MEMBERS PRESENT: Chairman Dini
Vice Chairman Schofield
Mr. Craddock
Mr. Jeffrey
Mr. May
Mr. Mello
Mr. Nicholas
Mr. Polish
Mr. Prengaman
Mr. Redelsperger
Mr. DuBois

MEMBERS ABSENT: None

GUESTS: Mrs. Peggy Westall, Assemblyman
Mr. Bob Gagnier, SNEA Executive Director
Mr. Jim Wenner-Chief of Recruting and Examining State of Nevada
Ms. Lucy Barrier, Personnel, Welfare Dept.
Mr. Bob Loux, Department of Energy
Mr. Al McNitt, Administrator, Housing Division
Mr. Bob Rusk, Assemblyman
Mr. Bryce Wilson, Nevada Assoc. of Counties

Chairman Dini called the meeting to order at 8:15 A.M. The first bill to be heard is AB-431 - Prohibits filing position in state service with person who has not attained classification assigned to that position.

Assemblyman Peggy Westall testified that the bill solves the problem of underfills. We conducted a study with the Personnel Division and employees and we came to the agreement that Personnel would pass a rule to handle the problem rather than to pass a bill. It now seems that Personnel has decided that they have had the rule long enough and they want to do away with it.

Mr. Dini stated that the problem he has with it is that the State Board of Examiners may on an ad hoc basis...how is that going to be defined.

Mrs. Westall indicated that Mr. Daykin had advised her that the way the bill is worded, it will handle the problem.

Mr. Dini asked if Section 3 was for the state printing office?

Mrs. Westall asked if Mr. Bob Gagnier, Executive Director, State of Nevada Employees Association, could testify with her and clarify some of the contents of the bill.

Mr. Gagnier supplied the committee with the current underfill rule, a copy of which is attached as EXHIBIT A and made a part of these minutes. He gave the committee the definition of an "Underfill", a copy of which is attached hereto as EXHIBIT B and made a part of these minutes. It is not restricted to the state printer; in fact, most of the printing trades at the state printer are unclassified and not within our jurisdiction. What this basically means is that we have a number of trainee classes in state government where after they complete successfully the trainee period, say, a year, they are automatically moved up to the next level. But the slot they occupy may be a journeyman level but they are occupying it as a trainee. We did not want to prevent that as the current rule does not prevent that. In sub-section 2, the term 'ad hoc' was the bill drafter's terminology. The intent was that the Board of Examiners could approve exceptions to this law on an individual basis. Sub-section 3 is a blanket approval for underfill in the case of trainee classes, where people are in a trainee position which would automatically move up as soon as they finished the training period. Sub-section 2 is an individual approval in case of an emergency where the Board of Examiners could provide an exception.

The rule you have (EXHIBIT A) was the rule that was worked out with the subcommittee four years ago, and while it wasn't everything we had wanted, it seemed to be an acceptable option and then this past fall, the Governor's office indicated to us that it was the intent of the administration to repeal this rule. Our history is that if the administration wants to change the rule, the Personnel Advisory Commission will change the rules. We had no alternative but to come back to the Legislature because we feel that this was a violation of an agreement that was reached three ways: by us, the administration and this committee.

In answer to Mr. Dini's question if the rule has been changed, Mr. Gagnier replied that it had not been changed as yet, and no advance notice has been rendered for a change at the next Personnel Advisory Commission meeting in June. What we have to do is take them at their word. They said last fall, they intended to repeal the rule.

Mr. DuBois asked for a review of the problem.

Mr. Gagnier stated that the problem is that in many of our classifications, we will have a ladder, maybe three levels. The tendency was very much, prior to this rule, and to some extent, since this rule, to take a person who is not qualified and who does not meet the minimum qualifications for a position and put them into that position for a certain period of time until they qualify for it. This is in effect a pre-selection process, where even though there may be qualified people available to fill a job, you are filling it with someone who is not qualified until such time as they are qualified. That is the abuse that we were mainly after, originally. If there are qualified applicants for a position, they should fill the job, not someone you pre-selected and say, well, because the person we want to fill the job can't qualify or passed the examination, will underfill. The rule curtailed that to some extent-enough, in our estimation. The underfills that are going on are almost at an acceptable level.

Mr. Jim Wenner, Chief of Recruitment and Examining for the Nevada State Personnel Division, testified that the previous testimony indicated that we originally agreed with the sub-committee and the SNEA to adopt the underfill rule. During negotiations previous to the session, we were considering abolishing the rule at that time. Since then, we have reconsidered and would like to continue the rule as it is currently stated and if there are any changes, we can also take care of those through the Personnel Advisory Commission. Therefore, there would no need to have legislation concerning AB-431.

Mr. Dini asked if he was saying that the Advisory Commission would not change this rule during the next two years.

Mr. Wenner answered that any changes that are proposed or considered would have to go through the Administrative Procedures Act, would require a hearing before that body, before they could be made. We can't unilaterily make any changes in that rule. The only changes we might want to consider would be in regard to layoffs. Because of the cutbacks in state government and in the national government, there is a need to have some provision to allow individuals that are proposed for layoff be able to underfill in some of the organizations that they are currently working in. Also, in the case of EEOC situations or affirmative action situations.

The problem was that someone less qualified, would have the same or better qualifications than the individuals within the state system. If a vacant position in state government had specialized requirements or a need for a individual with a highly specialized background that noone else in state government would have, the argument was brought forward that, based on the underfill rule, there was no way that they could go outside of state government

and attract an individual with that type of background. That was the primary consideration.

The underfill rule says that the position above the journeyman level which are supervisory in nature is not available to everyone. Not everyone can go to those levels. They can't aspire to that level, so the idea there is that there should be a competitive examination given at that time for the individuals that work in that agency, depending on the type of list that the agency has requested. The five people refers to primarily those within the agency, or there is a breakdown further from divisional, departmental and state-wide promotional basis.

This concluded testimony on AB-431.

The next bill to be heard is AB-439.

Mr. Gagnier testified that AB-439, compared with a copy of Rule V of the State Personnel Rules, is virtually identical to Rule V. A copy of Rule V is attached here to as EXHIBIT C and made a part of these minutes. We asked the bill drafter to make the rule a part of the law. We feel that the rule is not being followed and that is the reason for making it a part of the law. The first sentence of Rule V says that 'the kinds of eligible lists and the order of their priority of use SHALL BE in the sequence as shown below'. And I am sorry to say it is not. If it were, we would not be here requesting the passage of AB-439.

Until this past year, it has been customary and it has been an accepted policy of the State Personnel Division that it was entirely up to a supervisory employee, whether he chose to recruit on an 'open-competitive' or a promotional basis. This past year, an opinion was requested from the Attorney General which said in effect: you must fill a position with an agency employee if there five or more employee. In other words, you must fill jobs through promotion if there are enough qualified applicants. That opinion caused a great deal of stir, and in fact, you will find a bill that you will be hearing next week there is a provision to repeal the section of the law that requires that opinion. Management in state government does not want to have to follow the law. They have not been following the law and now that the Attorney General has told them they must, they want to repeal the law. The rule has been in effect as long as I can remember, and they are not following the law. We want to reinforce the rule by making it law.

The highest list that exists in state government and is the one that they generally follow is 'reemployment list'. This consists of the names of employees who have actually been laid off. If there is no one qualified for the position on the

reemployment list, then that agency must, if there are sufficient names on the list, go to a divisional or agency promotional list, a statewide promotional list, then an open-competitive.

Mr. Dini asked what if there is someone not a good employee that you don't want to promote?

Mr. Gagnier said that you have your choice of five. The list of eligibles has five names on it and it is not a legal list unless it does have five names or more. You are given the first five names and you don't have to take number one. It is no more difficult to get rid of an employee in our state civil service system than it is under a labor contract in private industry. If a supervisor is doing his job and is doing the job he is being paid for, it is not that difficult. Last session, you passed a bill calling for progressive discipline. If an agency is more concerned with doing the job than getting rid of somebody, then they can get rid of somebody. If a person is not doing their job and you follow the rule, what you are supposed to be trying to do, is not document a case against that employee but try to get that employee to do a better job. There is a procedure to follow. There are approximately 250 state employees dismissed each year. Of that number, we represent on appeals to the hearing officer approximately 13.

In recruiting, all applicants are given the examination. The top five are certified to the administrator or supervisor.

Mr. DuBois asked if they hire one of those five.

Mr. Gagnier stated that they either hire one of those five or have some pretty good reasons for going farther down the list. The examination system is very slow. By the time you get those five names, two or three of them may have already found other jobs. So then you go down the same number of names farther down the list until they have five people who are willing to interview for that job.

Mr. Redelsperger asked why the division has not been following this rule.

Mr. Gagnier stated that it has been the accepted practice of the State Personnel Division that it was up to the agency to determine whether they wanted to fill a job by promotion or open competitive. That was their philosophy until the Attorney General's opinion came out. The opinion only applied to one aspect - within that department. So, if you worked for just the Labor Commission, then if there are five qualified people working for the Commission, they would have to fill it by promotion. The potential for getting five qualified applicants from a small agency are practically nil.

The problem has been that the Personnel Division has not been following the rule. It says that they shall fill positions from the list in the order shown on EXHIBIT C. They have been allowing the agencies to give an open competitive examination and they will fill it with someone other than from promotional lists. Since the Attorney General's opinion, they are using No. 3 first. They actually use No. 1, first, skip No. 2, and are using No. 3. The important thing is that we are not asking to change the rule. We are just asking you to reinforce the rule with a law.

Mr. DuBois asked that the probationary period was.

Mr. Gagnier indicated for the lower levels it is six months and one year for the higher levels. In private industry it is generally ninety days. In personnel management practice, the probationary period is considered to be a part of the examination process and it is really the only valid part of the examination process. You can't think of it as 'we are going to give you a try'. It should be considered as the last part of the examination process and, really, the only one that is valid.

Mr. Nicholas noted that there has been the hiring of a number of out of state people more often in the recent past, perhaps, than we have in prior years to that. Has that had any impact on your thinking involving wanting this to have the force of law?

Mr. Gagnier stated that the people that are coming to work for the state that are coming from outside are either in some of our extremely difficult recruiting areas, such as the prison, or in upper level management positions.

In answer to Mr. Schofield's question of how many rules there are, Mr. Gagnier replied that there is a rule book. NRS 284 requires the chief of the Personnel Division, with the approval of the Personnel Advisory Commission, to promulgate rules and regulations. That is, regulations. There are some rules specifically mentioned in the law that have to be adopted and others have been adopted just as a practice of personnel management. They cover everything from grievance procedures to resignations, discipline, the appeals process, classification, training, compensation, etc. The Personnel Division has followed the rule (V) insofar as the agency is concerned. They are using No. 1 because the Attorney General told them they had to use it. They are not using No. 4, necessarily. But even more important, is the fact that they are coming before you to repeal the law that requires this.

In the rule book, there is the grievance procedure which requires that there be an individual employee appeal. The final step is a six-member arbitration panel made up of three management and three employees. To date, that committee has not addressed the types of things we are talking about. Our alternative in that area is the court with a declaratory judgment. We feel that at the present time, the State Personnel Division is violating a number of its own rules and a number of laws. Sometime back, they arbitrarily abandoned the rule of five-although NRS-284 specifies the rule of five, they abandoned it and said they had approval from the Attorney General's office. The Attorney General said they did not. We are highly likely to take them to court on that. They are breaking the law, and if they are breaking the law, according to this, they are subject to forfeiture of their job.

Mr. Wenner testified that by the previous testimony the State of Nevada Employees Association have claimed that we have violated our rule that currently governs the material listed in AB-439. We disagree with that statement. We feel it is a matter of interpretation. If you read the language that is currently within the rule, you will see that it governs primarily the list, which in our opinion, has already been established. Once we have established the list and we have followed this order, this is where the point of contention comes in from the SNEA and the Personnel Division. The AG opinion that Mr. Gagnier has mentioned made it necessary for us to rearrange as far as this rule is concerned and we have had to apply what the AG has asked us to do. The whole issue boils down to this: an open versus a closed system. Closed being in the majority of the cases, positions being filled by state employees only. Open means that those citizens of the state would have a much more difficult time of ever getting a job in state government because of the obsolute following of this regulation that SNEA is proposing. This is the whole issue. We have disagreed for the last ten years in the statute that he has mentioned - 284.295 - this is proposed in the omnibus bill, mainly because we feel the way the language has been written originally gave us the latitute to leave that discretion to the administrator to determine who they feel can best serve their agency by going outside or do they have the talent necessary to fill the position within the organization. In most cases, the vast majority of positions filled are by promotions.

If you look at the Welfare Division, for instance, with some 800 employees, only those individuals can compete for a vacancy. You accumulate a list with the five individuals on that divisional list, then you go to the agency promotion, which is Human Resources which consists of 1,300 employees or more. Then, you are talking about another configuration and another listing of those individuals in the entire department. Then you go state-wide, where

there are approximately 10,000 employees. And only then can you go to the outside to people who are citizens and taxpayers of the state when they deserve a fair and equal chance for employment in the state of Nevada. That is what the whole issue is all about. That is why we disagreed with the configuration here as a mandatory following of Rule V. You can't live with that type of configuration because it is a closed system. You have to hire from within. Very seldon especially in the large departments, you are never going to be able to go to the outside, expecially in common classes where everybody has that type of experience. That is really the gut issue. That is the reason we have come through with the legislation opposed to changes. The rule itself, as long as the existing list is used, and as long as the agency has made that decision to go with that type of employment list, we certify that list first, and each succeeding one if used. We have always followed that practice.

The lists are established. We have those on file. If there is a division promotional list and an open competitive list in our files, an active list and the agency has a vacancy, we certify to that agency the first people that they have to interview which are the division promotions. That is their first five. Only after they have exhausted those divisions can they go to open competitive. That is the order we have followed, but we have only distinguished that between existing lists that are already recruitments or examinations that have already been given and established. The difference here is the legislation, as I read it, refers to establishing, when you have a vacancy, that means that you have to go division promotional, departmental promotion, then state-wide, then and only then can you go to the outside of government.

Mr. Jeffrey asked: Why go outside when you have people within? Why do you have a problem? When you go to the outside, you are really talking about a lot of people. If the people on the list aren't qualified, why aren't they?

Mr. Wenner answered: I didn't say anything about being qualified. They have to be qualified to be on our eligible list. There is a distinction between those lists that are already established and which we use before we go outside. What the real issue is when you have that vacancy and there is no eligible list, the thing that we are opposed to is having to recruit first of all by division, then state-wide, etc.

Mr. Jeffrey asked: If there is an open position, why isn't there an eligible list?

Mr. Wenner answered: Because that is what this regulation in the

Attorney General's opinion has forced us to basically do. We can't go to the open list. We can't go to the outside unless there are certain conditions.

Mr. Jeffrey: Why would you want to?

Mr. Wenner: There might be various reasons. First of all, there may be some talent required. There may not be sufficient people that meet the qualifications from the standpoint of specialized requirements. For example, let's say that in the Central Data Processing there is a specialized computer that no one on board can operate. They are qualified based on the class specification but they really don't know how to operate that computer. It would require much re-training and if it has to be in operation right now, there is no exception right now where we can go to the outside and recruit for that one individual to come in and operate that computer.

Mr. Jeffrey: If you have a specialty job, what is keeping you from going to the outside?

Mr. Wenner: Because what we have to do, as long as there are promotional people, state employees qualified with the division or department, we have to test those first, before we go to the open competitive and people don't want to go through the travel expense if they are not going to be considered, anyway. The job descriptions are general and there might be twenty employees that have the basic training to qualify them but don't have the specialized training.

Mr. Craddock asked how often these various lists are purged.

Mr. Wenner: They are purged at the end of three years. At the end of one year, we notify the individuals on that list that the eligible list is over one year old and that we are re-establishing another list at that time.

Mr. Craddock: How long does it take to get on that promotional list?

Mr. Wenner: About six to nine weeks.

Mr. Craddock: It seems to me that the class specifications may be part of the problem. Do you have any comments about that?

Mr. Wenner: There are currently approximately 10,000 employees in state government with 1,500 classifications that are governing those. As you can see, if we had a classification for every single job, we would have 10,000 specifications. We try to limit those as much as possible, as personnel management dictates.

It is much more easy to administer. We have tried to group them into similar categories that have similar knowledge skills and ability. The qualification for any of these classes is based on minimum requirements. What does it require to get the job done.

Mr. DuBois asked: If you have a job description and when you are about to fill a position that is open, are you prohibited from adding on to that additional requirements for a particular job?

Mr. Wenner: Yes, we can, through a personnel advisory commission procedure. Minimum qualifications can be revised, depending on the nature of the change. If it is substantial, then it requires personnel advisory commission approval. It could involve, in the case of a substantial change, a three month delay in recruiting for that position.

Mr. DuBois: Why don't they use that procedure more often to narrow down the job description to fit the job?

Mr. Wenner: In the case of a specialized class, we would have to change that one class specification that would also impact all the other people currently in it. What you are saying, is in the case of the person who has the specialized requirements, we would have to establish a new classification, not merely change the requirements, which means that it would take up to three months and also approval by the personnel advisory commission.

Testifying against the bill is Donna Sheehan, Assistant to the Director of the Department of Motor Vehicles. She stated: the department has approximately 632 employees. As we touch virtually every citizen in the state, we have a responsibility to select employees who can best serve those people. By placing AB-439 into law, you are been redundant and it is an unnecessary move because there are existing rules and regulations. We do not exactly agree them them but we would prefer to work with them as rules and regulations with some flexibility, than to have them in the statutes and then have two years before we can address this situation. If an agency administrator decides to look at other people, other than their own employees, and go to an open competitive examination, it does not restrict any of their employees from competing on that same evaluation. They would just be considered along with those outside employees. And if they rated within the top five, then they could be chosen. It is just letting us have the ability to get some new blood into the agency if we feel that is necessary. Any manager is going to take into consideration what they have in-house, what resources we have before we go looking outside or choosing

somebody outside of the system. We have morale to consider, we have turnover to consider. Sometimes the existing employees do not meet your needs. Someone who meets the state minimum qualifications and has passed the test may not be the ideal person for that position. There are other things, along with attitude, loyalty, etc. We want the ability, if we feel it is necessary, to look at other people, along with our own people. We need that flexibility.

Mr. Craddock: If this is creating a problem, why haven't new rules been promulgated?

Ms. Sheehan: It only became a problem for us after the Attorney General's opinion where it said we had to go from list to list. There is a personnel omnibus bill that is addressing this situation for us and the only way we feel that we can change it effectively is through the Nevada Revised Statutes, and changing it. Changes could be made under 233(B) and we would like to have that flexibility, but if you put this under the Nevada Revised Statutes, we no longer have that ability to do that. We would have to wait two years and come back to you. If you do not put this in the statutes, we do have the ability to go through 233 (B) and change those.

Mr. Wenner: I believe this issue has to be resolved through the Legislature (284.295) which basically is promulgated off of that original regulation as Mr. Gagnier has indicated. It was only after that AG opinion that this became a problem.

Lucy Barrier, Personnel Officer for the Welfare Division, testified that she was working for the wrong division, apparently, because I have heard comments about the fact that we are not following rules and regulations and we are violating them. Let me tell you, I can't get away with a thing. Regarding AB-439, I think there is something you should understand about the logistics if this bill were to go into effect. It affects me and that is why I am here to tell you if you pass this, what you are doing. If we have a position that is vacant, we would open it up for divisional promotion. For example, the position of medical services assistant. That is a position we have in Welfare. One of the qualifications is that you have to be a physical therapist. According to this rule, if the position becomes vacant, we would have to open it up divisional promotion. We have 700-800 employees in the Welfare Division. I cannot tell you how many of those people might qualify. We go through a system of paperwork to announce this position as being divisional promotion to all of our 800 employees throughout the state. They have two weeks to reply. Let's say we have one individual out of our 800 that qualifies. For simplicity, let's say we have none. We find out at the end

of the two-week filing period that we have no applications. Then, we must go to the next thing, which is agency promotional, which is Human Resources, which has 1,400, 1,500 or 2,000 employees. Now we submit the paperwork again to State Personnel to open it up for another two weeks. Say, we have one individual that applies. However, we would like to have two or three to choose from. We then go to statewide promotional. We have to again announce, statewide, to our 10,000 employees. We submit the paperwork again. We are more than six weeks in this procedure because you can't just start something the minute it ends. You have to allow for the mails. This could take up another week or two. At this point, we still might have just one applicant to test. We are not even to the open competitive yet.

Mr. May: Is there a statute or a rule that would prohibit you from circulating once that vacancy to division, agency, state-wide, indicating the preference of hiring through those steps? That way, you would be cutting out the problem you are talking about. Secondly, is there a manner of defining the number of physical therapists in the state; doesn't Personnel have some kind of computer where they can plug in and furnish you with a list or names of those available? If not, what would prevent you doing it statewide at one time, indicating the order in which the applicants would be considered by following Rule V?

Ms. Barrier: I think that is a good suggestion. What we have been allowed to do to cut down the paperwork and time is, when we feel that we might not get any applicant, we ask State Personnel that we be allowed to open up this classification to all applicants. They have allowed us to do this on occasion. What you are saying is O.K., but that isn't what this bill says. It doesn't leave you that flexibility. We promote from within probably 95% of the time.

Mr. Mello: If the State Personnel would computerize the people that wished to transfer, positions available, promotions, etc.; the way it is now, you have to make out an application for each position that is available. It can be computerized.

Mr. Redelsperger: In 431, we had the Personnel Advisory Commission where they could go in case of an exception to the rule. In this bill, we don't have any exception. It is plain and simple: that's the way it is. There is no recourse. Maybe we should look along those lines.

Mr. Gagnier: May I respond and make one recommendation, based upon the suggestion of Mr. Redelsperger. We certainly would have no objection to adding a clause to this bill in cases where

special circumstances dictate, as long as there was a mechanism for some independent body to approve an exception in a special circumstance case. There is no problem with that. We currently have a procedure called 'selective certification' which is approved by the Personnel Advisory Commission. It means where you want to be able to require something outside the normal job description, in addition to, while this particular job, while maybe similar to many other jobs, does have this special requirement and this person does have to have that skill, therefore, you will selectively certify someone with that skill. We would have no objection to that, Mr. Chairman.

We don't have a closed system. State employees are not born state employees. They had to come from the outside at some point in time. Right now, we are experiencing from 26% and 22% turnover annually. We are changing one-fifth of the work force and bringing in one-fifth new people every year. All we are saying is, let them start the same way the other people started. As far as what Mr. Wenner said that the rule we have today only applies if there is an existing list, let me tell you how you get around it. It is very simple. You abolish the list. You have an existing list and if it has been in existence twelve months or longer, all you have to do is abolish it. Then you get around the rule. They do that all the time. An example is, and I cite it because it is the most blatant. We had a list for captain at the prison. There were thirteen people on the list for captain. The list had been in effect for thirteen months. It was abolished. The rationale in abolishing was that the warden wanted to have a larger group to select from. We have the examination and there were seven on the list, because the rest of the people said 'baloney, we're not going to take the list. We know who he wants. He just doesn't happen to be among the thirteen'. And the others wouldn't take the exam because, under the law, you can only use your veteran's preference once and they weren't willing to give it up for a job they knew who was going to get it. So, if you don't give a promotional exam, there is no promotional list and that's how they're getting around it. We would be glad to work with the committee on an exception.

This concluded the testimony on AB-439.

Mr. Bob Loux, Department of Energy, testified in favor of AB-446. We saw a need for a program to enable consumers to acquire energy conservation materials and equipment, renewable resource materials and equipment, some method of financing those at lower interest rates. We began talking with Mr. Rusk and Mr. McNitt of the Housing Division sometime ago about what might be the best alternative to develop some type of state-sponsored

program and I believe that what we have in front of us today is probably the best alternative that is available. Basically, the purpose of the bill is to expand the existing program of the Housing Division into the home improvement area to provide a lower interest loan mechanism for consumers to purchase these sorts of materials and hardware for installation in their homes. It was recognized nearly two and one-half years ago at the federal level that the single biggest obstacle to retrofit existing houses, either with added insulation or renewable resources equipment, was the lack of available capital at reasonable rates and, therefore, a solar energy/energy conservation bank was proposed at the federal level to become effective around June 1 of this year. Recently, the new administration recognizing that this is an area more of a state responsibility, have rescinded the program. It is not likely that it is going to be available at the federal level. Several of the savings and loan institutions have been surveyed and we found the rates to be somewhere in the 17% to 18½% rate in home improvement loans and in many cases, not available at any interest rates.

Mr. Al McNitt, Administrator for the Housing Division, testified that in checking with other states that have operated similar programs for the financing of the conservation of energy in residential housing, we have learned that (1) these types of programs, according to bond counsel and underwriters, are a doable program. They are difficult bonds to sell and present some problems from the standpoint of marketability, however, they can be marketed, specially when the size of the bond issues are small; (2) Virginia has operated a program for about three years and we have learned from them is that it is a very slow operating program, for a number of reasons. If people know the program is available they will still seek alternate methods of financing because if they are adding insulation, for example, they might find it easier to use their MasterCharge, rather than filling out a loan application, even though the rate of interest may be higher in the use of a charge card.

Lenders have not, in other states, really pushed these programs very strongly from a practical standpoint. These are relatively small loans, there is not a lot of fee income in them and, therefore, the lenders have not as aggressively promoted these as they otherwise could have been. Since we first started talking to the Department of Energy, and as many of you know, during the closing days of the 96th Congress, Congress passed and President Carter signed PL-96-499 which contained a Section XI, entitled Mortage Subsidy Tax Bond Act of 1980. This is also referred to as the Ullman Act. That has limitations. At this point, according to bond counsel as late as yesterday, we do not yet know whether, pursuant to that Act, we will be able to

issue bonds for this plan purpose in the future. As presently written, because of the one restriction in that Act which forbids loans to lender-type loans, we would not be able to use the language specifically drafted here, but we do have an amendment for you which, all things being equal, would enable us to use that Act down the road and our statutes to issue such bonds if the following occurs. We are presently waiting for the United States Treasury Department to issue their draft rules and regulations which implement that statute. We cannot anticipate that those draft regulations will be issued for review by the public before this Legislature concludes its current session. We hope that in those rules and regulations it will be possible to provide such bonding. If not, then we would comment publicly that we don't agree with them. We believe the Act has a very high degree of probability of being unconstitutional for the following reasons. (1) There is a relationship between the supremacy clause in the Constitution and the federal government vs. the states and there is also the Tenth Amendment of the Constitution which limits all powers of the states not specifically given to the federal government. So, according to bond counsel and our Attorney General's opinion, the powers of the federal government to regulate the states are at best a limited power, and in regard to that Act, there is a high probably that they have exceeded that limited power to regulate states. (2) There is the Constitutional doctrine of reciprocal immunity from taxation. (3) The federal government does not have the power to impair the rights of states to function within the federal system. Here we have an absolute impairment in two senses. That particular Act provides in the single family bonding, a sunset provision that after 1983, no more mortage-backed revenue bonds for single family housing could ever be issued by any state, city or county. That is an absolute impairment. In January of this year, we suspended our single family programs until we could find some way to act, with that statute, while we still sought our political legal remedies to have changes.

We would recommend to you the following amendment: the language from Lines 6 through 8 should be amended by adding to NRS-319.130 as a new sentence or sub-sentence similar language that we currently have in AB-150 which has added two new subsections at the very end of of this .130. If we would add this as a third sub-paragraph to that sentence, we would fulfill the same purpose that you have requested here or are seeking here.

Mr. Loux indicated he would like to make a small change on Line 7 to replace the word 'renewable' with 'alternative' to make it consistent with several other bills and language, mainly for the aspect that often times, geothermal in particular, is not considered a renewal resource, but rather an alternative energy resource and I think it is a minor change and would be consistent

with other bills that have been proposed.

Mr. McNitt stated that if this responsibility is given to the Department of Commerce, since based on other state experience, these programs do not require numerous bond issues to keep them functioning. We should be able to provide this program within the budget requested before the Legislature.

Mr. Redelsperger: I think we have some problems now in trying to finance mortages that come to the Housing Division. Where are we going to find the money to make these kinds of loans?

Mr. McNitt: That is the problem we have with Congress - the ability to issue bonds. We want to have a program of financing home mortgages for low to moderate income persons who cannot obtain a mortage from the private sector and Congress has superimposed its will over the sovereign right of this state to say what it wants to do within its own borders on that subject. We are seeking those political remedies. If the Legislature has a desire to consider legislation such as this, we would recommend you go ahead and put it in. We may find the ability, politically, down the road to obtain such changes with the current Act, or even obtain its repeal, totally, through either political or legal means, and we might not have to wait two more years. It won't be an instant program, however, on passage and approval July 1, because at this moment, we can tell you it isn't going to be. If this is what this state feels should be a tradional public purpose, then we have that right to include that within our statutes, as long as it is within our own constitution.

Mr. Craddock asked if on Line 5, Page 1, new mortage loans are made on new construction only.

Mr. McNitt answered: They are new mortage loans for residential housing, rather than mortage loans for new residential housing.

Assembly Bob Rusk testified in favor of AB-446 and his testimony is attached hereto as EXHIBIT D and made a part of these minutes.

This concluded the testimony on AB-446.

Mr. Bryce Wilson, Nevada Association of Counties, on AJR-31, said the Association favors this legislation. The principal reason might be found in fact that we believe that the local government is most responsive to the conditions existing in that local area. This would serve to maintain the present situation that county commissioners' salaries are set by the Legislature but that all other elected officials' salaries in the counties would be set

by the local government. The county commissioners are closely in touch with labor costs and competitive lines in their own areas. It should be the subject of annual review, at least bi-annual. They know their counties' abilities to pay; they have the normal budgeting process which should be taken into account. The county commissioners feel that their salaries should be set by the Legislature. That removes any probability or possibility of a building of the other salaries to bolster their own requests which in the past might have been considered a problem. The Nevada Association of Counties hopes that this legislation will be passed as written.

This concluded the testimony on AJR-31.

Mr. Dini indicated he had three BDR's for the committee to consider. BDR-31.1895* came from the military (National Guard) to create an emergency fund. BDR-42.1860** deals with retrofitting of casinos and hotels - the Governor's bill. BDR-31.1861† also the Governor's bill which excludes certain expenditures of local governments from statutury limitations.

These BDR's are up for introduction by this committee. Mr. Schofield moved TO INTRODUCE, seconded by Mr. Redelsperger. Motion carried.

On AB-39: Mr. Schofield moved to INDEFINITELY POSTPONE, seconded by Mr. Nicholas. Motion carried.

On AB-284: This has not been heard as this is handled under AB-930. Mr. Schofield moved to INDEFINITELY POSTPONE, seconded by Mr. Polish. Motion carried.

AB-62: Mr. Schofield moved to INDEFINITELY POSTPONE, Mr. Redelsperger seconded. Motion carried.

On AB-365: Mr. Schofield moved to INDEFINITELY POSTPONE, seconded by Mr. Nicholas. Motion carried.

On AB-85: Mr. Schofield moved to INDEFINITELY POSTPONE, seconded by Mr. Nicholas. Mr. Redelsperger stated that we were talking about the Governor appointing the support staff of the Public Service Commission after we got this taken care of. Are we still going to look along those lines? Mr. Dini: That's AB-58. Motion carried.

Mr. Dini stated that AB-58 we will keep it alive and use it as an avenue to work on the Public Service Commission itself. We can check with Don on that.

*AB 506
**AB 505
†AB 507

AB-431: Mr. Nicholas moved a DO PASS, seconded by Mr. Redelsperger. Motion carried.

On AB-439: This will be held until we hear the omnibus bill.

On AB-446: Mr. Redelsperger moved an AMEND AND DO PASS, seconded by Mr. Nicholas. Motion carried.

On AJR-31: Mr. Dini moved to INDEFINITELY POSTPONE, seconded by Mr. Schofield. Motion carried.

Respectfully submitted,

Lucille Hill

Lucille Hill
Assembly Attache

24. "Reclassification" means a reassignment or change in allocation of an individual position by raising it to a higher class, reducing it to a lower class, or moving it to another class at the same level on the basis of significant changes in kind, difficulty, or responsibility of the work performed.

25. "Semi-Automatic Progression" is defined as employee progression from a Trainee class to the next higher level in the class series without examination, based upon satisfactory performance including the recommendation of the appointing authority.

26. "State Personnel Division" refers to the staff of the Personnel Division of the State Department of Administration.

27. "Step" refers to an approximate 2½% salary increase as indicated in the Nevada State Personnel Division Compensation Schedule in a progression within a grade.

28. "Transfer" is any movement of an employee from one position to another position in the same class or related class with the same salary grade; or the movement of the employee with his position or classification to another location.

29. "Unclassified Service", officials, officers, or employees whose positions are identified in Nevada's Revised Statutes or are commonly filled by election or appointment by the responsible Appointing Authority without regard to the State's Merit System.

30. "Underfill" is the filling of a higher level classification with an employee holding a lower classification, exclusive of those situations where employees are in classifications which are training or intermediate levels preparatory to promotion to the journeyman level class.

E. Occupational Safety and Health

1. "The State shall provide their employees with the conditions of employment consistent with the objectives of this chapter (NRS 618), and comply with standards developed under NRS 618 on or before July 1, 1974." The head of each public agency shall consult with the representatives of the employees thereof in the establishment and operation of such program and that he shall make an annual report to the Director of Safety (Nevada Industrial Commission) with respect to the employer's Occupational Safety and Health Program.

M. Underfill

1. All underfills, as defined in the Rules, must be approved, in advance by the State Personnel Division.

2. No underfill appointment may be made if an eligible list of five or more available names for the class exists of the type requested by the agency.

3. If an underfill is approved, the Personnel Division will commence recruitment and examination and the underfill may not continue more than 30 working days after an eligible list of five or more available names is established.

4. If an employee acquires new duties over a period of time, as provided in Rule II, F 3, b, it shall not be considered as an underfill.

5. An exception to these requirements can be approved if money is not available as certified by the Budget Director or in case of non-General Fund agencies as certified by the Administrator of that agency.

6. This Rule does not apply to employees underfilling prior to the effective date of this Rule.

RULE V

ELIGIBLE LIST AND CERTIFICATION
(Refer to NRS 284.250)

A. Types of Lists

The kinds of eligible lists and the order of their priority of use shall be in the sequence as shown below. Each list shall be used before names are certified from the next succeeding list. (In addition to using any of these lists except the lay-off reemployment list, appointing authorities may fill vacancies by reinstatement or transfer.)

1. Reemployment lists (consisting of the names of employees who have been laid off).
2. Divisional promotional lists.
3. Agency promotional lists
4. Statewide promotional lists.
5. Eligible lists from open examinations.
6. Appropriate eligible lists (also, see subsection F).

B. Order of Names

The names of eligibles on promotional and open eligible lists shall be ranked in the order of their total rating earned in the examination, including veterans and residence preference. In the case of ties in ratings, such ties shall be broken on the basis of the ratings earned on the part of the examination having the greatest weight, and any remaining ties shall be broken by the ratings earned on parts of the examination having progressively lesser weights. In promotional examination, if all other factors result in a tie, it shall be broken by seniority in the State service. In open competitive examinations, ties shall be broken by lot.

C. Duration of Lists

Eligible lists may be extended when they have been in effect for at least 1 year, but shall not be extended so as to provide any eligible with eligibility greater than three years total time based on one examination. The State Personnel Administrator may extend any list any time the number of remaining

1568

Exhibit C

D

TESTIMONY ON

AB - 466

As we are all painfully aware, energy prices have and will continue to escalate at an alarming rate. For Homeowners, there are many options that can be exercised to mitigate the economic impact that these rising energy costs are having on their quality of life. Among these options are increasing insulation levels, sealing door and window openings, storm windows and doors, solar domestic hot water heating systems, attached solar greenhouses, if available, geothermal space heating systems, solar space heating systems. After the initial no or low cost options are implemented, such as weather-stripping, caulking, hot water tank insulating blankets, night set back thermostats, the majority of the balance of these measures are somewhat costly.

As some of you are aware, the cost of added insulation and storm windows alone can run over a thousand dollars. Most of the other items, I mentioned are even more costly. For instance the cost of an installed solar domestic hot water system can run over $3,000.00.

The purpose of this bill, therefore, is to expand the existing and very successful housing program run by the Housing Division of the Department of Commerce to the home improvement area to finance the purchase and installation of equipment and materials for the conservation of energy and use of renewable resources within residential housing in Nevada at less than conventional interest rates. The specific details of how this authority will be utilized and implemented will be addressed by Mr. McNitt, Administrator of the Housing Division who we worked with in developing this bill.

At the federal level nearly two and one half years ago, it was recognized that the single biggest obstacle to the retrofit of existing houses to make them more energy efficient is the lack of available capital at reasonable interest rates. Therefore, a Solar Energy and Energy Conservation Bank was established and funded to become effective around June 1 of this year. The new

Exhibit D

Administration, however has targeted the Bank for elimination under the budget cutting process and the belief that this is an area of state responsibility.

We believe that the state does have a responsibility in this area to assist Nevadan's in reducing the impact that rising energy prices will have on consumers. Numerous other states have developed and implemented very similar programs. Among them are New Mexico, Oregon, New Jersy, California and Tennessee.

Even more important is the need for the state to adopt policies and programs that demonstrate concern for Nevadan's energy problems. I believe that this concern can be demonstrated by providing a method whereby consumers can reasonably finance the acquisition and installation of energy conserving equipment and materials in their own homes.