge and encourage your passage of S.B. 240.

SENATOR CARLTON:
In reading this, I am trying to understand the term "an individual carrier shall," not "may." We are telling the individual carriers that they have to offer a health benefit plan with a health savings account to eligible persons. Am I missing the definition of eligible person?

SENATOR WASHINGTON:
There is somebody to testify regarding the word "shall." We did not want to make this mandatory, we wanted to make it permissible, so the word "shall" was probably put in there by mistake.

SENATOR CARLTON:
What about "eligible person?"

SENATOR WASHINGTON:
"Eligible person" is defined by the federal statute under high deductible.

SENATOR TIFFANY:
Do you know any carrier that offers that right now in Nevada? Did you do some research or attend a national committee conference to come up with this particular plan?

SENATOR WASHINGTON:
I am not sure if there are any carriers or providers currently in Nevada. I know there are some that have indicated that they wish to carry the policies.

Like most Legislators, we are often invited to several national conferences. I attended both the American Legislative Exchange Council and National Conference of State Legislatures, and they both addressed the issue. The Council of State Governments has supported health savings accounts which are different from medical savings account. Most of the national organizations are very supportive of this type of legislation.

SENATOR TIFFANY:
Do you know what is happening at a national level with respect to this concept?

SENATOR WASHINGTON:
Currently, there are about 250 million people who have health savings accounts. Most who access these accounts are usually younger families. However, there are some who have started to access these accounts, because they have medical problems.

SENATOR TIFFANY:
Do you see this as an individual being able to opt into a plan, or a company carrying it as an option?

SENATOR WASHINGTON:
I see both. An individual can opt into a plan, or an employer can provide it to his employees in a cafeteria style. There are some limitations to the plan. Medicare prohibits you from actually participating in the plan.

SENATOR HECK:
In response to Senator Tiffany's question, I know Anthem offers the product in Nevada. There is no prohibition from an insurance company offering this. This would just be an insurance mandate they provide as another type of policy. They were slow in coming to Nevada, but most of the major carriers either do have the plans or they are in the process of starting to institute them.

SENATOR WASHINGTON:
We are just codifying federal law and the state law so insurance companies are permitted to carry the product for insurers.

THOMAS CLARK:
The health savings accounts were the only options my wife and I had for health coverage at a reasonable rate as a sole proprietor of a business. The most difficult part is finding a bank that provides the accounts and is local. I am here to support Senator Washington.

JANICE C. PINE (Saint Mary's Health Plans):
It was our understanding that Senator Washington is trying to make this permissible so we can offer the health savings accounts at our discretion and the employer's discretion. Saint Mary's has been approved to offer these health savings accounts as part of a benefit package.

I would request that the bill be amended to reflect "may" instead of "shall" and "may" instead of "must" wherever it occurs. Also, in section 7, subsection 2 of the bill, allow for some variation in the plans so it is not a cookie-cutter for every plan so we can still have our own individual stamp on these things.

HELEN A. FOLEY (PacifiCare Health Systems):
In continuation of what Ms. Pine was saying, in section 3, subsection 1, line 9 of the bill, rather than "shall" it would be "may." In section 3, subsection 2, line 12, rather than "must" it would be "may," and then carry on with other sections that have similar issues. In section 7, subsection 2, line 26, change "shall file" to "may file" and in section 12, line 40, change "shall make available" to "may make available." In section 15, subsection 1, line 9 of the bill, change to read "a carrier may offer."

We know the market is evolving and changing all the time. PacifiCare recently acquired a company that works exclusively with the individual market. We look

forward in participating in these plans. We want to have plans that are affordable and available to everyone and make sense for them. This is not a product that everyone would want, but it certainly makes sense for a certain segment.

SENATOR CARLTON:
Since I have not looked at the federal form, I have to review that. You mentioned one on the Consolidated Omnibus Budget Reconciliation Act (COBRA) components. Being a person who gets health insurance through a totally employer-funded plan, would I be allowed to put something aside? What if I was laid off and I had to pay my insurance through COBRA, which is very expensive? My second question is as this is an option for employers to get for employees, is there any concern that employers will go to this more than other plans?

SENATOR WASHINGTON:
This could be part of a cafeteria-style offer to the employees by the employers. It may fit some and may not fit others. An employer could have several options from which an employee could select. If you are a small employer, you may only have one option. As far as the COBRA is concerned, as an individual you can set up a health savings account for yourself and then you can use it in the event of unemployment. You can use health savings accounts to pay your premiums when you are unemployed.

CHAIR TOWNSEND:
If you can get those changes to S.B. 240 to Mr. Young, we will have it go through the process and take it up next week.

The meeting of the Senate Committee on Commerce and Labor is officially adjourned at 10:58 a.m.

RESPECTFULLY SUBMITTED:

_____
Donna Winter,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chair

DATE:_____