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

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
March 9, 1981

The Senate Committee on Commerce and Labor was called to order by Chairman Thomas R. C. Wilson, at 1:38 p.m., Monday, March 9, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Thomas R. C. Wilson, Chairman
Senator Richard Blakemore, Vice Chairman
Senator Don Ashworth
Senator Melvin Close
Senator William Hernstadt
Senator Clifford McCorkle
Senator William Raggio

STAFF MEMBER PRESENT:

Frances Kindred, Committee Secretary

Chairman Wilson opened the meeting by stating the agenda had been revised and Senate Bill No. 203 would not be heard today. He said the Nevada Industrial Commission and Advisory Board had not met in time to come in with any recommendations so the bill would be rescheduled. He commented if anyone was present to testify on the bill however, they would hear it today. There was no one present to testify on the bill and it was not heard.

SENATE BILL NO. 45

Chairman Wilson opened the hearing on Senate Bill No. 45, which relates to community antenna television companies; empowering local governments to regulate community antenna television companies, repealing the Nevada community antenna system law.

Mr. Heber Hardy, chairman of the public service commission, said he attended the Legislative Commission's Interim Subcommittee (ACR 22) on the Public Service Commission meeting in Fallon when the community antenna television companies requested deregulation, due to difficulty in obtaining timely relief and being regulated by the public service commission.

Mr. Hardy indicated, if it was the desire of the committee and the legislature, he would not oppose degregulation. However, he thought they should consider the alternatives, if jurisdiction was removed from the public service commission and turned over to local governments to regulate. Mr. Hardy submitted some articles which confirmed his concern about the problems arising in local communities when choice of companies is determined on a political basis. (See Exhibit C.)

In response to Senator Hernstadt's question, Mr. Hardy replied he was not aware of any prohibition of cities and counties taxing, assessing, or charging franchise fees to community antenna television operations. Senator Hernstadt commented taxing these operations is a good source of revenue for communities which need more sources of revenue; and the committee would look at it in terms of revenue relief for local governments.

Senator Hernstadt remarked that cable television in Carson City has had something wrong with it the past few weeks and wondered what the trouble was. Mr. Hardy answered he was not aware of the problem but perhaps Mr. Bob Weber of TV Pix, Inc., who was present in the audience could explain. Mr. Weber declined to make a statement.

Senator Close inquired whether Home Box Office would be regulated under Senate Bill No. 45. Mr. Hardy did not believe so as it is not covered under the present regulations and the identical definition is also used in this bill. He also indicated the State of Nevada is one of the very few states which regulates community antenna television on a state level.

Senator Wilson asked Mr. Hardy for his recommendation, as chairman of the public service commission, with regard to this bill. Mr. Hardy stated there would be far less difficulty in the field if they left it as it now is.

Mr. George Tackett, administration manager, public affairs for Nevada Bell, testified in opposition of Senate Bill No. 45. His prepared testimony was read verbatim (see Exhibit D). Senator Blakemore asked Mr. Tackett to explain to the committee what was meant by "pole agreements". Mr. Tackett stated where Nevada Bell or another utility have a pole line construction served by a cable television company, those companies enter into a pole contract agreement with the other utility to share their existing pole lines.

With no further testimony, Chairman Wilson closed the hearing on Senate Bill No. 45.

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SENATE BILL NO. 231

Chairman Wilson opened the hearing on Senate Bill No. 231, which changes various provisions of law governing physical therapists and their assistants. He stated the bill has been booked for two days' hearing; and was booked on Wednesday to accommodate the state board of physical therapy examiners.

Mr. Jack Close, physical therapist from Las Vegas and past chairman of the state board of physical therapy examiners, stated he was present to provide input from his experience as chairman and also as a practicing physical therapist. Senator Wilson inquired if Mr. Close, or Ms. Pat Conn, present chairman of the board of physical therapy examiners would like to present the general outline of the bill. Ms. Conn stated they have found, from working on the board, many outdated areas in the law as it has not been reviewed for about 20 years. She said many of the changes are merely housekeeping changes, raising the limits of fees, adding hearing procedures, providing for a new definition for physical therapy because of the changes in the practice of physical therapy.

Senator Wilson suggested they go through the bill, section by section. He asked if the definition of physical therapist's assistant is the same in the bill as is presently in the law. Mr. Conn replied it was, except to change physical therapy assistant to physical therapist's assistant. (See Exhibit E.)

In response to Senator Wilson's question, Ms. Conn explained the complaint procedure in Section 3 is all new wording, following the hearing procedures in the Administrative Practice Act. Mr. Close added this wording goes all the way through Section 9, with the wording format given them by the attorney general's office. Responding to Senator Wilson's question, Mr. Close said the counsel for their board was not present. Senator Wilson asked if the language in this bill was generally consistent with the Administrative Practice Act as used by other boards of examiners and Mr. Close indicated it was.

There were no further questions on Sections 1 through 6. Senator Wilson questioned the wording in Section 7 regarding taking depositions of witnesses. He wanted to know if this meant they had to be in a formal hearing to take depositions or was it construed to mean in any matter before the board, without the need of a hearing. Mr. Close said he thought it meant to take depositions in any matter before the board to improve their knowledge of the matter being discussed. Senator Wilson asked if Mr. Hagen, of the state chiropractic association wished to comment on this. Mr. Hagen declined to comment.

In reply to Senator Close's question, Ms. Conn replied the reference to the physical therapist's permit meant a temporary permit and there are provisions in the bill for this. There were no further questions on Sections 7, 8, 9 and 10.

Senator Wilson asked Mr. Close if the new definition of physical therapy on page 3 of the bill, had the concurrence of the other medical disciplines. Mr. Close stated they had not had any negative input that he was aware of. Senator Wilson asked if the medical disciplines have been asked to review the proposed changes and Mr. Close said a copy was given to the chairman elect of the medical society but he did not know if it was reviewed by the society.

Senator Close pointed out that line 29, page 3, states the practice of physical therapy means for compensation, whether direct or indirect. His question to Mr. Close was if it was done for free, was it not defined as physical therapy? Mr. Close replied he did not know. Senator Wilson inquired as to who their legal counsel was, and if he drew up this bill. Ms. Conn replied it was Mr. Jeff Eskin from the attorney general's office in Las Vegas.

Senator Wilson referred to line 31, page 3, on interpreting of tests and measurements of cardiovascular and respiratory functions, and asked if this was subject matter relating to their discipline. Mr. Close affirmed it was as it relates to the musculoskeletal areas of the physical body. He said many physical therapists are heavily involved in cardiovascular rehabilitation as well as respiratory rehabilitation. These tests are a very important component of their ability to provide appropriate treatments.

Senator Wilson commented on Section 14, relating to jurisdiction of the board and specifically to paragraph 6 and page 5 with respect to members or agents of the board entering any facility or hospital and asked for an explanation. Mr. Close stated they had submitted information to clarify this reference (See definition in Exhibit E). Ms. Conn explained there have been problems with unlicensed physical therapists and this is the intent of those references, not to inspect a facility but to check out whether the physical therapists were licensed and registered with the state board of physical therapy examiners. This section will provide for an agent of the board or a board member to review and make sure such individuals are licensed in the State of Nevada.

Mr. Close commented that Section 16 is to update NRS 640, which was the original bill covering entrance into the field of physical therapy. Senator Wilson asked whether the board normally approves the school which issues the degree. Mr. Close answered the board usually follows the guidelines set by the American Physical Therapy Association in conjunction with the American Medical Association in certifying certain schools. He said there have been some problems with foreign registry.

Senator Blakemore asked if they were eliminating the practice of fingerprinting applicants and Mr. Close replied it was too much of a "hassle" to find a place to have it done and to maintain the records. Ms. Conn explained the fingerprints used to be turned in to the FBI for checking but were no longer accepted after the Right to Privacy Act; now they are no longer useful in that respect. Senator Wilson inquired if there was a reason for fingerprinting, like checking out criminal records. Mr. Close stated it was no longer feasible to check out an applicant's background that way, so the process was eliminated.

Senator Raggio questioned the exemption under 640.140, line 39, page 5. Ms. Conn commented she thought that was for the temporary permit but Senator Raggio stated that was in 640.120. Mr. Close explained that 640.140 covered reciprocity from other states.

Senator Wilson asked if the fee schedule was doubled and Mr. Close said that the fees were not actually going up. The provision was to give them a new ceiling because they are now at the top of their allowed fees. He explained the majority of the cost goes to the examining service which provides information; therefore the fee increase would not have a ceiling too much higher to compensate for the board's secretarial expenses.

Ms. Conn explained Section 18, page 6 refers to examination fees and re-examination fees which they have not been allowed to charge for. Presently, the cost is $55.00 for the examination, and for registration, whether by examination or reciprocity, the fee is $50.00. However, at present there is no fee for re-examination.

With regard to Section 20, page 6, Mr. Close stated the new material is to cover physical therapy students from schools in surrounding states who utilize clinical facilities in Nevada. The board feels the necessity of some type of certification licensure for these students. Senator Wilson asked if the temporary permit during internship or residency requires the supervision of a licensed physical therapist and Mr. Close said it does. Ms. Conn explained it was not the same direct supervision as an undergraduate would have.

Senator Wilson commented a student in physical therapy must work under the direct supervision of a physical therapist while a graduate student could practice as though licensed, but still has a temporary permit for not more than one year. Mr. Close explained those who complete their degree and utilize a residency and/or internship program have different qualifications from a junior or senior student. Senator Wilson stated he was looking at the difference between direct supervision and indirect supervision. He said a medical doctor, whether on internship or a residency, works under a licensed physician and indirect supervision. This provision does not appear in the language of Senate Bill No. 231, and he questioned whether a graduate student should practice in a plenary fashion without supervision, when he is only on permit. Mr. Close explained students in both categories were still under direct supervision and have to work in established clinics. Senator Wilson stated he felt, under those circumstances, the language should be changed so the intern or resident would not practice independent of supervision. Mr. Close and Ms. Conn agreed the language should be changed.

Ms. Conn stated Section 21 is to allow for an increase in the yearly re-licensing fee; also to change the time of year for re-licensing from January to July. Mr. Close pointed out line 12, page 7, which relates to giving the board the option to implement the continuing education requirement.

With regard to Section 22, Ms. Conn commented it is important in giving the board other means of censure, such as fines, probation, or cause of investigation. Prior to this, they could only refuse to register someone or else suspend the license. Senator Close questioned the use of the word "permit" but both Ms. Conn and Mr. Close indicated it was necessary.

Senator Raggio asked for an explanation of the last portion of Section 23, lines 25 through 27, page 8. Mr. Close explained they were still practicing under the umbrella of the practitioner. This provision allows them to take referrals from someone other than a physician. Then the physical therapist can do a physical evaluation and refer the person to their physician with a report of recommended treatment. Senator Raggio commented this appeared to be a departure from existing language and wanted to know it it was something new in this state. Mr. Close indicated it was a nationwide trend; and more than 50 percent of the states have moved in the same direction. In response to Senator Raggio's question, Mr. Close said when a person comes in for initial examination, the therapist would choose whether to do the evaluation or send the person to their physician to see if their evaluation warranted further treatment.

Ms. Conn stated this provision of Senate Bill No. 231 would be most helpful in a school-type situation where a teacher might ask a physical therapist to look at a child with a problem and the physical therapist can do a motor evaluation and refer the child, with his reported problems, to a physician. Senator Close inquired of the rationale for accepting referrals from someone other than a physician. Mr. Close explained under the definition a referral could come from a physician, chiropractor, psychologist, dentist, or podiatrist.

Ms. Conn stated in Section 25, the curriculum provided by the Armed Forces of the United States, has been approved by the American Physical Therapy Association. Ms. Conn also stated the language in Section 27 needed some rewording.

Senator Wilson asked about the repealers in Section 32. Ms. Conn explained one was a grandfather clause, good for one year in 1956, which is just now being removed. Some of the others were for the beginnings of some chapters removed by the Legislative Counsel Bureau.

Mr. David Hagen, representing the Chiropractic Association of Nevada, stated he was present to offer comments in opposition to Senate Bill No. 231. He said his comments will be general in nature and Dr. James will give the more technical testimony. He directed attention to Section 11, page 3, line 31 where the performing and interpreting of tests and measurements seem to be authorizing the physicial therapists to diagnose. In line 37, administering of joint mobilization would seem to authorize the hard manipulation which is in chiropractic practice. He compared Section 11 with Section 23, page 8 where a physical therapist is permitted to treat only on a referral. He said it did not seem necessary for a physical therapist to diagnose; nor did he think a chiropractor would refer a patient for manipulation to a physical therapist, or be permitted to do so under chiropractic regulations.

Mr. Hagen then commented on the education qualifications for the applicant for registration, as set forth in Section 16, page 5. He said there are none as even the high school education requirement is removed by the bill. He compared it with Section 25, page 8, where it appeared the applicant for physical therapist's assistant must be better educated than the physical therapist himself, so far as the statute is concerned. On line 38, page 8, the assistant applicant must have a high school education but the language not removed from NRS 640.240, sets forth a curriculum for the assistant but not the physical therapist.

In response to Senator Close's question earlier, Mr. Hagen referred to Section 9, page 3, on the three ways a physical therapist may get to practice (by registration, license or permit) yet Section 16 speaks only in terms of registration. Senator Close referred to page 6, line 45 about permits for graduate students and Mr. Hagen replied there was no modifying language for temporary permits in Section 9, page 3.

Senator Wilson commented he wanted more discussion on Section 11 referring to the definition of practice which is supposed to be consistent with the practice definitions of the other medical disciplines. He asked Mr. Hagen if the two questions raised in respect to the practice act were with reference to line 31 meaning diagnostic and line 31, joint mobilization, being chiropractic practice. Mr. Hagen affirmed the statement. Senator Wilson asked Mr. Close to come to the table again to help resolve the conflict on Section 11.

Mr. Close responded to the first question by stating the use of tests and measurements in physical therapy is not new. It is not used to diagnose the problem but to document the patient's condition at the time treatment is initiated, and the patient's progress under the treatment course. Senator Wilson asked if there was a difference in taking the tests and measurements and interpreting them; whether the word "interpreting" is diagnostic. Mr. Close replied it was not making a diagnosis by saying what range of motion there was in a joint as opposed to trying to diagnose a fracture of a joint. There was some more discussion on the meanings of the word "interpret" and "taking" with reference to diagnosis and Mr. Close concluded he still felt the diagnosis was being left to the referring physician.

Dr. Nancy James, representing the Chiropractic Association of Nevada, disagreed with Mr. Close. She stated interpreting is diagnosis and, if the physical therapist was performing tests, a physician asked for the results of those tests, the therapist is in effect diagnosing. The tests should be at the disposal of the physician and diagnosis left totally up to the physician. If the word "interpret" were left in as written in the law, the physical therapist could interpret the test and that would be diagnosis. Senator Wilson commented it is up to the board to determine the language used.

Senator Hernstadt asked what percent of referrals comes from physicians and what percent comes from chiropractors. Mr. Close stated he could only speak from his practice. He had only a few referrals from chiropractors. The majority came from medical doctors or osteopathic physicians.

There was further discussion by the comittee over the similarities and differences between interpretation and diagnosis. Dr. James gave the chiropractors' view. Mr. Close explained the physical therapists' definition of the terms. There was no real agreement between the two definitions.

Senator Wilson asked Mr. Close for his comments on "joint mobilization" on line 37. Mr. Close explained that physical therapists do move the joints through specific movements or range of motion exercises to the joint, but that it is not the same as a thrusting chiropractic movement. Dr. James stated the entire spine, ilium, etc., are joints and if the words "joint mobilization" are used, the physical therapists will have the authorization to move those joints as the chiropractors do. The committee discussed the difference between therapeutic exercise and joint exercise or movement, and was told by Dr. James movements are made by the patient, mobilization is done to them.

Dr. Lon Harder, chiropractor, from Carson City, explained the problem was in the changing of the definition of treatment by physical therapy in that they want to add neuromuscular testing which is basically chiropractic practice. Senator Wilson asked Dr. Harder if a patient moves his own joint was it physical therapy; but if moved by a doctor did it become chiropractic. Dr. Harder answered the basic concept of chiropractic was that articulation was frozen in a particular position. Chiropractic practice is to manipulate the joint. He said physical therapists have always done some manipulation, but now they wanted to put it in the law, which was objected to by chiropractors who wanted the old definition retained.

In response to Senator Close's question regarding the distinction between what chiropractors and physical therapists do, Mr. Close answered the difference was the thrust of motion through the joint. Dr. James indicate there are 20 or more techniques a chiropractor can use and some of them have no thrust involved. She submitted a letter from Dr. Raymond T. Kern, of the American Chiropractic Association (see Exhibit F), opposing section 11 and section 23 of Senate Bill No. 231. She further questioned whether physical therapists can take x-rays under this new bill. Senator Close explained this was covered under section 11, lines 40 and 41, page 3.

Mr. Hagen brought up some procedural questions, page 3, lines 42 and 43. He asked if the province of the courts had been invaded by this reference. Senator Raggio explained it was the subpoena language used for all boards. Mr. Hagen also raised the question

referring to page 5, lines 1 through 5, of a member or agent of the physical therapist's board having summary entry to any facility without prior notification, to inspect patients' records. He was concerned, since the physician or chiropractor may practice physiotherapy, whether the agent or board member would have access to their records. Mr. Close assured him the new language was submitted to basically certify that individuals practicing physical therapy in an institutional environment are registered by their board. There was some discussion as to whether the definition would include a chiropractor's office. After further discussion, no definite conclusion was reached except that physicians and chiropractors are legally able to practice physical therapy in their offices, with the physical therapists' board having no control over that.

Mr. Close inquired, with reference to the hearing on Wednesday, March 11, if there would be another board coming before the committee to testify. If so, he wanted to come back then. He was advised by Senator Wilson that he would be contacted by the committee secretary with that information.

With no further testimony, Senator Wilson closed the hearings on Senate Bill No. 231.

SENATE BILL NO. 193

Reestablishes real estate division of department of commerce, changes fees and duties of division and brokers.

Chairman Wilson opened the hearing on Senate Bill No. 193.

Mr. Dan Miles, fiscal analyst for the legislative counsel bureau, appeared for Senator Kosinski, who had other commitments. Mr. Miles explained Senate Bill No. 193 was the result of the Pilot Sunset Project, started by the 1979 legislature. Those agencies concerned included the real estate division of the department of commerce, the Nevada racing commission, and the bureau of community health services in the health division. In reply to Senator Wilson's question, Mr. Miles said these agencies would lapse if this or a similar bill were not processed. He explained the Sunset Project terminates an agency on a given date, requiring a review of that agency before the date, and gives the next legislative session the opportunity to continue the agency, terminate it, or change it in some way. He stated the recommendations of the subcommittee are on page 23 of the Sunset Report, and continuation of the real estate division is recommended. (See Exhibit G.)

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Senator Wilson suggested going through each section of Senate Bill No. 193 as it related to the recommendations, discussing testimony from the floor relating to those recommendations. In response to Senator Wilson's question, Mr. Miles explained there were 35 recommendations; 22 of which appear in the bill and 13 recommendations for administrative action on behalf of the division. Consequently all the legislative recommendations do appear in the bill.

Each section of the Sunset Report (see Exhibit G) was discussed as follows:

Section 1: (Recommendation 3). Mr. Miles explained the subcommittee found the Real Estate Advisory Commission was not really not advisory in their duties. Therefore, "advisory" should be deleted in all references in the bill.

Section 2: (Recommendation 13). This deletes language from NRS 645.475 describing the process of becoming a real estate broker. Mr. Robert Bowers, vice president of the real estate advisory commission, indicated the bill states a real estate broker-salesman must obtain industrial coverage but does not specifiy maintaining that coverage. Senator Wilson indicated this language was in respect to the definition of the employee. Ms. Joan Poggione, deputy administrator, real estate division, stated this provision was for the purpose of industrial insurance. Senator Wilson said this may be addressed elsewhere in the bill.

Section 3: (Recommendation 4). Mr. Bill Cozart, representing the Nevada Association of Realtors, suggested the governor might obtain and consider a list of nominees from the real estate industry, as an act of good government. Senator Hernstadt amended Mr. Cozart's suggestion with the comment the nominees should be defined as real estate licensees, as stating anyone from the industry was too broad a definition. Senator Wilson explained he meant considering a list submitted by the real estate industry.

(Recommendation 5). Mr. Miles explained this is to improve the efficiency of the division in approving or disapproving licenses, as the commission is merely performing a ceremonial function in approving or disapproving those brought before them.

Section 4: (Recommendation 4). Mr. Bowers stated the real estate advisory commission objects to a member of the public

Mr. John Crossley, legislative auditor, commented that Recommendation 4 stems from their audit report on the commission. He said one of the responsibilities of the real estate advisory commission is to conduct hearings for infractions of NRS and his concern was that the review of disciplinary actions showed them to be all against salesmen, and not against brokers. At that time all the commissioners were brokers and that is why they made the recommendation to have a member of the public on the board. He said it should be noted that Section 17 of Senate Bill No. 193 now makes the brokers responsible for the supervision of salesmen.

Mr. Cozart stated the Nevada Association of Realtors also is in opposition to placing a member of the public on the commission. The association feels the present configuration of the commission is the best way to handle the situation. He said he had contacted people from other states about having a public representative and their comments were neutral. Senator Hernstadt questioned why brokers were not censured as well as the salesmen. Mr. Cozart stated this was not always the case and gave some examples.

Ms. Joan Poggione, stated the real estate division and the department of commerce oppose adoption of this recommendation also as they would prefer all brokers on the commission for a better quality, better-functioning body. In response to Senator Hernstadt and Senator Wilson's comments, Ms. Poggione said brokers have more experience and education than do salesmen. Mr. Bowers suggested having salesmen on the commission might deter them from becoming brokers.

Section 5 and 6: (Recommendation 6). Mr. Miles explained this recommendation is to give the commission and licensees some flexibility for setting their meeting dates but retaining the requirement for at least one meeting date to be held in each district. Ms. Poggione stated the real estate division's position, on line 37, page 2, is to add two meetings annually which must be held in the southern and northern districts of the state. She said the governor's management task force suggested realignment of their offices to north and south versus east and west. Ms. Poggione submitted an outline of the bill draft (see Exhibit H). Mr. Bowers stated line 49, page 2, giving three working days notice, is very short notice for people scattered around the state to be notified of a special meeting. Ms. Poggione said the division had no position on this matter. Mr. Cozart commented he did not know why it was changed unless in response to the open meeting law requirements.

In reply to Senator Wilson's question, Mr. Cozart said the open meeting requirement was for at least three working days notice. He said they would like to see that bill changed to five working days notice.

Section 7: (Recommendation 28). Mr. Miles said the subcommittee's recommendation was amendment of the law to require a separate checking account only if the broker receives trust funds. Currently the law requires all brokers to maintain separate banking accounts for trust funds although some of them never receive trust funds. Mr. Bowers questioned whether this would eliminate the need to have a trust account as the rest of the law requires maintenance of records on whether checks are made to their trust account or a title company. He felt it should read "broker or associate broker who receives money as a broker, which belongs to others". Senator Wilson commented that paragraph would not apply at all unless they received money. He questioned the difference between broker and associate broker. Mr. Bowers said in some cases there are brokers who associate with each other in a firm. In reply to Senator Wilson's question, Mr. Bowers stated it was possible only one broker would have possession of funds.

Section 8: (Recommendation 15). Mr. Miles explained the current procedure requires two application processes to become licensed; one application to take the examination, at which time the division does background checks to determine eligibility to take the examination. Once the examination is passed the licensee is required to submit a second application for a license. The subcommittee's recommendation was that these two procedures be consolidated into one application process, with the examination given at any time, and only those passing the examination would be subject for checking out compliance with the other requirements. Ms. Poggione stated the division supports these changes as they will cut down processing time. She suggested on line 49, page 3, "to the board" be deleted as it is unnecessary since there is no longer a board but a division. Everyone concurred with that and the other changes in this section.

Section 9: (Recommendation 15). Mr. Miles explained these were the same changes as in Section 8 about consolidating the application procedure and this just clarifies the language.

Section 10: (Recommendation 29). Mr. Miles stated lines 38 and 39, page 5, were recommendations of the subcomittee that

salesmen must associate with a broker before licensing, rather than before taking the examination. The subcommittee took testimony that the change, made in 1979 that a salesman must associate with a broker before he took the examination, was inadvertent and not supported by the division, the commission or the industry. Senator Wilson asked if an applicant for a license as salesman or broker salesman had to provide a verified statement from the broker with whom he would be associated; and, if so, was it a condition of licensure. Mr. Miles replied in the affirmative, that a person could not be licensed as a salesman unless he was working with a broker. In reply to Senator Wilson's question, Ms. Poggione stated a salesman could not even take the examination without providing such information and this recommendation would change that.

Section 11: (Recommendation 5). Mr. Miles commented the subcommittee wanted a better definition of the real estate advisory commission's duties.

Section 12: (Recommendation 19). Mr. Miles explained this amendment related to extending the time limit for approval or denial of a license application and payment of the license fee. He said the actual verification of all the other requirements should be contingent upon passing the examination with rearrangement of fee payment and the required time limits for the division to have those duties performed. Sections 12 and 13 extend those time periods.

Section 13: (Recommendation 19). Mr. Miles said this section performs the same function as Section 12, stating the division shall act upon all applications within sixty days after receiving a completed license application. Ms. Poggione explained one reason for extending the time limit was that people frequently changed affiliates. In response to Senator Wilson's question on paragraph 5, Mr. Miles stated, under the new proposal, the language would be clarified with regard to notification of examination results in writing, and the parts of the examination having to do with fitness until the applicant passes the examination.

Section 14: (Recommendation 31). Mr. Miles explained this section pertained to written transcripts of commission hearings being required only if requested and the cost is borne by the requester. He said there are currently several sections in NRS 645 which require the division to produce transcripts of hearings whether needed or not. Ms. Poggione answered Senator Wilson's question on deletion of paragraph 6, lines 36 through 43, page 7, by explaining it was a duplication of NRS 645.330.

Section 15: (Recommendation 17). Mr. Miles explained this section as a partial reciprocity process which the subcommittee felt the commission would be in the best position to determine, after seeing what was going on in other states. Senator Wilson asked if the language on lines 48 and 49, page 7 was redundant and was answered in the affirmative by Ms. Poggione.

Mr. Bowers commented they objected to the language of lines 7 through 9, on page 8, pertaining to the division accepting the successful completion of the uniform portion of a national real estate examination as partial satisfaction of Nevada's examination requirements. He said he understood the bar association did not accept that portion of their national examination either. Senator Raggio explained this was only permissive language but Mr. Bowers said they would be better off without it, as it was not a viable test for Nevada applicants. There was some more discussion on this point until Ms. Poggione explained the choice of the professional testing service is the prerogative of the administrator of the real estate division, and there are basically two such services for the whole country. Senator Raggio explained most of the states, at least 27, are using this exam. Mr. Bowers explained their misgivings since both of these exams originate on the East Coast.

Senator Blakemore asked for a definition of "partial satisfaction". Mr. Miles explained there were two parts of the examination, the national uniform portion and the portion dealing specifically with Nevada. The statement pertains only to the uniform national portion of the examination.

Section 16: (Recommendation 15). Mr. Miles said this recommendation refers to the salesman-broker process and also deletes the dual application process. Mr. Bowers stated the real estate advisory commission would like to submit new language which would be NRS 645.476 (see Exhibit I). He cited an instance where a person on probation was denied a license by the commission and then granted one by the administrator. He recommended that commission decisions not be arbitrarily overturned by the administrator.

Section 17: (Recommendation 35). Mr. Miles commented this provision is to make absolutely clear the broker's duty to supervise his salesmen. Mr. Corky Lingenfelter, representing the real estate advisory commission, stated he did not disagree with the premise. However, he had some reservations about some of the decisions the commission makes.

Mr. Lingenfelter stated the language on page 8, lines 43 through 45 bothered him because it implied the real estate broker was supposed to know and supervise what his associates were doing at all times and he felt this reached farther than a human being can handle. In response to Senator Wilson's question how the situation can be dealt with where the supervising broker has general licensure responsibility for what the salesman does, Mr Lingenfelter explained the commission has dealt with that situation by disciplining the brokers. Mr. Cozart commented lines 32 through 42, page adequately state what needs to be done and lines 43 through 45 are overkill. There was general discussion on the matter of supervision, non-supervision and broker responsibility. Eventually there was general concurrence to modification of the language in Section 17 to which everyone agreed.

Section 18: (Recommendation 31). Mr. Miles stated this recommendation related to the written transcript of commission hearings and has been discussed in previous sections.

Section 19: (Recommendation 31). Mr. Miles said this dealt with the same subject. Ms. Poggione commented it was needed to protect the division.

Section 20: (Recommendation 7). Mr. Miles explained this was related to all fees going back into the general fund. Mr. Cozart said the Real Estate Association is in favor of making the real estate division self-supporting. He gave a brief resume of what it cost to run the division but said the figures were in here for the time being to see how the division budget comes out and were not the result of a time-motion study. He hoped it would be referred to the Finance Committee so the figures could be adjusted, contingent upon what final budget is approved.

Senator Wilson stated they should be able to speak to their budget in the event fees generated are not going to be sufficient. He said the division knows its impact on the budget and should address the budget in the finance committee and refer the bill. In response to Ms. Poggione's question, Senator Wilson stated the fees would be adopted into the bill and asked if Ms. Poggione would review the recommendations and amendments. Ms. Poggione submitted a handout of the proposed fees and amendments to the committee. (See Exhibit H.) Ms. Poggione explained some of the changes requested and was asked by Senator Hernstadt why the change of name and address was so expensive, when the department of motor vehicles can do it for $2.00. Ms. Poggione gave the rationale behind the request but Senator Hernstadt and Mr. Cozart

were not convinced. Senator Raggio stated the committee was against raising any fees without some real justification. Ms. Poggione explained the changes proposed (see Exhibit H). Mr. Cozart and Mr. Bowers questioned the justification for these fee changes and Ms. Poggione stated she could not speak to this point as the administrator of the division would be the one to do so. She stated two minor fees were added for each original accreditation of a course of continuing education and for each renewal of such courses.

In reply to Senator Wilson's question on paragraph 2, page 11, Mr. Miles replied the subcommittee did not want the fees for accreditation of courses to be paid by the university system.

Section 21: (Recommendations 5 and 11). Mr. Miles explained these recommendations were to narrow the scope of duties of the real estate advisory commission. Recommendation 5 changes the commission's duty with regard to setting of expenditures of educational research funds, from approval to advisory only. Recommendation 11 transfers approval authority for education contracts from the research recovery fund to the division from the commission. The subcommittee found the commission had been approving education contracts from this fund exclusively with the realtor's association and they felt this was a potential conflict of interest. There was general discussion of the amounts held in the recovery and educational research funds, with Mr. Miles explaining the wording of the changes to Senator McCorkle. In response to Senator Hernstadt's question, Mr. Miles and Ms. Poggione explained it was used for education and research expenditures.

Mr. Cozart was concerned about deletion of the commission's approval on these expenditures as he felt it had worked out as a check and balance system very well since the commission can not approve funding for any courses the division does not recommend. Mr. Bowers agreed with Mr. Cozart's comments and added this change gives total authority to the real estate division administrator and he did not agree the administrator should have that authority. In response to Senator McCorkle's question, Mr. Bowers said he wanted the wording left as it had been.

Ms. Poggione stated the division also supported retaining approval with the commission. Mr. Crossley commented their current practice was not evident at the time of their audit; that measures have been taken for a competitive proposal process since their audit report but prior to their commission meeting they did not have it.

Mr. Cozart addressed the committee on the part of Section 21 pertaining to research, and the cost of the division in operating these programs. He said the association is very much opposed to allowing for division administrative costs to be taken out of the education recovery fund and the association is in conflict with the advisory commission and the division on this point. Mr. Bowers commented the commission's position was, since it is part of the cost of education and research, it is only reasonable it be paid from the fund.

Mr. Miles remarked the governor's budget recommended moving the educational coordinator's position into this fund which corresponds to the language. Ms. Poggione stated the real estate division wished to have this position funded from the education research recovery fund. Mr. Cozart and Ms. Poggione did not agree about the percent of time spent directly on education research recovery. After further discussion, Mr. Cozart commented if this position is justified, it should be put through the general budget of the real estate division instead of cutting the cost of the division's operations at the expense of the education research recovery fund.

Section 22: Mr. Miles stated this section deletes a redundancy in the $40.00 fee for this particular fund, which was discussed earlier. Everyone appeared satisfied with the deletion.

Section 23: Mr. Miles said the subcommittee recommended the provision, that a claimant against the recovery fund must post a bond, be removed. He said there is really no way they could damage the fund, and posting the 10 percent bond is an added burden to the claimant.

Section 24: Mr. Miles explained when a claimant gets paid out of the recovery fund, the licensee involved automatically has his license revoked but can regain his license if he repays the fund the amount of the claim plus 6 percent interest. He said the subcommittee felt this rate of interest was too low and should be made more compatible with current interest rates. The committee seemed to agree with this conclusion.

Section 25: Mr. Miles stated the subcommittee recommended the legislature should enact a statutory requirement for all prospective licensees to have a fingerprint check performed. He said the federal government would not process fingerprint checks without statutory authority. Mr. Wadhams, director of the department of commerce, explained the FBI decided within the last two

years to respond only to law enforcement agencies or to administrative agencies empowered by enabling legislation to request or require fingerprint cards. Both Mr. Cozart and Mr. Bowers indicated a fingerprint check was an important source of information in dealing with applicants for real estate licenses.

Section 26: This section deletes "advisory commission" which related to the recommendations discussed earlier. Senator McCorkle asked for an explanation of the $25.00 fee at the top of page 14. Mr. Miles explained the fees were not covering the cost of regulatory activity under NRS 119. The subcommittee found a large number of applications submitted did not fall under NRS 119 and therefore no fees were derived. They recommended a small fee for every application. Senator McCorkle took issue with the wording covering this fee and Mr. Miles tried to explain the difference. Senator Raggio and Senator Ashworth commented on having to pay the application fee whether exempt or not.

Ms. Poggione stated the division wanted the language on lines 48 and 49, page 13, deleted because they do not transfer registered representatives. They are all treated as originals and the cost is $25.00. Mr. Wadhams explained the time and expense in processing a transfer is the same as processing an original application. Senator Close questioned whether they had to make a new application, get another set of fingerprints, etc. Ms. Poggione explained this did not apply to a registered representative who is likely to work for an owner/developer who does not have his own individual license, and is represented under NRS 119.

Section 28: (Recommendation 1). Mr. Miles explained this section recreates the real estate division and real estate advisory commission; and deletes those provisions in Assembly Bill No. 523 of the 1979 session which deleted the division and all references to it.

Section 29: (Recommendation 32). This section has two repealers. One repeals the requirement for each application to be accompanied by three letters of recommendation. Mr. Miles said this is an outdated requirement and the subcommittee recommended repealing it. They also recommended repealing the requirement for the licensee to carry a pocket card. He would still have a license at his place of business. Senator Hernstadt questioned why, if they were removing the pocket card requirement, all the fee sections are related to them. Mr. Wadhams explained lines 23 and 24, on page 10, delete all references to pocket cards.

Section 30 and 31: Mr. Miles explained this was repeal language to make the dates effective upon passage and approval.

Mr. Cozart submitted written testimony, presented by the Nevada Association of Realtors. (See Exhibit J.) Mr. Bowers indicated the study before the committee probably cost somewhere around $100,000. He stated that parts of the government such as this could be done with a positive approach of coming in to streamline and straighten things out, rather than taking the negative approach which took so much time and money. He said the division could have saved enough money so they would not have to raise their fees.

With no further testimony, Senator Wilson closed the hearing on Senate Bill No. 193.

SENATE BILL NO. 269

Revises educational requirements and certain administrative procedures affecting real eastate brokers and salesmen.

Chairman Wilson opened the hearing on Senate Bill No. 269, by stating they would go through each section of the bill and hear testimony as it pertained to that section.

Section 1: Mr. Cozart states this section removes NRS 645.345, on page 2, lines 47 through 49, and adds "by the commission". NRS 645.345 specifies all broker education courses offered by a proprietary school must be submitted to the College of Business Administration at the University for approval and determination whether they meet university requirements. In fact, this has never been done. Mr. Cozart added the commission and the division have the information and ability to determine whether the courses are college level. Senator Ashworth inquired, referring to lines 15 and 16, page 1, where the student would get 15 classroom hours of Nevada real estate law. Mr. Cozart explained the classes in real estate law are available through the universities, community colleges and the proprietary schools, and there are typically three semesters or the equivalent 45 hours. He said certain sections of the classes provided for prelicensing education deal directly with NRS 645, which is the real estate law.

Senator Blakemore asked how this affects the outlying rural licensees. Mr. Wadhams said wherever there is a community college, brokers and salesmen in the outlying areas could attend them. Ms. Poggione stated there is also the Unite System which hooks

up to the libraries where people can sit in on a classroom situation and converse back and forth. Senator Blakemore was much concerned about the difficulties for those in the really rural areas of the state to obtain continuing education.

Mr. Miles stated that currently two years of experience as a real estate licensee count as 16 semester credits toward broker licensing. However, he cited cases of licensees with 4 to 6 years experience in California, meeting the Nevada requirements for a broker's license, never having taken a course in Nevada real estate law. Senator Close asked why they had to and Mr. Miles commented if a broker is charged with the supervision of licensees in the State of Nevada, he should know what NRS 645 covers. Senator Close disagreed with the need for a certain number of classroom hours or credits if a person was already experienced. Mr. Miles remarked they were only saying anyone coming in from out of state who wants to become a real estate broker should be conversant with the intent and meaning of NRS 645, and perhaps the section could be reworded to more accurately reflect that intention.

Mr. Wadhams commented on subsection 10, section 1, where it refers to an applicant for an examination rather than an applicant for a license. Senator Wilson asked if he wanted the word "examination" removed from the subsection and Mr. Wadhams indicated he did, as NRS 475 referred to application for an examination which was incorrect. Senator Ashworth suggested substituting "broker's license" for "examination".

Mr. Miles stated page 2, lines 47 through 49, referred to the change in section 1 which deletes the requirement for the College of Business Administration, University of Nevada System, to approve all prelicensing courses offered by private schools. This would give that authority to the commission to promulgate the rules and regulations. Mr. Bowers asked Mr. Miles if he thought the comissioners would have the expertise to make these determinations. He wondered whether the real estate division might be better-equipped to do this. Mr. Miles agreed the division was fine with the association. The main thing was to get it out of the University System and put it in the proper perspective with the proper authorities. Mr. Bowers explained the commission might have a problem doing it for lack of budget or staff and it might be better just to give the responsibility to the division, with approval by the commission. This compromise was acceptable to all.

MEETING OF THE SENATE COMMITTEE ON COMMERCE AND LABOR
MARCH 9, 1981

Section 3: Mr. Miles explained there was only one change which was to make the language parallel.

Section 4: Senator Wilson asked if this was the same fee schedule as Senate Bill No. 193 addressed. Mr. Miles replied that it was the old fee schedule and did not address any of the proposed changes. He said lines 3 through 5, page 4, partially eliminates the pocket card. Senator Ashworth asked what the repealer was and Mr. Miles indicated it was the pocket card.

With no further testimony, the hearing was closed on Senate Bill No. 269.

BDR 9-1527 (The only introduced bill having to do with accelerated loans is SB 400, which has a BDR number of 9-853)

Senator Blakemore moved that BDR 9-1527, relating to loans secured by real property and prohibiting the acceleration of a loan upon the sale of the real property, be introduced.

Senator Raggio seconded the motion.

The motion carried unanimously.

BDR 40-855 (SB 391)

Senator Blakemore moved that BDR 40-855, relating to pharmacies, requiring certain publications, providing for registration of senior pharmacists; relating to reports and fee schedules of the state board of pharmacy, pertaining to the qualifications and examination of applicants for certification, specifying the contents and filing of prescriptions and the labeling of prescription drug containers, be introduced.

Senator Ashworth seconded the motion.

The motion carried unanimously.

BDR 54-1066*

Senator Ashworth moved that BDR 54-1066 relating to the licensing of professions, occupations and businesses; extending the period of validity of certain licenses; and adjusting the fees for those licenses to compensate for those longer periods, be introduced.

* The Library is unable to identify the bill for this BDR number. The BDR number given here is likely incorrect, as SB 208 22. has the BDR number S-1066.

BDR 54-1066 (Voting action continued)

Senator Hernstadt seconded the motion.

The motion carried unanimously.

Senator Raggio stated that Mr. Tom Erwin, an attorney in Reno, requested a bill for an amendment to NRS 642.273. Apparently the present statutes do not require the party commencing an act against a bond to give those to the state board of contractors. The board of contractors, also, does not require the provision of any potential claimants with knowledge of acts, when they are commenced against a bond. Mr. Erwin feels this should be corrected

Senator Raggio moved that a BDR be requested.

Senator Blakemore seconded the motion.

The motion carried unanimously.

Senator Wilson stated he had a request for a BDR* from the insurance commission to amend NRS 680A to change the life, health and annuity policies and counter signature law. This was also requested by the commissioner. Currently there is a requirement on property and casualty policies to be countersigned by a Nevada resident agent. The basic rationale being to see that they conform with the Nevada statutes, and the coverage is adequate with the local insurer needs. This proposal meets the same requirements, only it is incumbent upon life and health insurance policies, which are presently not under the requirement. It generates a minimum countersignature fee of 5 percent.

Senator Hernstadt moved a BDR be requested.

Senator Ashworth seconded the motion.

The motion carried unanimously.

Senator Wilson requested a BDR** for proposed amendments to NRS 628.015, the Public Accountancy Law of 1960.

Senator Ashworth seconded the motion.

The motion carried unanimously.

* SB 624
** SB 661

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With no further business, Chairman Wilson adjourned the meeting at 4:50 p.m.

Respectfully submitted,

Frances Kindred

Frances Kindred, Committee Secretary

APPROVED:

Senator Thomas R. C. Wilson, Chairman

DATE: _____

EXHIBITS, MARCH 9 MEETING

Exhibit A is the Meeting Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a copy of Mr. Tackett's testimony in opposition to Senate Bill No. 45.

Exhibit D is copies of articles, Arizona Daily Star and U.S. News & World Report.

Exhibit E is a definition, new language for Senate Bill No. 231, submitted by Ms. Pat Conn.

Exhibit F is a letter from the American Chiropractic Association, submitted by Dr. Nancy James.

Exhibit G is a copy of recommendations included in the Sunset Review.

Exhibit H is bill draft outline and fee schedule, submitted by real estate division, department of commerce.

Exhibit I is suggested language to be included in Senate Bill No. 193, submitted by Mr. Bob Bowers.

Exhibit J is a copy of testimony from the Nevada Association of Realtors, supporting Senate Bill No. 193.

EXHIBIT A

SENATE AGENDA

COMMITTEE MEETINGS

Committee on Commerce and Labor, Room 213.

Day Monday, Date March 9, Time 1:30 p.m.

REVISED AGENDA

S.B. No. 45--Empowers local governments to regulate community antenna television companies.

S.B. No. 231--Changes various provisions of law governing physical therapists and their assistants.

S.B. No. 193--Reestablishes real estate division of department of commerce, changes fees and duties of division and brokers.

S.B. No. 269--Revises educational requirements and certain administrative procedures affecting real estate brokers and salesmen.

ATTENDANCE ROSTER FOR COMMITTEE MEETINGS

EXHIBIT B

SENATE COMMITTEE ON Commerce & Labor

DATE: Monday, March 9

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
Jack Close	P.T. 2075 E. Flamingo Rd	733-7173
Pat Conn	Board of PT Examiners 80 Arrowhead Dr Carson City	882-3221
GEORGE TACKETT	NEV BELL RENO	789-8496
Bob Peterson	Teleprompter 435 Ketzke Reno	329-9731
Bill Cozart	REALTORS	329-6698
Sharon Cleary	" "	" "
Wayne Engkman	" "	
DAN Miles	LCB - Fiscal Analysis	
MIKE COOL	City of Las Vegas	
Al Christopherson	Commerce	
Jim Douglas	REHAB - DHR	4440
DAVID HAGEN	CHIRO PRAC ASSN	786-2366
Joan Poggi	Real Estate Division	885-4280
Mel James, D.C.	Chiropractic Association of Nev.	883-6000
LON L HARTER DC	Self. Chiropractor	882-0528
[illegible]	MGM - Reno	789-2203
Bob Weber	TV PIX, INC	882-2136
HEBER HARDY	PSC	885-4117
John Crossley	LCB. Audit	
RANDALL CAPURRO	P.I.A	
Jim. Wadhams	Commerce Dept	885-4260

CHAIRMAN HARDY SB 45- 3/9

EXHIBIT C

Cable TV Firm Snubs Tucson

TUCSON (UPI) — A second cable television firm in less than a week has announced plans to avoid the Tucson market because of a controversial "buy back" provision imposed by the City Council.

Warner AMEX Cable Communications Monday joined Cox Cable in refusing to bid on a franchise that will be awarded by mid-1981.

Jan Lesher, vice president of Warner AMEX, said the firm would have been required to take "a $60 million to $80 million gamble that the city would not virtually confiscate" the system within 15 years.

Warner AMEX spent $250,000 promoting its system in Tucson; Cox spent about $150,000.

The ordinance provision would permit the city to buy out the cable system of the successful bidder at the end of a 15-year period at depreciated book value rather than market value. SUN 12-14-80

In Scramble to Bring Cable TV to Your Area—

There's big money to be made in wiring U.S. homes for a broader choice in television viewing. Result: A fight to win over local residents.

One of the hottest battles in business today is the struggle to bring cable television into America's homes.

It's a fight that pits aggressive cable companies against each other in an all-out campaign to woo local residents and city officials. Their weapons: Court fights, payoffs and plenty of old-fashioned wheeling and dealing.

At stake are shares in an expanding, lucrative market. From its beginning 30 years ago as a vehicle for sending television signals to remote areas, cable coverage has spread to 22 percent of the viewing audience. Industry revenues are expected to reach 2.4 billion dollars this year and 5 billion by 1985.

The catch is that the dollars do not start flowing until a local government awards a franchise to one of the many companies that usually bid on a job. Those decisions are now being made by dozens of communities, often under storms of controversy and legal battles.

Typical is the situation in Pittsburgh, where communications giants Warner-Amex and ATC of Time, Inc., are still in court months after the franchise to bring cable to the city was awarded to Warner.

In that dispute, one local group pushed the cause of ATC with Mayor Richard Caliguiri, while another lobbied the City Council on behalf of Warner.

ATC, the loser in the tug of war, claims in its suit that the award of the franchise to Warner-Amex was "based on arbitrary, capricious, unlawful and irrelevant considerations."

A federal grand jury is looking at whether improprieties were involved in the award of the franchise, which could generate 100 million dollars for Warner in its first 15 years.

In Texas, another federal grand jury is now examining how five cable franchises were awarded in Houston last year. There, Storer Broadcasting and Warner bought majority positions in two of the franchises after they were awarded, gaining access to 80 percent of the city's 1.5 million population without ever having to preview their services for the public.

Says Robert Sadowski, who served as a cable-TV consultant to the city: "It was apparent that some of the applicants were doing nothing more than getting paper franchises that they could turn around and sell."

In addition to the grand-jury investigation, William Goldberg, a Houston developer, is suing the former mayor and City Council and the winning cable company for 2.6 million dollars. He claims he was unfairly denied a chance to provide cable television for a part of the city he helped develop.

Buying support. Elsewhere, observers complain that cable companies are resorting to "rent a citizen" tactics by offering prominent residents shares in their firms in exchange for support. In Fairfax County, Va., for example, a former county supervisor could earn several million dollars—without having to invest a cent of his own money—from a 7 percent interest in a company bidding on a Fairfax franchise.

Says a lawyer involved in a franchise battle in another Washington, D.C., suburb: "If there's a cable fight, and you don't have a 2 percent interest in somebody's bid, you're a nobody."

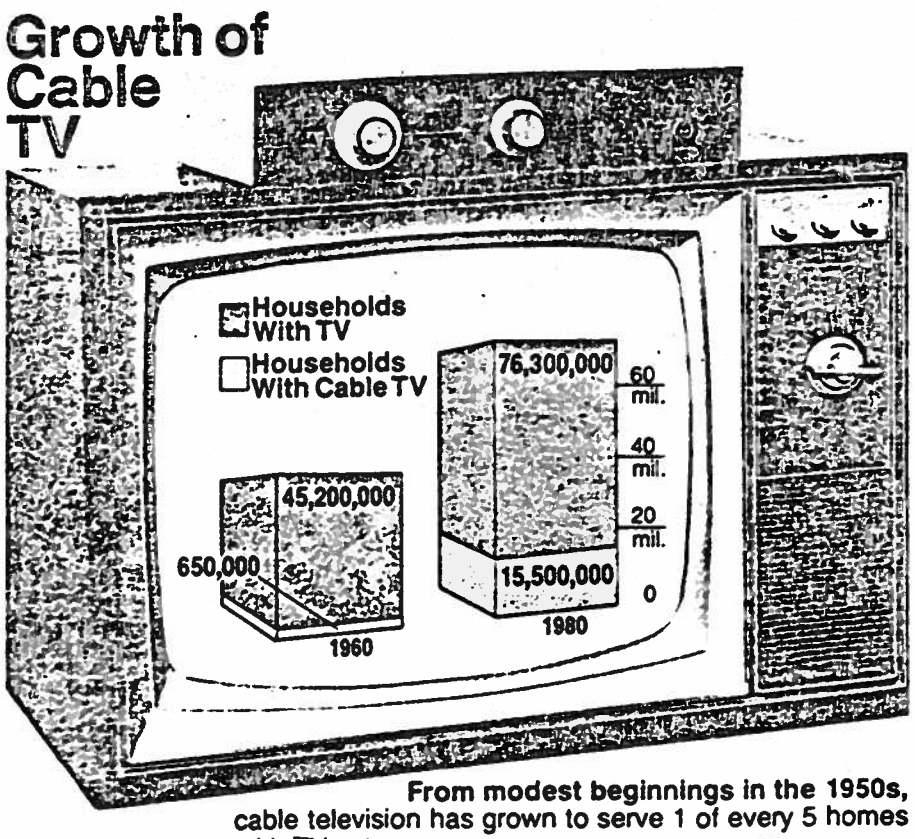
Critics charge that the rent-a-citizen idea hurts the general public, since franchisers will try to make up for the shares given local supporters through higher charges to cable subscribers.

In many small communities, the competition can pit friend against friend, making decisions all the more troublesome. For example, in Leesburg, Va., citizens lobbied that town's five-member City Council on behalf of five competing cable firms. Recalls Councilman G. Dewey Hill: "In my case, my landlord was on one of the cable-company boards. As it turns out, I voted against his company. It was one of the toughest decisions I've ever had to make."

Millions at stake. While the rent-a-citizen practice is not illegal, both cable operators and local officials admit the potential for corruption is great. A Pittsburgh journalist recalls how he declined a "satchel full of bills" offered by officers of one company in return for his influence.

Explains one cable-company officer: "We're talking about projects that range in costs from 10 million to 60 million dollars. What's another $100,000 under the table?"

Industry observers also are concerned that local citizens are being ex-



From modest beginnings in the 1950s, cable television has grown to serve 1 of every 5 homes with TV sets. USN&WR chart—Basic data Television Digest: Federal Communications Commission

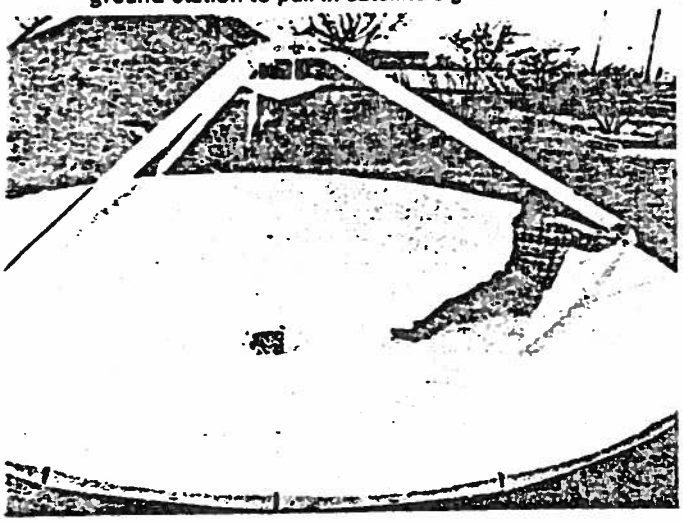
ploited by cable operators who make promises about glittering services and equipment, but fail to deliver. Says Harold Horn of the Cable Television Information Center: "The potential for bait and switch is great."

Often, residents and local officials are confused by all the services promised in cable packages. In Dallas, for example, six cable companies are competing for a franchise—each with a different array of services for less than $10 a month. However, extras offered by some of the companies can push the monthly charge much higher. One 47-channel deluxe package, which costs $25 monthly and $55 for installation, brings in all the Dallas and Fort Worth stations, FM-radio stations, religious stations, Spanish-language broadcasting, Home Box Office, an all-movie channel and the Atlanta and Chicago "superstations," which beam their programs via satellite.

Some concerns also try to sweeten their packages by offering free use of TV studios, program-production equipment and the services of technicians. That is in addition to the normal requirement to provide a public-access channel for displaying public notices.

Faced with these pressures from cable operators, some local officials are beginning to fight back. In Fort Worth, the City Council passed legislation forbidding contacts between council members and franchise bidders.

Officials in Iowa City passed a similar rule. A state law in Iowa also requires that the services of competing cable firms be approved by 50 percent of those voting in a special election. City councils then make the final choice.



Stringing cable can be expensive—as much as $14,000 a mile for overhead wires. Below, a worker installs a ground station to pull in satellite signals.

Some communities, too, are doing a little arm-twisting of their own. During the bidding process in San Antonio, Tex., the City Council asked cable companies for an advance on future franchise fees and got a needed 1 million dollars for street and sewer repair from United Artists-Columbia Cablevision, the franchise winner.

Iowa City's council members successfully sought money from cable operators to help build local studios for public-access programing. And in Grand Rapids, Mich., officials insisted that the cable firm install a line to control traffic lights and help city engineers monitor busy intersections.

The tough competition among cable operators has brought the industry from its infancy in 1952, when 70 systems served 70,000 customers, to the current market of more than 15.5 million subscribers served by 4,225 operators.

Yet to be wired are most of the nation's big cities, including Los Angeles, Washington, D.C., Baltimore, Boston, Chicago and Atlanta.

The staggering costs are a major roadblock. The price tag for laying an underground cable can range from $25,000 to $50,000 a mile. Stringing cable on telephone or power poles costs about $14,000 a mile, and construction of a single ground station to receive satellite signals is about $48,000. It would cost an estimated 70 million dollars to wire Washington, D.C. Added to these outlays are the costs of maintaining delicate equipment. High winds or a thunderstorm often can knock a cable system off the air.

Despite these problems, there is no shortage of companies bidding for franchises. Leading the field in the first quarter of this year were: Teleprompter, with net income of 5.7 million dollars: Storer Broadcasting, 3.6 million; Viacom, 3 million, and UA-Columbia Cablevision and TeleCommunications, Inc., 1.2 million each. These firms, along with Cox Broadcasting, Time, the Times Mirror Company, Sammons and Warner-Amex, account for 40 percent of the market.

Consumers served by these and other companies enjoy a wide range of viewing choices. Cable systems, which can bring up to 64 channels, typically offer uncut movies, 24-hour sports channels, gavel-to-gavel coverage of Congress, religious channels and children's programing. Some even offer home security and medical-alert services that link homes with police and emergency teams.

In addition, local officials can look forward to using public-access channels to televise city-council meetings and deliver free TV messages.

Younger watchers. It is an attracting market for advertisers as well. Surveys show that cable-TV households are larger and younger than those without cable. In addition, there is more TV watching in cable homes.

Industry analysts predict that 35 percent of the nation's homes will be equipped with cable television by 1985. That spurt, they say, will make even tougher for the three major commercial networks to hold on to their viewers. This year, cable advertising revenues are expected to total 12 million dollars. By 1989, says Paul Kagan of Kagan Associates, a Carmel, Calif., investment firm, revenues will climb to 150 million dollars.

Behind cable's surging popularity are the growing number of communications satellites and the steady elimination of cable regulations by the Federal Communications Commission. The latest FCC actions removed restrictions on the number of distant TV stations a cable operator could offer subscribers and allowed operators to relay more syndicated programs, such as the Phil Donahue Show, Merv Griffin, the Muppets and other favorites.

Such developments, say observers, are sure to stimulate more public demand for cable television and sharpen the competition for new franchises. □

By RONALD A. TAYLOR

744

City covets spoils of cable bidding war

By LINDA ROACH MONROE
The Arizona Daily Star

About a year ago, Assistant City Attorney Robert Hersch began poring over the pounds of material he needed to review before writing Tucson's cable television ordinance.

The [illegible]e American Atomics Inc. radiation [illegible]ase monopolized his time for much of the spring and summer.

Now Hersch is back at the cable TV job, going through the paper scattered in his office and home and pasting ideas in ordinance-order onto yellow legal pads.

He's also being visited by representatives of some of the 23 firms eager to get Tucson's cable TV license. Those visits have convinced him that Tucson is an attractive cable TV market, and he wants to keep it that way.

"I would like to use the marketplace to course them to outbid each other," said Hersch in a recent interview.

"That will be a lot better than any person or any government organization sitting down and saying, 'This is what you must provide.'"

San Antonio, Texas, provides an example of just how far cable TV firms will go to win a franchise. As city officials sat back and watched recently, two firms bid back and forth for the San Antonio franchise — in spite of the fact that the winner would have to spend $35 million to install cable in the city.

The winning proposal offered rock-bottom subscriber fees, gave the city a $1 million advance on its franchise fees, set up a $150,000 scholarship fund for minority media students and promised millions of free channel space and production assistance to individuals and non-profit groups.

Though Tucson isn't as big as San Antonio, the prospect of such highly competitive bidding — which would benefit the city — appeals to Hersch.

Minimum requirements in Hersch's draft ordinance — which is likely to go through several revisions before final adoption — include:

- 35 total channels, with two-way capability. The two-way cabling would allow the system to be adapted for such uses as providing residential burglar and fire alarm protection and allowing citizens to register responses to City Council proposals.
- One public-access channel, one governmental channel and one channel available to area educational institutions. The cable operator would also have to provide studio facilities for the access channels, but could charge "reasonable" fees for studio use.
- A requirement that the firm provide "dedicated cable" — similar to closed-circuit TV — for hospitals, schools and other institutions that request it and are willing to pay for it. [illegible]
- A "strong emphasis" that, over the 15-year license, the operator must add more channels as the growing city needs them and must otherwise upgrade the system as new technology becomes available.
- A commitment from the firm on what subscribers would be charged. Hersch said he might also recommend that the firm promise to hold that rate for the first 18 months to two years of the license.
- A timetable for installing cable throughout the city, which if not met could result in loss of the license. Hersch said he hasn't settled on exact figures, but expects that the system would be complete within 48 to 50 months of the awarding of the license.
- A requirement that, if utilities in a neighborhood are underground, the TV cables also would have to be.
- A lengthy portion to protect subscribers' privacy. The cable firm would be prohibited from releasing information on individual preferences — what programs a person watches, for instance — without written permission. Overall percentages for the area could be revealed.

The main problem Hersch wants to avoid here is slow installation of cable, he said.

To assure compliance, he plans to recommend that the city set up a cable commission of seven cable consumers, headed by a paid, non-voting executive director who would oversee day-to-day progress of construction. The commission would handle consumer complaints and would also review the system's operation every two years.

The cost of the commission would be paid for through the license fee paid to the city. Under federal rules, the city can count on 3 percent of the cable firm's gross revenues, but Hersch said he hopes to win a federal waiver to collect 5 percent. Ultimately conservatively, the city could ultimately be collecting $120,000 to $200,000 annually from the cable firm.

Hersch would like to see the City Council stay out of rate regulation. That's a politically charged area that makes some City Council members uncomfortable: If raising water rates can cause a recall election, what about raising the price of "Laverne and Shirley" reruns?

Yet, without city approval of rates, would the cost of cable go sky-high? Hersch thinks the answer is no, because the firm must keep customers happy.

Hersch has finished a first rough draft of the ordinance, and plans to spend the next month revising it before sending it off for review. Copies will go to Washington, D.C., for review by the Federal Communications Commission and the Cable Television Information Center, a non-profit branch of the Urban Institute. The FCC review is free and the center's review will cost $600.

The only other direct cost of the ordinance anticipated so far is the less than $1,000 budgeted for bringing Howard Gap[illegible] general counsel to the Cable Television Information Center, to [illegible] the City Council today.

The reviews will take [illegible] weeks, then the revised ordinance will be sent to the council for action, probably before December, when the new council takes office, Hersch said.

However, some council members say they expect to hold study sessions on the draft ordinance before it even returns from Washington.

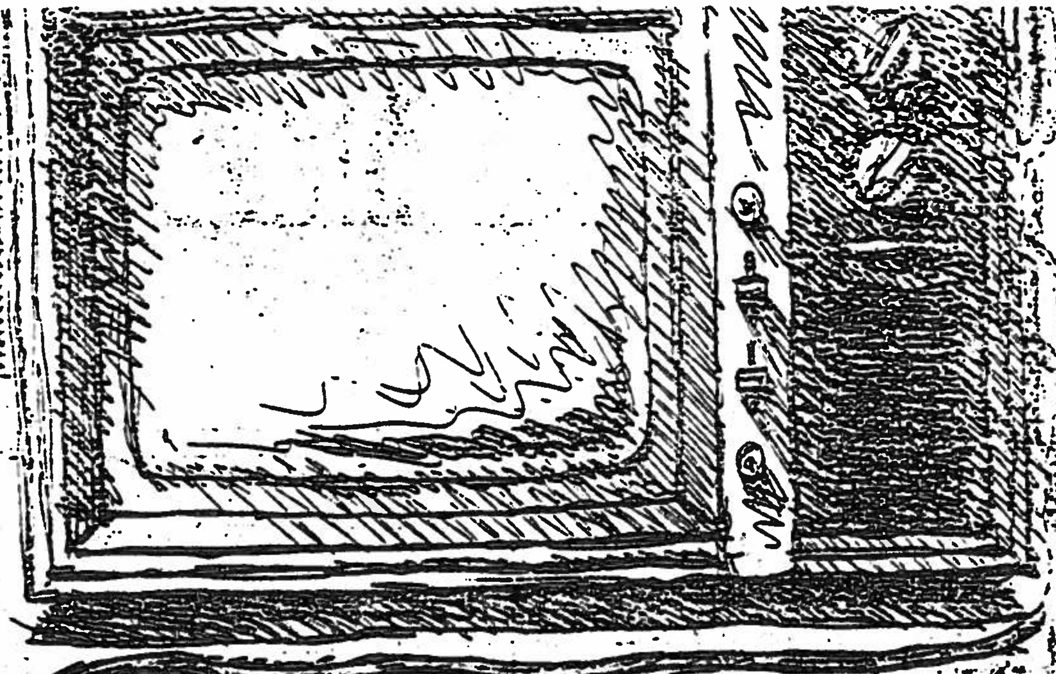
In the meantime, a committee of city employees is meeting to recommend a consultant to write the city "request for proposals" soliciting cable bids. The consultant would also review the bids as they come in and make a selection recommendation to the City Council. Hersch said he expects the winner to be chosen by March.

Hersch estimated a minimum cost for the consultant at $35,000, but the winning cable firm would be required to reimburse the city for that cost.

Industry's most eligible firms vying for hand of fair Tucson

By LINDA ROACH MONROE

[illegible] already been made or are in the process [illegible] franchises, working with

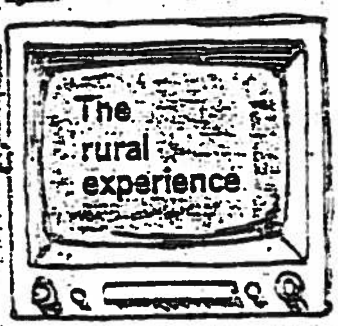


Southern Arizona viewers have a choice: get cable or forget TV

By HOWARD FISCHER
The Arizona Daily Star

For most Southern Arizona residents cable television is more than a luxury. It's a choice of paying for the service or having no television at all.

It's a simple matter of geography: A good percentage of the area's residents live outside the range of good television signals.



Cable television was born at the same time as live television in Southern Arizona, with the first system being set up in Bisbee in 1952. The system was basically a community antenna, with subscribers getting the benefit of a firm's hilltop antenna to bring in nearby stations.

Then, about six years ago, came microwave transmissions of high-quality images over long distances. Now six firms serve more than 24,000 subscribers in Cochise, Santa Cruz and Graham counties.

For the first time residents were able to see not only the Nogales station, which had been blocked by mountains, but stations in cities far beyond the range of normal signals.

These independent stations — KZAZ in [illegible], KPHO in Phoenix, KTLA and [illegible] in Los Angeles — soon acquired a [illegible] of their own [illegible] the [illegible] stations.

[illegible] Brown, manager of cable systems for Jim R. Smith Co., says the growing use of satellites within the last two years means even better cable service for Southern Arizona.

Brown's firm serves Sierra Vista, Fort Huachuca, Huachuca City, Tombstone, Benson and Willcox and is planning to begin service in Green Valley by the end of the year.

Richard Smith, manager of Douglas Television Co., said the advent of satellites not only brought about the option of having TV signals from far away, such as the Oakland, Atlanta and Chicago stations his system has, but resulted in a whole new type of programming.

The first effort was Home Box Office, a service available to cable subscribers for an additional monthly cost of $8 to $8.50 that brings first-run movies, concerts and stage shows into the home. County cable operators report from 25 to 47 percent of their subscribers also have HBO.

The Douglas system has also taken advantage of other satellite-offered programming, including the Spanish International Network, several hours a day of children's programming through the Nickelodeon service, live broadcasts from the House of Representatives, some programs from the Christian Broadcasting Network and a running news update from United Press International, all part of the monthly cable service fee.

Beginning next month the firm hopes to offer Galavision, a Spanish-language equivalent of HBO. The proposed Galavision service will cost another $7.50 a month, with an installation charge if not put in the same time cable service is requested.

Only one of the cable companies operating in Southern Arizona has provided any significant public access to its system.

Douglas Television Co. regularly broadcasts City Council meetings as well as speeches by local politicians. Smith says he will also provide, at no charge, time for any resident [illegible] his or her views.

[illegible] owner of Bisbee Cable Television, [illegible] five years [illegible] local newscasts on one channel. He says they lost interest and Pavlovich has since rid himself of his color TV camera.

Brown says his company has no immediate plans to do public-access programming.

He claims that to do a first-class job could require a $500,000 investment in setting up a studio, buying equipment and staffing. At present he says the demand does not warrant such an expenditure.

But Brown, who also is mayor of Sierra Vista, points out that cables were installed in the recently-completed city hall that will allow for live council broadcasts when the time comes.

Local communities could have more control over the cable systems, although so far all have refused to accept it. The key is a ruling by the Federal Communications Commission that all cable systems must have a franchise from the local governmental agencies to use the streets and alleys.

This gives the city councils and the county Board of Supervisors a club they could use. Regulatory options include the setting of rates, public access, mechanisms for customer complaints as well as standards for repair response time.

But lawyers for the cable companies successfully argued that since the franchises were non-exclusive — another firm could, if it had the money, string cable and go into competition — the local agencies should not get into the regulatory business.

The cost of having cable television in a home in Cochise County varies with location and the type of service wanted.

Both the Bisbee and Douglas systems charge $6.50 a month for basic service. Installation is $15 in Douglas and $20 in Bisbee.

Residents of Sierra Vista, Huachuca City, Tombstone, Fort Huachuca, Benson and Willcox, all served by the Sierra Vista-based firm, pay [illegible] a month and a [illegible] installation fee.

Cable systems also offer FM radio [illegible] [illegible] tional connection for their stereo [illegible]

Industry's most eligible firms vying for hand of fair Tucson

By LINDA ROACH MONROE
The Arizona Daily Star

The list of at least 23 firms interested in Tucson's cable television license reads like a Who's Who of the fast-growing cable television industry.

Ten of the 15 largest cable firms in the United States have expressed an interest in the license to serve Tucson, considered one of the last prime urban markets up for grabs.

The combination of the Tucson market's attractiveness, the national firms' money and the influence of local partners they are recruiting could lead to "a real dogfight," as one potential participant puts it, over Tucson's license.

The license winner will have to spend millions of dollars — one firm estimates $2.5 million to $20 million for cabling and installation alone — but recouping its costs could conservatively be making a 20 percent annual return on the total investment.

If only one-third of Tucson's households buy cable at $7 each and if a third of those subscribers buy extra features through "pay TV" at $5 more a month, the cable firm's annual revenues would be about $4.4 million.

Firms also are hoping the Federal Communications Commission will deregulate cable almost entirely, making the profit potential of cable even greater.

One way large national firms try to increase their chances of getting a cable license is by linking with influential locals who can help the firm put on a good face for city fathers. One cable official called the practice "rent-a-civic-leader."

"The right local partners are about 25 percent of the battle," said Paul Alden, vice president of Warner Cable Corp., which has been working throughout the summer to put together just such a local coalition.

At least six such arrangements have already been made or are in the process in Tucson. Those include:

• Warner Cable Corp., the No. 4 firm in the country, which has hired former city councilman Schuyler "Sky" Lininger as a paid consultant. The committee of local persons who will advise Warner and perhaps invest in the project includes former Arizona House Speaker John Haugh; Ben Morales, the former Democratic mayor of South Tucson; and attorney Dino DeConcini, former Democratic candidate for governor and brother of U.S. Sen. Dennis DeConcini, D-Ariz.

• Cox Cable Communications Inc., the No. 5 firm, which has a board of local investors that includes Levy's president Henry Quinto; car dealer R.B. "Buck" O'Rielly; Bill Naumann, chairman emeritus of M.M. Sundt Construction Co.; and William J. Woestendiek, executive editor of The Arizona Daily Star.

Woestendiek said his interest is "strictly as a private citizen" and is not connected to the Star.

The Cox group has hired Greg Lunn, 1978 Republican candidate for the state Senate, as the coordinator of its effort.

• American Television & Communications Corp., a subsidiary of Time Inc. and the No. 2 cable firm in the country, working as Tucson Cablevision Inc. with a local group which has been the most public about its desire for the Tucson license.

It is composed of E. Lee Druckman, who helped build the nation's largest cable system in San Diego; real-estate developer Roy P. Drachman; radio broadcaster Frank Kalil; radio station president Howard Duncan; Edwin G. Richter Jr., former owner of KGUN-TV; cable engineer Ronald Morriss; and Mary Peachin, director of the transportation office at the University of Arizona.

• American Cable Television Inc., which holds the Tempe and Phoenix franchises, working with former Ford presidential aide Warren Rustand, attorney Lowell E. Rothschild and KXEW-AM part-owner and general manager Ernesto Portillo.

• Cablecom-General Inc., the No. 14 firm, working with attorney Myles C. Stewart. Stewart declined to reveal the names of potential local investors because he said federal securities laws prohibit it.

• A group being coordinated by Paul E. Dunn, an investment executive with Blyth Eastman Dillon & Co. Inc. here. Dunn declined to reveal the name of the national firm with which he is dealing.

A seventh interested local group, unlike the others, plans to keep at least 60 percent of the ownership local, said former county Republican Party chairman Charles King, coordinator for the group. He would not reveal the names of other Tucsonans involved in that effort.

What that group and the six others have in common is the influence of politically or economically notable Tucsonans.

Publicly and privately, City Council members say they fear that what the large firms can't gain through their lobbying money, their local allies might be able to gain through old friendships and political alliances.

"But I would think that if we draw the ordinance up right we'll take the politics out of it, and I think it's better if we do," said Councilman Roy Laos.

About speculation that there might be a move to push the ordinance through before the November election, Republicans Laos and Cheri Cross both say they won't go along with any such move. Neither should it be adopted by a lame-duck council between the election date and the day the new council members take office, Laos said.

SB45

EXHIBIT D

MR. CHAIRMAN AND COMMITTEE MEMBERS

FOR THE RECORD MY NAME IS GEORGE TACKETT, ADMINISTRATION MANAGER - PUBLIC AFFAIRS FOR NEVADA BELL.

I WISH TO TESTIFY IN OPPOSITION TO SB45. THE TRANSFER OF COMMUNITY ANTENNA TELEVISION COMPANIES FROM THE JURISDICTION OF THE NEVADA PUBLIC SERVICE COMMISSION TO LOCAL JURISDICTIONS WILL CREATE SEVERE ADMINISTRATIVE PROBLEMS. OUR COMPANY AND OTHER UTILITIES, REGULATED BY THE NEVADA PSC, HAVE POLE ATTACHMENT AND CONDUIT AGREEMENTS WITH MANY CATV COMPANIES. UNDER EXISTING STATUTES WE ARE UNDER A COMMON JURISDICTION WHICH HAS BOTH THE ADMINISTRATIVE AND TECHNICAL STAFF TO REVIEW AND RESOLVE MATTERS OF INTERACTION BETWEEN CATV'S AND THE UTILITIES.

UNDER THIS BILL INESTIMABLE COSTS AND BURDENS WILL BE PLACED UPON THE UTILITIES TO DEFEND CONTRACT PROVISIONS, ENFORCE CORRECTIONS OF NATIONAL ELECTRIC SAFETY CODE VIOLATION AND ENFORCE CONSTRUCTION TO ITS STANDARDS, DEFEND FEES CHARGED UNDER CONTRACTS AND DEAL WITH SEVERAL REGULATORY BODIES IN ADDITION TO THE PUBLIC SERVICE COMMISSION.

I DO NOT BELIEVE THIS BILL IS IN THE BEST INTEREST OF ALL PARTIES CONCERNED AND ASK THAT YOU OPPOSE ITS PASSAGE.

THANK YOU FOR THE OPPORTUNITY TO EXPRESS MY VIEWS.

BDR 54-297

to determine whether any person who is not registered or licensed pursuant to this chapter is practicing in the facility as a physical therapist or physical therapist assistant

SB 231 3/9

AMERICAN CHIROPRACTIC ASSOCIATION

EXECUTIVE OFFICES 2200 Grand Avenue Des Moines, Iowa 50312

March 4, 1981

EXHIBIT F

Harold G. Holmby, D.C.
644 Plumas Street
Reno, NV 89509

Dear Dr. Holmby:

Although your inquiry of February 26 was addressed to the legal department, it has been referred to me because it deals with the professional aspect of the practice of chiropractic.

In my opinion, there are two dangerous sections in Senate Bill 231 before the Nevada legislature, viz. Sec. 11 and Sec. 23. I have highlighted these two sections on the enclosed copy.

The new wording in Section 23 raises the Physical Therapist from the technician status, providing physical therapy on the prescription of and under the direction of a physician, to that of an independent "portal of entry" health care provider. The wording makes a sham of referral.

The new wording of Section 11 permits the Physical Therapist to perform and interpret a wide range of diagnostic procedures including x-ray. Even more dangerous is the specific authority to perform "joint mobilization" which they didn't have before. This could be construed to be a hazard to the public health because the amendment does not require either new or old Physical Therapists to show evidence of additional education or examination which would qualify them for the added diagnostic and therapeutic responsibilities.

To summarize the situation, the bill will create a new category of independent health care practitioner that can do everything that a chiropractor can do except call himself one. Don't be lulled into a sense of false security by the specific authority to refer to a P.T., that could be a cute trick to gain the support of the "straights".

You have a lot more to lose by the passage of Section 11 and 23 than you will gain. Think about it, why would there be a need for chiropractors in hospitals, HMOs, the VA or the military, if the P.T. could fill the role model?

Good luck. You do have a major problem.

Very truly yours,

Raymond T. Kern

Raymond T. Kern, D.C.
Director, Professional Affairs

RTK/srr
Enc.
cc: Board of Governors

750

EXHIBIT G

SUNSET REVIEW

Bulletin No. 81-21

LEGISLATIVE COMMISSION

OF THE

LEGISLATIVE COUNSEL BUREAU

STATE OF NEVADA

December 1980

3. What efforts have been made to address the problems?

4. Have alternatives to licensure been considered?

5. Will the public benefit from regulation of the occupation?

6. Will regulation be harmful to the public?

7. How will the regulatory activity be administered?

8. Who is sponsoring the regulatory program?

9. Why is regulation being sought?

The subcommittee noted that at the 1979 Session, legislation was approved which authorized licensing of audiologists and speech pathologists. The subcommittee made no determination as to the advisability of licensing these professionals, but did, however, find through a review of the minutes of the Senate Commerce and Labor Committee and the Assembly Commerce Committee that only a few of the questions suggested by the authors of this CSG publication were answered either in testimony or materials provided by the professional groups.

The subcommittee only suggests, therefore, that these standing committees consider the use of these questions as a guide to help them determine if future occupational licensing requests are justified.

IV. Real Estate Division and Advisory Commission

A.B. 523 terminates on July 1, 1981, the Real Estate Division, the Real Estate Advisory Commission, all provisions of NRS 645 (Real Estate Licensing Law) which relate to occupational licensing of real estate practitioners and all provisions of NRS 119 (Land Sales Act) that relate to the Real Estate Division.

Regulation of real estate brokers and salesmen is a joint responsibility of the Real Estate Division of the Department of Commerce and the Real Estate Advisory Commission. The Division also regulates certain subdividers, land sales and escrow agents. The Division investigates complaints, processes applications for licensure, conducts background checks, examines applicants and recommends licensees to the Advisory Commission. The Commission approves licensees, promulgates regulations, holds disciplinary hearings on violations of licensing laws and regulations and approves

certain education expenditures for licensees. Currently, over 10,000 persons are licensed in Nevada to practice real estate.

The Legislative Commission's Subcommittee on Sunset Review requested both a performance audit from the Legislative Auditor and a sunset review by the Fiscal Analysis Division of the Legislative Counsel Bureau on the Real Estate Division and Advisory Commission. The Legislative Auditor's report included findings and recommendations on the compliance section of the Division and the Advisory Commission. The Fiscal Analysis Division report dealt primarily with the other functional areas of real estate regulation, including administration, licensing, education, education expenditures and land sales. Many of the recommendations of the subcommittee originated with these reports. For an expanded discussion of each of these findings and recommendations a reference is given to the appropriate staff report which are included as appendices in this report. The staff's findings on the specific review criteria in A.B. 523 can be found in Appendix B, pages 34 to 40. The subcommittee accepts and incorporates these findings on the review criteria as a part of its report. In addition, the subcommittee reviewed and included several recommendations of the Real Estate Division and Advisory Commission. The following are the recommendations of the subcommittee:

Findings and Recommendations

Recommendation 1: The 1981 Legislature should repeal those provisions of chapter 688, 1979, that terminate the Real Estate Division, Real Estate Advisory Commission and sections of NRS 645 and 119 and continue to regulate real estate practices and certain land sales activities (Appendix F, BDR 54-116).

The subcommittee concluded, after review of the reports of the Legislative Auditor and Fiscal Analysis Division and hearing testimony of the Real Estate Division, Department of Commerce, members of the Advisory Commission, representatives of the industry and general public, that the absence of regulation would create a potential for substantial economic loss resulting from deceptive or fraudulent business practices and from unprofessional and incompetent real estate practitioners. The public depends on competent and expert brokers and salesmen to handle simple and complex real estate transactions and regulation is warranted to protect the public economic welfare.

The subcommittee also found that the provisions of the Real Estate Licensing Law (NRS 645), the Land Sales Act (NRS 119) and the activities of the Real Estate Division and Advisory Commission do act to protect the public from potential loss and help insure that only competent and professional persons are allowed to practice. In addition, the subcommittee found that the Division and the Advisory Commission have generally acted in the public interest and that the cost of regulation is not excessive considering the potential for loss in the absence of regulation.

The subcommittee did find many areas of the regulatory process, however, that require legislative or administrative action in order to increase the effectiveness and efficiency of the Division and Advisory Commission. These findings and recommendations are included here in the balance of this section.

Recommendation 2: The Legislature consider restructuring the Real Estate Advisory Commission to include one public member (Appendix F, BDR 54-116).

NRS 645 currently requires that all members of the Advisory Commission must have been actively engaged as a real estate broker in Nevada for at least three years in order to be eligible for appointment. The Legislative Auditor recommended and the subcommittee agreed that the Commission should include one member of the general public. The subcommittee found that the purpose of the Advisory Commission is to protect the public and that inclusion of a public member is entirely consistent with that purpose. In addition, the inclusion of a public member would bring new perspective to the Commission and help create public confidence in the real estate licensing process. The subcommittee noted that this recommendation was consistent with earlier efforts of the Legislature to place representatives of the general public on other boards and commissions (see Statutes of Nevada, Chapter 530, 1977). The subcommittee also recommended that the membership of the Commission be maintained at five and rejected a recommendation to add a real estate salesman to the Commission since responsibility to the client rests ultimately with the broker and the subcommittee is recommending that a statutory provision be created to place on the broker a "duty" to supervise his salesmen (see recommendation 35 and Appendix A, page 28.10).

Recommendation 3: The Legislature amend NRS 645.010 and 645.050 to delete the word advisory when applied to the Commission (Appendix F, BDR 54-116).

The subcommittee found that most of the duties of the Advisory Commission were in fact not "advisory." The Commission promulgates regulations, conducts disciplinary hearings, approves who can sit for examinations, approves real estate courses, approves licenses and approves certain education fund expenditures. The use of the word "advisory" does not properly describe the role of the Commission and may in fact be deceiving or misleading to the public as well as licensees (see Appendix A, page 28.11).

Recommendation 4: The Legislature amend NRS 645.050 to delete the provision that the Governor must consider a list of nominees from the Nevada Association of Realtors when making appointments to the Advisory Commission (Appendix F, BDR 54-116).

Although the Governor may want to consult the Nevada Association of Realtors when making appointments to the Advisory Commission, the subcommittee felt it was inappropriate to require such a procedure in statute. The subcommittee noted that the Association does not represent all licensees in Nevada and that all members of the current Advisory Commission are members of the Association, several had been state officers in that organization and one is currently a national officer. Although the statute does not require the Governor to appoint nominees of the Association, the procedure creates the appearance of control by the Association over the Commission and tends to narrow the choices for appointment to exclude those licensees who are not members of the Association.

Recommendation 5: The Legislature amend NRS 645 to narrow the scope of duties of the Advisory Commission to promulgating regulations and conducting disciplinary hearings required by law. The Commission's responsibilities to approve who may sit for examinations and final approval of licensees should be given to the Division and the requirement for final Commission approval of education fund expenditures should be deleted. The Commission should maintain an advisory role only in education fund expenditures (Appendix F, BDR 54-116).

The subcommittee found that Commission approval of who can sit for examinations and final approval of all licensees were routine matters frequently handled in telephone conference meetings. The Division currently performs all the licensing functions necessary under regulations of the Commission and procedures exist for potential licensees to appeal decisions of the Division to the Commission should that be necessary (see Appendix A, page 28.13).

The subcommittee also found that Commission approval of education fund expenditures presented a potential conflict since these moneys had gone exclusively to the Nevada Association of Realtors for educational classes up until fiscal year 1979-80 and all members of the Commission are members of the Association and were nominated for appointment by the Association. In fiscal year 1979-80, for instance, the Commission approved contracts with the Association in the amount of $154,500. Actual payments under this contract totaled $147,132 as of September 19, 1980, which included $21,800 for Association consulting charges and $29,258 for Association staff salaries, including the salary for the Executive Vice President of the Association. Payments also included charges for the actual cost of classes, such as, speaker fees, facility and equipment rental and class materials. The subcommittee feels that payment for consulting charges and Association staff time creates the appearance that the state is subsidizing the Association. The subcommittee feels that even the appearance of such a subsidy creates a potential conflict between the interests of the state and the interests of the Association. The subcommittee recognizes that the Division and the Advisory Commission have begun to implement a competitive proposal system for the letting of education contracts in fiscal year 1980-81, however, it still believes that the responsibility for education expenditures should be given solely to the Division and the Commission should only advise the Division on matters of curriculum.

Recommendation 6: The Legislature should amend NRS 645.150 to delete specific date requirements for Commission meetings in the Eastern and Western Districts (Appendix F, BDR 54-116).

NRS 645.150 requires that the Commission hold two regular meetings, one on the second Monday of January and the other on the second Monday of July, each year. One of these meetings must be held in the Eastern District and the other in the Western District. (The Eastern District includes Clark, Elko, Eureka, Lander, Lincoln, Nye and White Pine Counties.) The subcommittee feels that statutorily setting the dates of meetings places an unnecessary burden on the Commission and may even be inconvenient for Commission members, licensees and the general public. The subcommittee agrees, however, that the requirement that at least one meeting each year be held in the Eastern District and one in the Western District should be retained (see Appendix B, page 14).

Recommendation 7: The Legislature should adopt a fee schedule that covers the cost of regulation based on the budget approved for the agency for the next biennium (Appendix F, BDR 54-116).

The cost of regulation of real estate practitioners and land sales is supported by general fund appropriations. In turn, all real estate licensing fees and land sales fees are deposited in the general fund. The review prepared by the Fiscal Analysis Division revealed that fees collected by the agency were less than the cost of regulation paid from the state's general fund. During the 1978-79 biennium this deficit was $104,000 and, based on the 1980-81 biennial budget and agency revenue estimates, this difference is anticipated to grow (see Appendix B, page 12).

The subcommittee feels that licensing and related fees should at all times cover the cost of regulation. The subcommittee noted that all other occupations regulated by the State of Nevada are self-supporting from fee revenue and that the real estate broker license fee in Nevada has not been increased since 1956 and the salesman license fee has not increased since 1963. When expenditures exceed revenues, the cost of regulation is shifted from the licensee and the buying and selling public to the general public.

The Subcommittee recognizes that the Division is in the process of preparing their biennial budget using the zero-based budgeting concept and that this exercise plus the implementation of a new computerized licensing system should streamline the regulatory process and produce savings. In addition, the subcommittee believes that certain recommendations of this report, such as, combining the applications and licensing sections, administering the examination first and background investigation last, funding a portion of the education coordinator position from the education fund, and the development of agency goals and objectives could increase the efficiency of agency operations and minimize the impact of any fee increase. Based on 10 percent yearly increments to the current Division budget, the subcommittee estimates that a $25 per year increase in brokers, broker-salesman and salesman license fees will bring revenues in line with expenditures. This amounts to a $50 increase in the actual license fee since it is for a 2-year period. The subcommittee also recommends that fees for penalties and branch offices be increased in line with the proposed license fee increase and that an initial continuing education course accreditation fee of $50 and an annual renewal fee of $10 be established. In addition, the subcommittee found that the fees derived from the regulation of subdivisions (NRS 119, Land Sales Act)

did not cover the cost of that activity and therefore recommends the establishment of a $25 application fee that must be paid by all subdivision requests including those that are later determined to be exempt from regulation. The subcommittee recognizes that changes to the Division's budget that occur during the budgetary process may require adjustments to the proposed fees. The following table depicts the fee changes recommended by the subcommittee. The subcommittee recommends that all other existing fees in NRS 645 and 119 should remain the same.

Fee	Existing	Proposed
Original Broker License (2 years)	$80	$130
Original Salesman License (2 years)	50	100
Original Branch Office (2 years)	50	100
Penalty, Failure to File - Broker	40	65
Penalty, Failure to File - Salesman	25	50
Renewal, Brokers License	80	130
Renewal, Salesman License	50	100
Renewal, Branch Office	50	100
Penalty, Late Filing Broker	40	65
Penalty, Late Filing Salesman	25	50
Original Continuing Education Accreditation	-0-	50
Renewal, Continuing Education Accreditation	-0-	10
Subdivision Application Fee (NRS 119)	-0-	25

The subcommittee considered a recommendation to reduce the $40 education, research and recovery fund fee to partially offset the recommended increase in license fees. The subcommittee noted that the Advisory Commission had been urged by the Nevada Association of Realtors to increase the level of research and education expenditures in order to deplete the large surplus that had accumulated in the fund and avoid any possibility that the Legislature might require reversion of these excess funds to the state's general fund (the education account fund balance for fiscal year 1979-80 was $444,216). The subcommittee is not recommending reduction of this fee, however, since both the Division and the Association testified that the demands on that fund for real estate courses as a result of continuing education requirements were increasing. The Association also testified its membership opposes reduction of this fee.

Recommendation 8: The Division should establish formal goals and objectives for their organization and develop an internal information system which has the capability of measuring program effectiveness.

The Legislative Auditor reported that the Division has not established written goals and objectives and has not developed an information system that would allow management to determine if intended results were being achieved (see Appendix A, page 28.17). Because of this lack of stated goals and information, the Legislative Auditor was unable to fully evaluate the results of the Division's activities. The subcommittee feels that establishment of goals and objectives and the means to evaluate the Division's performance in meeting those goals is a basic principle of sound management and a necessary activity. The Division indicated that, during the course of the subcommittee hearings, goals and objectives and methods of measuring effectiveness would be developed.

Recommendation 9: The Division should discontinue depositing fees directly into the education and research account of the ERRF fund. All fees should be deposited in the recovery account and the balance over $50,000 transferred to the education and research account at the end of the fiscal year pursuant to NRS 645.842.

NRS 645.842 states in part, " * * * any balance over $50,000 at the end of any fiscal year shall be set aside and used by the administration, after approval of the Commission, for real estate education and research." The Division's current practice of maintaining a $50,000 balance in the recovery account and depositing all fee receipts directly into the education account makes these moneys immediately available for obligation and expenditure for education and seems to be in violation of the law. In addition, obligation or expenditure of these funds prior to the end of the fiscal year for education reduces the resources available to pay court ordered recoveries and provides a lesser degree of public protection (see Appendix B, page 17).

The subcommittee recommends and the Division has agreed to discontinue the present practice and to begin holding all ERRF fees in the recovery account until year's end.

Recommendation 10: The Division and Advisory Commission should expand the presentation of the Education and Research account in the "Executive Budget" to disclose the proposed actual uses of the funds for legislative review.

The Executive Budget presentation of the education and research account simply lump all available resources into a proposed expenditure line-item of education. Actual expenditures from this fund have included out-of-state travel of

the Advisory Commission and legal staff to national conventions, travel of Division staff, and for the publication costs of a quarterly newsletter. These other expenditures were made without specific legislative review or approval.

The subcommittee believes that adequate legislative review of agency plans through the budget process depends on candid and complete descriptions of proposed expenditures. The subcommittee feels that an expanded Executive Budget presentation will provide sufficient legislative control over proposed expenditures and that more specific statutory language governing acceptable uses of these funds is not necessary (see Appendix B, page 17).

Recommendation 11: A portion of the Education Coordinator position should be funded from the ERRF fund corresponding to the amount of time spent on fund activities or programs (Appendix F, BDR 54-116).

The Education Coordinator position spends considerable time performing ERRF fund activities such as coordinating the educational program, preparing the quarterly newsletter and preparing recommendations on ERRF sponsored courses. This position is currently funded entirely from general fund resources (see Appendix B, page 17). The subcommittee feels the ERRF fund should share in the cost of this position based on the amount of time spent on fund programs. The general fund should only be responsible for time spent in the regulatory process. The subcommittee also recommends that NRS 645.842 be amended to include Division expenses in operating the education program as an authorized expenditure from the ERRF fund.

Recommendation 12: The Legislature should amend NRS 645.847 to increase the interest rate required on repayments to the recovery fund as a condition for restitution of the suspended license (Appendix F, BDR 54-116).

The law requires the automatic suspension of the license of any practitioner for whom the recovery fund is required by court order to pay a claim. In order to reinstate the license, the practitioner must repay the claim plus 6 percent interest. The subcommittee feels that 6 percent interest is too low and recommends establishing the rate as the same rate allowed on court ordered judgments when no other rate is specified (see Appendix B, page 18).

Recommendation 13: The Division and Commission should consider refining the educational contract system to specify what courses are required and by inviting proposals on that basis in order to maximize the benefits of the ERRF educational dollars.

During the last year the Division instituted a request for proposals (RFP) procedure to award contracts for educational offerings to be sponsored by the ERRF fund. Prior to this, all courses were offered exclusively by the Nevada Association of Realtors under contract to the fund. Under the new procedures, other entities such as private schools, the Community College System and the University System will have an opportunity to offer courses for real estate licensees. The first RFP (FY 1980-81) outlined broad ranges of courses on which schools could offer a proposal (see Appendix B, page 19).

The subcommittee recognizes the significant effort made by the Division in instituting these new procedures in order to allow other educational institutions an opportunity to compete. The subcommittee also suggests that the Division, with the advice of the Commission on curriculum matters, refine the RFP procedure to more specifically define the types of courses required. This procedure could increase competition among educational sources and maximize the benefits of available funds. The Division has indicated that it will review this and all other phases of the RFP procedure in order to maximize effectiveness and efficiency of the education contract process and continue to insure that all educational entities have an equal opportunity to compete.

Recommendation 14: The Commission should adopt regulations required by NRS 645.575 covering claims of equivalent education and time extensions.

NRS 645.575 requires the Commission to prescribe standards for the continuing education of licensees by adopting regulations. By law the regulations must include a procedure for evaluation of petitions based on claims of equivalent education and under what conditions time extensions may be granted. The Commission has not adopted regulations covering equivalent education and time extensions (see Appendix B, page 20).

The subcommittee recommends that the Commission comply with the requirements of NRS 645.575 by adopting regulations and the Division has indicated that they will prepare and propose such regulations to the Commission.

Recommendation 15: The Division should evaluate and recommend regulatory and statutory changes necessary to consolidate the application for examination and application for licensing procedures into a single process. Background investigations should be conducted only for those applicants who successfully pass the exam (Appendix F, BDR 54-116).

Current statutory procedures require two application processes in order to become licensed. One application is required to become eligible to take the examination and another is required to obtain the license if the applicant successfully completes the exam. All determinations as to an applicant's suitability to be licensed are conducted before being qualified to sit for the examination. The Fiscal Analysis Division found in their review, however, that only about half of all applicants successfully completed the examination. The current process requires a certain amount of duplication and unnecessary effort in reviewing qualifications of many applicants who will never be licensed (see Appendix B, page 24).

The subcommittee believes that revamping the application process to eliminate duplication and unnecessary tasks will serve to promote efficiency and budgetary savings within the Division and better service for the public. The subcommittee also recognizes that the statutory language should be added that makes it clear that taking the examination creates no vested rights for the applicant and that all other license requirements including education and the demonstration of suitability to practice real estate must be met before the license can be granted. The Division has concurred in this recommendation.

Recommendation 16: The Division should consider combining the applications and licensing staffs into one section and consolidating the application for examination and application for licensure forms.

The subcommittee feels that the Division could more effectively use available resources and produce budgetary savings if the licensing and applications sections were combined. Since these sections both deal with the same individuals and the same files, the adoption of the subcommittee's recommendation to consolidate the application process (see Recommendation 17) would seem to mandate the consolidation of the staff. The subcommittee also notes that a new computerized licensing system is being developed for the Division by Central Data Processing and that this would be the ideal time to consolidate staff as well as the separate application forms. In the process of computerization the Division and Central Data

Processing have undertaken an examination of all licensing forms in order to eliminate duplication and unnecessary data. The subcommittee anticipates that this process will result in additional savings to the Division (see Appendix B, page 24).

Recommendation 17: The Legislature should enact enabling legislation to allow the Commission the discretion of accepting the successful completion of the uniform portion of the national uniform exam as partially satisfying examination requirements in Nevada (Appendix F, BDR 54-116).

The Division contracts with a national testing service to administer the real estate examination in Nevada. The test consists of two parts: one is a national uniform portion; the other relates only to Nevada law (see Appendix B, page 25). Currently, 31 states allow either partial or full reciprocity with other states and 27 states are using the same national testing service. The subcommittee feels that the opportunity exists to grant reciprocity in certain instances and that this may act to reduce barriers to licensure and increase licensing efficiency. The subcommittee recognizes that the current examination section on Nevada law is necessary to insure competent licensees and recommends statutory changes only to allow the Commission the discretion to grant reciprocity under regulation for the uniform portion of the test.

Recommendation 18: The Legislature should enact a statutory requirement that all prospective licensees must have a fingerprint check performed (Appendix F, BDR 54-116).

The Division is unable to perform an adequate criminal background investigation of prospective licensees since fingerprint checks are not available from the Federal Bureau of Investigation. These fingerprint checks can be reinstituted provided there is a statutory requirement for them. No statutory requirement presently exists. The subcommittee feels that the fingerprint check can reveal concealed criminal records and be a useful tool in determining an applicant's suitability for licensure (see Appendix B, page 26).

Recommendation 19: The Legislature should amend NRS 645.410 and 645.420 to extend the time limit for approval or denial of an application for license and for payment of the license fee (Appendix F, BDR 54-116).

Current law requires the Division to act on an application within 30 days of the examination and the applicant to pay the license fee within 30 days of notification of successful completion of the exam. If Recommendation 17 of this report is adopted, these time limits should be extended to allow the Division sufficient time to investigate the background of all applicants who successfully pass the examination. In addition, a longer time period for payment of the required license fee will provide a greater opportunity for salesmen to associate with a broker and avoid any penalty for late payment (see Appendix B, page 27). The Division has recommended that the time period for action on an application be extended to 60 days from the examination and the period for payment of the license fee be extended to 90 days from notification of successful completion of the exam.

Recommendation 20: The Division should establish a written procedures manual for the compliance function.

The Legislative Auditor reported that the Division has not established written procedures for the compliance function to effectively carry out the regulations as adopted by the Advisory Commission. The Legislative Auditor found that there is a lack of consistency in the manner in which complaints and investigations are initiated, conducted, documented and closed. The subcommittee feels that procedures manuals would help standardize procedures and ultimately result in more efficient utilization of staff time (see Appendix A, page 28.18).

Recommendation 21: The Division should evaluate the need for the current number of investigators taking into account cyclical trends.

Through analysis of the 1978-79 investigative caseloads the Legislative Auditor found an inequitable caseload distribution among the compliance staff. The analysis indicated that individual caseloads ranged from 14 to 27 open cases during the review period when 50 cases is considered maximum. The audit report also noted that agency auditors were performing investigations during this period when investigative caseloads were less than half of the maximum caseload. Although the Division disagrees with the audit report and maintains that the number of cases is not the only indicator of an efficient caseload distribution and staff requirement, the subcommittee feels that a thorough evaluation by the Division is in order and anticipates that budgetary savings may be possible (see Appendix A, page 28.20).

Recommendation 22: The Division should establish an audit plan to insure that personnel are used effectively, develop and utilize an audit program in the performance of audits and prepare and retain audit workpapers for all audits performed.

The Legislative Auditor found that the Division was performing audits of broker trust accounts without the use of a predetermined audit plan or audit programs. In addition, audit workpapers were not always prepared to document the audit work. An audit plan would help insure that audit staff is used in an efficient manner as well as insure that all audit requirements can be performed and assigned caseloads can be met. Audit programs are valuable as a planning tool and to document what steps have been performed for individual audits. Workpapers are necessary to document what work was performed on each audit and what findings were made. The subcommittee believes that an audit plan, audit programs and workpapers are a necessary part of any audit program and recommends that the Division take the necessary steps to develop them (see Appendix A, page 28.23).

Recommendation 23: The Division consider expanding the scope of the broker office survey.

The Division performs broker office surveys which are a spot check of broker records and compliance with Nevada Revised Statutes. These surveys require approximately 1 1/2 to 2 hours to complete. The Legislative Auditor has reviewed this survey procedure and recommends that additional time be allotted for each survey in order to conduct a more comprehensive review. The subcommittee noted that this survey is frequently the only contact the Division has with a broker for several years at a time and, therefore, its value as a compliance tool is contingent upon its thoroughness and completeness. The subcommittee, therefore, agrees that the Division should review these procedures and consider expanding their scope (see Appendix A, page 28.24).

Recommendation 24: The Division should expand the explanation on the Statement of Fact to better explain the Division's authority and to better inform the complaining public of the limitations of the Division's authority.

Many complaints are not within the authority of the Division to resolve since only licensing law violations and violations of Commission regulations can be investigated (see Appendix B, page 29). The subcommittee found that complainants may

become dissatisfied if their complaint falls outside the investigative jurisdictions of the Division. All complainants must complete a Statement of Fact form (complaint form). The form currently contains a brief statement concerning the limited authority of the Division. The subcommittee feels an expanded explanation on the complaint form may clarify the Division's legal position and minimize public dissatisfaction.

Recommendation 25: The Division should expand its public relations effort to inform the public of the role of the Division and provide information to the public through the complaint process about the recovery fund and how and when a claim may be ordered.

In their review, the Fiscal Analysis Division reported that the Education, Research and Recovery Fund (ERRF) was established in 1967 to provide some protection to the general public from unscrupulous licensees and to provide a resource for education of Nevada licensees (see Appendix B, page 29). Since the inception of the fund only $44,730.22 has been paid out for recoveries against licensees and only seven claims have been paid in the last six years. The Fiscal report concluded this may be due in part to lack of knowledge of the fund and its purpose and recommends informing all complainants of the potential for recovery.

The subcommittee recognizes that the lack of claims may be due in part to a small number of suits filed against licensees but, after receiving testimony at four public hearings, feels that the problem may be broader in scope and that the public may not be aware of the role of the Division and the complaint process in general. The subcommittee believes that the Division should begin a public awareness program as a routine function to inform the public of the purpose and activities of real estate licensing.

Recommendation 26: The Division should, after consulting with the Consumer Affairs Division, evaluate the need to place vacation licensing under the regulatory authority of chapter 119 of NRS and make appropriate recommendations to the 1981 Legislature.

Recent marketing advances have resulted in the creation of "timesharing" and "vacation licensing" arrangements. "Timesharing" generally refers to a part interest in real property for a fixed period each year. If the interest is a real property interest, the project may be regulated by NRS 119 (Land Sales Act). "Vacation licenses", on the other hand, is a term used to describe a contractual relationship which

entitles the license to the use of some property at a specified time of year. The Nevada Supreme Court has ruled that "vacation licenses" do not meet the definitions of a subdivision pursuant to NRS 119. Potential problems can occur in marketing "vacation licenses" since they are not regulated and the public has no direct protection from unscrupulous sales practices. The Consumers Affairs Division of the Department of Commerce has received numerous complaints concerning these marketing practices (see Appendix B, page 32).

The subcommittee does not recommend the regulation of "vacation licenses" at this point, but feels that the subject should be brought before the full Legislature for consideration in 1981. The Division has indicated it will develop a legislative proposal and present it to the next Legislative Session.

Recommendation 27: The Advisory Commission should consider adopting a rule requiring all brokers to keep their trust fund records up to date.

When the Division conducts a broker office survey they give advance notice to the broker. The Legislative Auditor noted that this procedure reduces the effectiveness of the survey and provides the broker with an opportunity to correct any deficiencies in the records or to replace any shortages in the trust account. The Division maintains, however, that advance notice is necessary to insure that Division staff will find the broker or bookkeeper at the place of business and to avoid situations where the auditor must first balance the books before performing the audit. The subcommittee feels that it may be impractical to perform broker office surveys without advance notice, but that trust fund records must be kept current in order to properly protect the interest of the buying and selling public. The subcommittee, therefore, recommends that the Advisory Commission require timely bookkeeping and suggests that the Division publicize through the newsletter its intent to require compliance with that rule.

Recommendation 28: NRS 645.310 should be amended to only require a separate checking account designated as a trust account for each broker that receives trust funds (Appendix F, BDR 54-116).

NRS 645.310 currently requires that every broker maintain a separate checking account designated as a trust account for the purpose of holding trust funds that pass to the broker

during the course of a transaction. The subcommittee recognizes that not all brokers receive trust funds and the statute is overly broad and that the statute only need apply to those brokers who receive such funds.

Recommendation 29: NRS 645.350 should be amended to change the requirement that salesmen must associate with a broker before licensing rather than before taking the examination (Appendix F, BDR 54-116).

The 1979 Legislature made substantial "housekeeping" changes to chapter 645. Included was a provision that a salesman must obtain a verified statement from a broker that he intends to hire the salesman prior to taking the examination. Previously, such a statement was only required before licensing. Testimony before the subcommittee indicates that this change was inadvertent and not supported by either the Division, Commission or the industry. The subcommittee feels that it is inappropriate to require association of a salesman with a broker before the examination and no public purpose is served by such a requirement.

Recommendation 30: NRS 645.360, which requires three letters of recommendation for prospective licensees, should be repealed (Appendix F, BDR 54-116).

NRS 645.360 requires that each application for a license must be accompanied by three letters of recommendation attesting that the applicant has a good reputation for honesty, truthfulness, fair dealing and competency. This requirement emanated from an early licensing law and was nearly the sole requirement for licensure at that time. Today, little use is made of the recommendations and the Division has requested deleting the requirement since the letters bear little relationship to the qualifications of the applicant.

Recommendation 31: Provisions of NRS 645 should be amended to provide that a written transcript of Commission hearings should only be required if requested by someone and the cost should be borne by the requester (Appendix F, BDR 54-116).

NRS 645.440, 645.690 and 645.760 all provide that any party to proceedings held before the Commission appealing a decision of the Division is entitled to a written transcript of the hearing at a cost of 25 cents per folio. Transcripts

currently cost $2.35 a page for originals and $.75 a page for copies. NRS 645.760 also requires the Division to purchase a transcript whether or not anyone has requested it.

The subcommittee feels that transcripts should only be prepared when a need is demonstrated or when a party to the proceedings requests it provided that the tapes from which the transcripts are prepared are retained past all appeal deadlines. In addition, the subcommittee recommends that the cost of the transcript should be borne by the requester as long as those costs are reasonable and proper.

Recommendation 32: NRS 645.540, which requires that the Division prepare and deliver to each licensee a pocket card, be repealed (Appendix F, BDR 54-116).

In addition to the official license which must remain at the broker's office, each licensee is provided a pocket card which identifies the licensee and, in the case of a salesman, the broker with whom the licensee is associated. The Division has recommended and the subcommittee agrees, that this requirement should be deleted since the cards serve no useful purpose, duplicate the license itself, creates an unnecessary expense for the Division and are a bother both to the Division and the licensee.

The subcommittee believes that no additional protection is afforded the public by the pocket card and deletion of this requirement will eliminate unnecessary procedures and increase efficiency of the licensing process.

Recommendation 33: Chapter 645 should be amended to provide that service of process and other required communications upon the Commission may be made at the Real Estate Division in Carson City (Appendix F, BDR 54-116).

Chapter 645 does not include any instruction or provisions on how or where the Commission can be served or notified in those matters that require service of process or special communications. The Commission is an interim body without a permanent address and constitutes a public agency only when meeting. The subcommittee feels that for the convenience of the public such communications could be served at the Division office in Carson City.

Recommendation 34: NRS 645.844 should be amended to delete the requirement that a claimant against the recovery fund must post a bond to guarantee costs should the claim be denied (Appendix F, BDR 54-116).

Provisions of chapter 645 under which a claimant can petition the courts for payment from the recovery fund to satisfy a judgment against a licensee requires the posting of a bond in the amount of 10 percent of the claim to guarantee costs should the claim be denied. The Division has recommended that this provision be deleted since it places an additional burden on the claimant when there is little or no threat of abuse of the recovery fund procedures. The subcommittee believes unnecessary impediments to the recovery fund should be removed in the interest of public protection.

Recommendation 35: NRS 645.660 should be amended to make it absolutely clear that "a broker has a duty to supervise" his salesmen (Appendix F, BDR 54-116).

Under present law, a real estate broker can be held accountable for actions of his salesmen only if he has guilty knowledge of those actions. The subcommittee noted that the entire licensing relationship between a broker and salesman is based on the concept that the broker has a duty to supervise his employees and agents and that the broker is responsible for the actions of his subordinates. The subcommittee was concerned that Nevada law, however, does not specifically require the broker to accept responsibility for his employees or agents and that disciplinary actions had been frequently brought against salesmen, but not the associated broker. The Legislative Auditor found that of 29 cases brought before the Advisory Commission in the last two years, 10 involved actions against salesmen where no action was taken against the broker. The subcommittee, therefore, recommends that this "duty" be reaffirmed in the law.

V. Nevada Racing Commission

A.B. 523 terminates on July 1, 1981, the Nevada Racing Commission and the Nevada Racing Act (NRS 466) in its entirety.

Regulation of horse racing, greyhound racing and racing pari-mutuels is a responsibility of the Nevada Racing Commission. The Commission, composed of five members appointed by the Governor, promulgates regulations, licenses race meet operators, licenses certain occupations associated with racing, and enforces state law and regulations at licensed events. Currently, only limited horse racing events at Ely and Elko are licensed by the Commission, however, the industry in Nevada is about to undergo significant changes. The Racing Commission is considering an application to license a full-time commercial track in Henderson which will initially feature greyhound

3-9-81

SB 193

Department of Commerce
Real Estate Division

EXHIBIT H

As Proposed in SB 193--Effects

Original Broker License Fee ($130 x 262 transactions/6 mos. x 2)	$ 68,120
Original Salesman License Fee ($100 x 494 transactions/6 mos. x 2)	98,800
Original Branch Office Fee (100 x 22 transactions/6 mos. x 2)	4,400
Renewal Fees for Brokers ($130 x 181 transactions/6 mos. x 2)	47,060
Renewal Fees for Salesmen ($100 x 802 transactions/6 mos. x 2)	160,400
Renewal Fees for Branch Offices ($100 x 3 transactions/6 mos. x 2)	600
Application for Developer's Exemption or Permit ($25 x 50 transactions/yr., estimate)	1,250
Original Continuing Education Course Accreditation ($50 x 35 transactions, estimate)	1,750
Renewal fee - Education Accreditation ($10 x 170 transactions, estimate)	1,700
Total Revenue (Result of BDR 54-116)	$384,080

Agency Amendment Effects

Original Prelicensing Course Accreditation ($ x 0 transactions/yr. (estimated))	$15	$ 0
Renewal of Prelicensing Course Accreditation ($10 x 30 transactions (estimated))	$10	300
Licensing Transfer Fees ($35 x 3,482/6 mos. x 2)		243,740
Total Revenue (Result of Agency Sponsored BDR)		$244,040

Total Revenue (Result of SB 193)	$384,080
Total Revenue (Result of Agency Amendment--SB 193)	244,040
~~Total Line Item Revenue Sources~~	~~246,500~~
	~~$974,620~~

ANTICIPATED EXAM FEE REVENUE	108,080
BALANCE FORWARD	26,500
HANDBOOKS	20,000
	782,700

AMENDMENTS TO BDR 54-116; SB 193:

Section 6. NRS 645.150, 1 and 2:

1. The commission shall hold [regular meetings on the 2nd Monday of January and July of each year,] at least two meetings annually, one of which [shall] must be held in the [eastern] southern district of the state, and one of which [meetings shall] must be held in the [western] northern district of the state, at such place or places as [shall be designated by] the commission designates for that purpose.

2. [Special] Additional meetings of the commission [shall] may be held at the call of the president [whenever] when there is sufficient business to come before the commission to warrant such action, at any place [most] convenient to the commission, or upon written request of two members of the commission. Written notice of the time, place and purpose of all such meetings [shall] must be given to each [commission] member at least [5] 3 working days prior to the holding of [a special meeting.] each additional meeting.

Section 7. NRS 645.310, 2 and 4:

2. Every real estate salesman or broker-salesman who [received a deposit on any transaction in which he is engaged] receives any money on behalf of a broker or owner-developer shall pay over the [deposit] money promptly to the real estate broker or owner-developer.

4. [Each broker shall maintain] If a broker receives money, as a broker, which belongs to others, he shall promptly deposit the money in a separate checking account in a bank . . .

Section 17. NRS 645.660, 3:

3. The commission may suspend or revoke the license of a real estate broker if it appears he has failed to maintain adequate supervision of a salesman or broker-salesman associated with him and that person commits any unlawful act or violates any of the provisions of this chapter. [Those provisions which impose a duty on the real estate broker to supervise persons associated with him also extend to situations where he does not have specific knowledge of the acts of his associates.]

Section 20. NRS 645.830:

1. The following fees must be charged by and paid to the division:

For each real estate salesman's or broker's examination	$ 40
For each original real estate broker's, broker-salesman's or corporate broker's license	[80] 130
For each original real estate salesman's license	[50] 100
For each original branch office license	[50] 100
For [each] real estate education, research and recovery [fee] to be paid at the time of issuance of each original license or renewal	40
For each penalty assessed for failure of an applicant for an original broker's, broker-salesman's or corporate broker's license to file within [30 days of] 90 days after notification	[40] 65
For each penalty assessed for failure of an applicant for an original salesman's license to file within [30 days of] 90 days after notification	[25] 50
For each renewal of a real estate broker's, broker-salesman's or corporate broker's license	[80] 130
For each renewal of a real estate salesman's license	[50] 100
For each renewal of a real estate branch office license	[50] 100

For each penalty for late filing of a renewal for a broker's, broker-salesman's or corporate broker's license .....[40]	65
For each penalty for late filing of a renewal for a salesman's license .....[25]	50
For each change of name or address .....[10]	35
For each transfer of a real estate salesman's or broker-salesman's license and change of association or employment ..[10]	35
For each change of status from corporate officer to individual broker, copartnership, association or other corporation, per NRS 645.590	35
For each change of status from association or copartnership to individual broker, corporate officer or other association or copartnership, per NRS 645.590	35
For each duplicate license [or pocket card] where the original license [or pocket card] is lost or destroyed, and an affidavit is made thereof	10
For each change of status from broker to broker-salesman, or the reverse .....[10]	35
For each reinstatement to active status of an inactive real estate broker's, broker-salesman's or salesman's license .....[10]	35
For each reinstatement of a real estate broker's license when the licensee fails to give immediate written notice to the division of a change of name or business location .....[20]	45

For each reinstatement of a real estate salesman's or broker-salesman's license when he fails to notify the division of a change of broker within 30 days of termination by previous broker .....[20]	45
For each original registration of an owner-developer	40
For each annual renewal of a registration of an owner-developer	40
For each enlargement of the area of an owner-developer's registration .....[15]	40
For each cooperative certificate issued to an out-of-state broker licensee for 1 year or fraction thereof	40
For each original accreditation of a course of continuing education	50
For each renewal of accreditation of a course of continuing education	10
For each original accreditation of a course acceptable for prelicensing education	15
For each renewal of accreditation of a course acceptable for prelicensing education	10

2. The fees prescribed for courses of continuing education do not apply to any university or college of the University of Nevada system.

Section 21. NRS 645.842:

The real estate education, research and recovery fund is hereby created as a special revenue fund. A balance of not [more] less than $50,000 must be maintained in the fund, to be used for satisfying claims against persons licensed under this chapter, as provided in NRS 645.841 to 645.8494, inclusive. Any balance over $50,000 at the end of any fiscal year must be set aside and used by the administrator, after approval [with the advice] of the commission, for real estate education and [research.] research and the costs to the division to operate such programs.

Section 27. NRS 119.320, 1:

1. Subject to the provisions of this chapter, the division shall collect the following fees at such times and upon such conditions as it may provide by rule and regulation:

For each annual registered representative's license to represent a developer $25

[For each transfer of a registered representative's license to represent a developer ..... 10] .....

Recommended
645.476

SB 193 3/9/11

EXHIBIT I

THE REAL ESTATE ADMINISTRATOR MAY NOT ISSUE A LICENSE TO A PERSON WHO'S LICENSE HAS BEEN DENIED, SUSPENDED OR REVOLKED BY A HEARING BEFORE THE REAL ESTATE COMMISSION, WITHOUT FIRST FIRST OBTAINING THE APPROVAL OF THE REAL ESTATE COMMISSION.

3/9/81

S.B. 193

Testimony Presented to
Senate Commerce Committee
By
Nevada Association of REALTORS

EXHIBIT J

March 9, 1981

The Nevada Association of REALTORS would like to commend the work of the Subcommittee of Sunset Reviews for its review of the Division of Real Estate and the Real Estate Advisory Commission.

We find ourselves generally supportive of S.B. 193 which is the result of that review. Specifically we are in support of the increase in licensing fees and the new fee for accreditation of continuing education courses, the elimination of the dual application procedure, the elimination of a mandatory trust account and the inclusion of the requirement for fingerprinting.

We oppose the inclusion of a member of the public on the Real Estate Advisory Commission. We concur with the Director of the Department of Commerce who has opposed this change based on the fact that the commissioners' purpose is "familiarity with the business, not representation of interest groups". Indeed, a review of the professions whose boards have members of the public seems to merely substantiate the fact that it is a "cosmetic" and meaningless change since most members of the public serving on those boards are precluded from participating in the evaluation of a licensee's professional qualifications. In addition, as the Director has said, past performance has shown that the interests of the general public were held of no less importance than that of the licensee or the industry. Further, it would seem almost impossible to find a member of the public knowledgeable enough and willing to devote the number of hours required who would not be in a position of judgement on potential clients or customers. (e.g. escrow or title personnel, banking personnel). And finally, the Commissioners appointed to serve take their responsibility for maintaining a high standard of professionalism and protection of the buying and selling public very seriously. They have a personal stake in doing so BECAUSE they are real estate brokers. They must be like Caesar's wife - above reproach.

Although we do feel that it is certainly appropriate for the Governor to be required to seek recommendations for appointment of Commissioners from the real estate industry, we do not feel that these recommendations need only be sought from the Nevada Association of REALTORS.

The section of new language on Page 8, Lines 39-45 provides for the suspension or revocation of a broker's license for an act of his sales associates of which he may be entirely unaware and we must strongly oppose this section of the bill. It presumes no defense just as it presumes that a broker should have knowledge of all the acts of his salespeople. Brokers are responsible for supervision of their salespeople and current law provides for that (see lines 28-34, page 8). The new wording man-

dates not only adequate supervision, but constant supervision. One error on the part of one salesperson could result in the suspension or revocation of a broker's license and automatically result in punishment of all other salespeople affiliated with him for an act that he was unaware of and thus had no opportunity to correct.

The Association strongly opposes both the removal of the required approval of Education, Research and Recovery Fund expenditures by the Real Estate Advisory Commission and the use of those funds to defray Division operating expense, Page 11, Lines 10-12. Current law provides a check and balance system which enables the Division staff to review and recommend courses based on compliance with requirements for content and for cost effectivenesss. But Division staff who are not involved in the day to day industry cannot effectively evaluate the need for particular subject matter, a function of the Commission. Courses which benefit the licensee and ultimately the buying and selling public must be timely and indeed, are required to be. At present, both the expertise of the Divison and the Commission are available for determining fund expenditures to insure that maximum benefit is derived. The check and balance system should remain in place.

Use of Education Research and Recovery Fund monies to fund division operation is contrary to the purpose of the Fund. The Association has supported both an increase in licensing fees and the addition of new fees for accreditation of continuing education courses. The proposed <u>new</u> fees alone cover 25% of the education coordinaor's salary. The remainder, and properly so, is covered by the increase in license fees. The duties and functions of the Coordinator of Education would be required whether or not there was an Education, Research and Recovery Fund. Licensees pay $20 per year into that Fund for the express and <u>intended</u> purpose of research and education and not to pay expenses which are already being covered or should be covered by their license fees. Again, we assure the Committee of our support of a fee structure which would make the Division self-supporting but ask that provision for the Education Coordinator's salary and travel be made only once, not twice, and that it be made in the Division's operating budget insuring the integrity of the Education, Research and Recovery Fund. The purpose of the Fund is not to subsidize Division operations.

And finally, in line 17, Page 11, we would ask that the fee paid by the licensees to the Education, Research and Recovery Fund remain set by statute as are the licensing fees. We do not feel that fees should be discretionary on the part of the Division Administrator or the Commission.

Respectfully submitted,

W. E. Cozart

William E. Cozart, CAE
Executive Vice-president