

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Eighth Session
May 20, 2015**

The Committee on Commerce and Labor was called to order by Chairman Randy Kirner at 1:56 p.m. on Wednesday, May 20, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website: www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Randy Kirner, Chairman
Assemblywoman Victoria Seaman, Vice Chair
Assemblyman Paul Anderson
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblywoman Olivia Diaz
Assemblyman John Ellison
Assemblywoman Michele Fiore
Assemblyman Ira Hansen
Assemblywoman Marilyn K. Kirkpatrick
Assemblywoman Dina Neal
Assemblyman Erven T. Nelson
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblyman Stephen H. Silberkraus

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

Senator Patricia Farley, Senate District No. 8
Senator Kelvin D. Atkinson, Senate District No. 4

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Matt Mundy, Committee Counsel
Leslie Danihel, Committee Manager
Connie Jo Smith, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Mark J. Krueger, Insurance Counsel, Division of Insurance, Department of Business and Industry
Barry Gold, Director, Government Relations, AARP Nevada
George Ross, representing Astellas Pharma US, Inc.
Tom McCoy, Nevada Government Relations Director, American Cancer Society Cancer Action Network
Jay Parmer, representing America's Health Insurance Plans
Keith Lee, representing Nevada Association of Health Plans
James L. Wadhams, representing Anthem, Inc.
Michael D. Hillerby, representing Hometown Health
Liz MacMenamin, Vice President, Government Affairs, Retail Association of Nevada
Paul A. Thomsen, Director, Office of Energy, Office of the Governor
Donald J. Lomoljo, Utilities Hearings Officer, Public Utilities Commission of Nevada
Shawn M. Elicegui, Senior Vice President, Regulatory and Strategic Planning, NV Energy
Nat Hodgson, Chief Executive Officer, Southern Nevada Home Builders Association
Daniel O. Jacobsen, Technical Staff Manager, Bureau of Consumer Protection, Office of the Attorney General
Rose McKinney-James, Managing Principal, Energy Works LLC, and representing Bombard Renewable Energy
Bo Balzar, Operations Manager, Bombard Renewable Energy
Joshua J. Hicks, representing Lennar Ventures
Tom Clark, representing Sempra U.S. Gas and Power, LLC
Robert List, representing SolarCity Corporation
Lyndon Rive, Chief Executive Officer, SolarCity Corporation

Susan Glick, Senior Manager, Public Policy, Sunrun, Inc.
Robert S. Uithoven, representing The Alliance for Solar Choice
Elspeth Dimarzio, representing Toiyabe Chapter of the Sierra Club
Robert Johnston, Senior Staff Attorney, Western Resource Advocates
Kyle J. Davis, representing Nevada Conservation League
Louise Helton, Vice President and Founder, 1 Sun Solar, Las Vegas,
Nevada
Scott Shaw, Director of Research and Commercial Development, GoSolar,
Las Vegas, Nevada
Ray Bacon, representing Nevada Manufacturers Association

Chairman Kirner:

[Roll was called, and a quorum was present.] We have two bills on the agenda today that are very important to Nevada, and we will open the hearing with Senate Bill 328 (1st Reprint).

Senate Bill 328 (1st Reprint): Revises provisions relating to policies of health insurance. (BDR 57-794)

Senator Patricia Farley, Senate District No. 8:

I am here to present Senate Bill 328 (1st Reprint) for your consideration. As amended, S.B. 328 (R1) requires the Commissioner of Insurance to adopt regulations prescribing the standard format for posting drug formularies online. Senate Bill 328 (1st Reprint) is a measure that will assist Nevadans who are shopping for health insurance either on <HealthCare.gov> or from another source. The measure will direct the Insurance Commissioner to develop regulations which will (1) create a standard template for health insurers to use in listing their drug formularies and consumer cost-sharing amounts on those drugs covered, and (2) have health insurers post these templates to their websites. These changes in Nevada law will give a person who needs to take many medications the ability to shop for health insurance and price out both the insurance premium and their cost sharing for these medications, for instance, if a patient decides to go with an insurance plan that charges more or a higher premium because that plan has better coverage of their medications.

Several states have looked into and taken action on this initiative: Colorado, California, Hawaii, and Minnesota. Since this bill's introduction, I have worked with all interested stakeholders and have taken several of their suggestions into an amendment, at the insurers' insistence, including removing the requirement of the health plan to differentiate direct coverage under their medical and pharmacy benefits, applying the bill only to the individual policies of insurance

and not small group health plans, and removing the requirement that the health plan provide specific dollar amounts of out-of-pocket costs instead of providing the copay.

I will add that with the first reprint of the bill, I had the insurers' commitment not to oppose the bill. However, after passage from the Senate Committee on Commerce, Labor and Energy, the insurers requested further amendments to the bill. I met several times with the health insurers and will be proposing another set of amendments that get us as close to an agreement as possible without taking away the need to protect the consumer. I believe S.B. 328 (R1) will assist Nevadans in purchasing health insurance by giving them more information to make educated choices on which health plan to purchase. Amendments taken will strike needed compromise not only to not overly burden the industry, but also to give protection to consumers in their health insurance. I respectfully ask for your support on this bill.

Chairman Kirner:

On the Nevada Electronic Legislative Information System (NELIS), I am seeing a proposed amendment by Mr. George Ross ([Exhibit C](#)). Is that an amendment you have reviewed?

Senator Farley:

Yes.

Chairman Kirner:

Is it a friendly amendment?

Senator Farley:

Yes, it is a friendly amendment.

Chairman Kirner:

Committee members, do you have questions for the Senator?

Assemblywoman Carlton:

I like the disclosure. I have to go shopping for health insurance soon because my husband will be turning a certain age, which puts him in one insurance policy and me in another. If an insurance company has multiple groups and multiple rates, which ones do you want them to post: what they would actually be selling to me, or how they cover large groups? We have a very large health plan here in Nevada that covers a lot of different people, and I want to understand what information you want on the website.

Senator Farley:

That information would be for the individual and by plan so that when an individual is shopping for an insurance plan, the person can look at the associated formulary so they can see not only the cost of the plan but their out-of-cost sharing. That would be, from the consumer side, when the consumer is looking to purchase a plan but while on the plan, plan members should be able to, while sitting in their doctor's office, look as the doctor prescribes the medication and be able to go onto that website and decide if that drug is covered. If the drug is \$200 per month, the member can have a conversation with the doctor at that point: "Is there another alternative I can try first?" It is really meant to put information in that individual's hands so that they can make the best decisions.

Assemblywoman Carlton:

One insurance company has multiple clients, and let us say it covers state employees and city employees—two different plans. Those plans will not have their formularies posted. It would only be the formulary that would be associated with a single issue plan for one person?

Senator Farley:

Yes.

Assemblywoman Carlton:

I am trying to understand with the health insurance exchange and the multiple plans, and we have a co-op also. How would the co-op handle this? They are in a little bit different world than insurance plans because they actually partner with the insurance exchange. I am trying to figure out how those pieces fit together.

Senator Farley:

As of right now, this bill would apply to only individual policies, so there would not be group policies or group plans that would be mixed in. It would only be those individuals on the health exchange or who are purchasing health insurance off the insurers' websites.

Assemblywoman Carlton:

I may have other questions as we go through more of this. I am still trying to put the pieces together.

Chairman Kirner:

I am with you, and I would like to pose a question. I have other members who would also like to ask questions. This bill, the requirement to have formularies available on the Internet, you had mentioned this exchange, and I assume you are talking about the Silver State Health Insurance Exchange?

Senator Farley:

Yes.

Chairman Kirner:

At one time we tried to do that and, among other reasons, our system failed, and we are now on the federal exchange. The federal exchange does not allow for sharing of that information. Am I correct in that so far?

Senator Farley:

I do not know. I may have to ask legal counsel.

Chairman Kirner:

We do not do that anymore. In fact, the only place you can find formularies is through Medicare, and we are talking about insurance plans other than Medicare. When I think about this bill and the formulary information, there is a certain format that the federal government requires people to follow. This bill would require creating a Nevada format, which would be quite different and quite cumbersome, it seems. Those are the issues I am wrestling with at the moment.

Assemblywoman Neal:

In regard to the mental health services, it seems to be a little more prescriptive in terms of what you want it to say. When I was reading the bill, I was trying to get an understanding on why, so help me understand that part about the intent for the mental health piece.

Senator Farley:

In the amendment ([Exhibit C](#)), that section has been eliminated.

Assemblywoman Neal:

I did not notice that bottom line. Basically, you have nothing left of this bill? Because it says sections 5, 7, 9 10, 12, 14, 15, 17, 20, 23, 24, and 25 are deleted.

Senator Farley:

Yes. We have been working with the carriers for months now, trying to get this correct. We have gone back and amended the bill back to most of its original content.

Assemblywoman Kirkpatrick:

Serving on the Legislative Commission, when we would oversee and approve the Insurance Commissioner's regulations, I am not understanding what is expected to be in those regulations so that there is some direction for the insurers. The legislative responsibility is to ensure that the regulations meet the legislative intent, and I am a big stickler about that. What would that mean, and what is expected? The only thing I can see they would be adopting regulations for is a website. That is not something that they do as soon as practicable in a standardized format. Is that what we are looking for? I am not sure what formulary data should look like in regulations. If you could help me with that because I thought I heard you say that when you go to the doctor, the office can tell you what insurance. I know from my perspective that my doctor has always said, "What insurance do you have, and what prescriptions are you taking?" Once he said, "Your daughter needs this medication, but it is \$200." I said, "Is there a generic one?" He was able to prescribe a generic. When would that become a fact? I am more concerned about the regulations. I know that Assemblyman Hansen and Senator Settlemeyer also sit on that Commission, and we have a lot of discussion to make sure the legislative intent is there.

Senator Farley:

I will do my best to answer that. Again, the legislative intent is for the insurer to create a standard template that lists their drugs and formularies and the consumer cost-sharing amounts. If you are going to buy a plan, you are able to see which drugs fall under the different sections, the different tiers of that formulary, and what your out-of-pocket cost is going to be. These would be posted on the website. It is minimal but expansive.

Assemblywoman Kirkpatrick:

I understand that they already do that because the first thing that people ask about is prescriptions. Typically, people ask about prescriptions and are given a list of what is covered or the generic. As a parent, that is a list that I always kept handy so that I knew what it was. That is not already being done, or is it just required by law?

Senator Farley:

It is not required by law, and many do not. Some of the folks who will be coming up are moving that direction. Some of the folks we have worked with have a very good website with the ability to search. So the primary goal is that uniformly, when you look up LIPITOR, you can find out how much that drug costs and what your cost sharing is going to be on the plan—that is the goal. We make sure we get that information, both on the consumer side and once that person has become a member.

Assemblywoman Kirkpatrick:

Not everyone is website friendly, and I like an old-fashioned hard copy. That would not allow them to circumvent giving me a hard piece of paper when I sign up for my insurance, right?

Senator Farley:

Absolutely not. The drug costs change quite frequently. I think the law recently passed that it will be every six months they are allowed to update the formularies and move drugs around. Because they do move around, having it more dynamic online and available to people via their devices, I think is helpful in decision-making when people are making purchases. We have health insurance, but patients are also in their doctor's office having to get the prescribed drugs.

Chairman Kirner:

I have experience in the health care industry. Here are 30,000 drugs and when you talk about fees changing and so forth, they are changing daily in multiple ways. What is your vision in terms of who would run this Internet site? Is this a state-run Internet site, or is it run by somebody else?

Senator Farley:

I think the health insurers would be responsible for making sure that if they sell a plan, their formularies and the cost-sharing information are posted in accordance with the plan that is posted. The reality is they know how much those drugs are; they are tiered out. It is now just sharing that information with the consumer and/or the member.

Assemblyman Nelson:

I understand that the insurance companies could post the formularies as to, for example, what the copays are going to be, the deductibles, and the various different plans because that is all within the information the company has.

But my understanding, and correct me if I am wrong, is that the pharmacies set the prices and that there are different prices according to which pharmacy you might go to. Are you going to get the pharmacies involved in this also to make sure that it is comprehensive?

Senator Farley:

Someday. There is current regulation, and I will let the Insurance Commissioner speak to that about when prices can change. We are starting to see on a federal level that states such as Texas only allow pharmaceutical prices to change once a year. Once you buy a plan, that is it. We are not there yet in the state of Nevada. We are not asking for them to lock in prices. Monthly drug prescriptions can change in cost. While you are purchasing, you can see what formulary, what tier the drug is, and what that cost share is at that moment when making the purchase. For people who take lots of medications, that is an important decision-making factor. Then, while you are a member, the intent is to make sure that while you are sitting in the doctor's office, if you are being prescribed a new medication, you can look the drug up. I have a father who has end-stage cardiac disease, and he takes a lot of medications. It fluctuates between \$200, \$400, \$600 a month, and if one drug continuously seems to be climbing, it triggers a conversation with his physician that says, "Is there an alternative?" Many people who are taking these life-sustaining medications do not have budgets that continue to fluctuate in the positive to continue to afford these things. We need to put information in people's hands so they can go back and have an educated conversation with their physician in order to manage their health care and its cost.

Assemblyman Nelson:

You and I briefly discussed the possibility of a friendly amendment, and rather than propose it right now, I would like to summarize what it would be: to require each manufacturer of a prescription drug made available in Nevada that has a wholesale acquisition cost of \$10,000 or more annually, or per course of treatment, to file a report with the Division of Public and Behavioral Health (DPBH), Department of Health and Human Services, and then for the DPBH to post that on their website so that, particularly, the drugs over \$10,000 were reported. If I could make the language acceptable to you, would you have a problem with that?

Senator Farley:

Not if the language is acceptable, and if we can make it happen, yes. Anything that helps the consumer. The purpose behind this bill is to protect the consumer.

Assemblyman Nelson:

I appreciate that. This is particularly for chemotherapy or things that are thousands of dollars every year.

Senator Farley:

I would like to have that conversation.

Assemblyman O'Neill:

I appreciate your attempts on this bill, but I need some clarification. If I understand correctly, your real attempt is for the person who is looking for a medical plan, correct? Prescriptions change regularly. Let us say this bill goes through, I go in and research six different sites, and compare costs. I think about it, I talk it over, I go ahead and start making the purchase of the plan and the prices could have changed again. I know now, as a member, I can look at my prescription costs anytime, and even the pharmacist will tell me when I have gotten prescriptions that this is a certain amount, and it is not covered or is covered, or this is cheaper. I am trying to make sure there is a protection for the consumer because that is really what your goal is, and it seems like it is a terrible expense on the individual plans. Is proprietary information being given away to put all their plans out before you purchase?

Senator Farley:

It is kind of like buying a car. I can go lot by lot, and the difference may be \$200 here or \$200 there.

Assemblyman O'Neill:

But it changes.

Senator Farley:

It does, so this is the first step in a process. Texas law does not allow change. Once a plan is sold, within that plan, that price cannot change. The sky has not fallen in Texas, and we are taking the first step, in my mind, in the process of making sure when the consumer buys a product, he or she gets it for that price. This protects the individual, and I will share my personal view. I have a company and pay for company-sponsored health insurance, and it is not cheap. Nothing drives me crazier than to pay for a more expensive plan, and then three months later get a letter saying the hospitals and drugs are now off or moved, but I bought that plan for the more expensive price because of those options. Yet in the letter, the price of my plan was never reduced. I think we have to slowly move to the end goal, and the end goal is, when I buy something, that is what I want. When you have elderly people living off life-sustaining medications, it cannot fluctuate month to month. They cannot make those decisions, and a lot of times, I feel that people find medications that

work for them and so switching also becomes a health issue. When people sit down and say I can afford this amount, I am going to try these different medications, it should be consistent. But today, we are not there. I believe this is the first step, and the first step is to make information very accessible and easy for the consumer to purchase health coverage.

Assemblyman Ellison:

Assemblyman O'Neill answered a lot of this, but are there different pharmaceutical groups that make, basically, the same drugs, so they are competitive? As these prices change, who changes this on the websites?

Also, once it is described what the drugs can do, do you think these people go to the doctor and say, "I need such and such?" Would that create a problem?

Senator Farley:

When the prices change, the insurance companies are very good about making sure it changes out of my pocket, too, correct? So they do not miss a beat. The price does not go up and somehow I am not paying that difference. They move it on the formulary. That process is already happening. All we are saying is put it on the website. Make it available for me to understand that the price just changed, that I understand when I first bought the plan, it was in the low tier formulary cost section and now, all of a sudden, it is in the second tier or was moved to the third tier because there was a generic. All I want to do is take the information they already have and put it in the consumers' hands or make it accessible for the consumer to find out.

Assemblywoman Neal:

If you are trying to do baby steps into this process, then why not focus on a particular area. Formularies are good for narcotic control. They are good for expensive drugs that are related to cancer. Maybe a better baby step is the pharmacy relationship.

My sister has her doctorate in pharmacy, and she is a pharmacist. She said sometimes she gets calls from a doctor who wants to have a discussion about a drug that he may be prescribing to a patient, but he is looking for an alternative because maybe it had a negative reaction. She does not have a list where she can compare that for him over the telephone. Maybe the small step for mankind is to have a list for the pharmacist. Between the doctor and the pharmacist, if they have a telephone call, then at least the pharmacist can answer the question as to whether or not this is a negative reaction or it is a good reaction. You have cases where the drug, as you said, affects everyone differently.

Costs are different—there are two sides to this story. Insurers do not want to be told what to subscribe to. They say the drug control costs have been set because they have a team of people who decide what is going to work for them. Maybe that is a smaller step because at least it is helping the consumer who may be at the doctor who can call a pharmacist and say, "Hey, drug X has a negative reaction. What is the alternative? Can you give me a list that is comparable that fits under the insurance because there is an insurance cap, and the consumer can only afford to pay \$100 for this drug?" Maybe that is the way to go because it sounds like the baby step is to put all of these on the website. I get where you are going, but it may be too much for right now.

Senator Farley:

I agree with what you just said about the drug interaction. Again, I will step back to my own personal situation. My dad takes a lot of medications, so taking the wrong thing, eating the wrong thing, could be detrimental to his already sensitive condition. A lot of the major insurers have that information on their website. If you are a member, you can pull up the drug. It tells you the copay. It also tells you what that drug interacts with and what you should not take. It is phenomenal. It is Anthem's, not to plug Anthem, but they have that technology, which is already out there. We are working that way.

My whole goal with this is to get cost information into people's hands who need it and who live on life-sustaining medication. That price and those medications fluctuate so that people can make good decisions about their money and their health insurance. It is to provoke a conversation between you and your doctor if you are already a member, about cost or if you are shopping, that you know. You can say, "As of today, or for the next six months, once I buy this plan, this drug is going to cost me a certain amount, and I can afford this plan." Or maybe I need to buy a more expensive plan, or maybe I do not need the drugs I am on, but it is allowing the consumer to make cost decisions based on what they need to do every month. I think, for me, that is what is important about this bill, and that is how I saw the first step of moving along the strategy of getting to where Texas is.

Chairman Kirner:

This bill would not cover company plans?

Senator Farley:

No.

Chairman Kirner:

I was an executive at IGT, and our people were told to go to Walgreens because they could buy it cheaper there. We worked out an arrangement where we were paying less money. I have heard similar things about Costco. These are just for individual plans.

Senator Farley:

Yes, individual. I think it is important because with the cost of health care and some of the other issues we have talked about in this session, my concern is that more and more people are going to be on the <HealthCare.gov> website or purchasing individual plans. I once heard the Insurance Commissioner say that about 15 percent of people are illiterate in buying health insurance. Putting more information out there for consumers, particularly about costs, is helpful to that population going off of company plans onto individual policies who have never purchased insurance before. It is important they have that information and that they know how to buy their health insurance.

Assemblyman Ohrenschall:

I think it is important when a legislator takes a personal crisis, as you have had with your father, and tries to help other people.

Section 22 is not being deleted in the amendment. It states that the Board of the Silver State Health Insurance Exchange shall ensure that the Internet website for the Exchange provides direct links to the information posted pursuant to NRS 689A.405. I looked up NRS 689A.405, and I do not see anything in that chapter regarding the formularies being on the Internet. It looks like they could be a paper handout or something that someone gets in the mail. Do you think this will increase transparency for the public in terms of knowing what is covered and under which policy? What kind of response have you gotten from the insurance industry about this proposal?

Senator Farley:

My feeling is that yes, it will increase transparency, and it will put information in the consumers' hands. In every state where a law like this has been brought, the carriers are not crazy about it, although some of the bigger players here in town have worked and continue to work to get to where we are asking to go. The new piece would be that the person, the consumer not on the plan, would have this information available to them, versus going through a broker. That is really the difference. Today, if I wanted to buy a health plan, I would have to go onto <HealthCare.gov>. I would probably call the different insurers, and they would feed me the prices they wanted to give me. Brokers are good people, but they are going to sell you either what they know or what might be to their advantage because they make commissions off these. I would like for

you to be able to find the information about the drugs and prescription costs that you need and have you make an informed decision about the plan that you want.

Assemblyman Ohrenschall:

What I like about section 22 is that it takes us from *Nevada Revised Statutes* (NRS) 689A.405, which seems like the kind of notice a patient would get in the nineteenth century, and takes us to the twenty-first century.

Is there any guarantee the formularies will be posted? I see the links will have to be on the Silver State Health Insurance Exchange, but is there a guarantee that the other side will play ball and will post these?

Senator Farley:

I am going to take that one back and make sure that I follow up with the Insurance Commissioner to make sure that language is right.

Assemblywoman Kirkpatrick:

I want to follow up on the regulations because I think this is not clear on what the Commissioner should be bringing before the Legislative Commission and what the expectation is to see in the regulations. I think we have talked all the way around that, and it seems to be the crux of the bill. For me, I am in sales as you are in your day job, and I do not see any penalty or any reference to that in regulations that would say, if you do some spike pricing in six months, that you would be penalized.

There are salespeople out there who will lower certain things in order to get the bigger quantity later. There is nothing in these regulations that addresses that, and to me, if it is about consumer protection, then we want to have those kinds of things in the regulations because there has to be a hammer in our world if consumers are being misled. In my mind, if you come in and tell me that next week penicillin will be \$10 and, by the way, July 1, it will be \$100, I did not save anything on the plan that I supposedly bought, yet there is nothing within the regulations that allow us to go after those folks. There is nothing in the regulations that says the website has to be updated every six months. They will say things like, "Oh, we were going to get to it but our system crashed and we were down." That is why I am asking about the paper. I need to know broadly and specifically what we expect the Insurance Commissioner to adopt. We spend a lot of time during the interim making sure that every one of our colleagues' legislation is implemented. I am looking for some guidance.

Senator Farley:

Not being an insurance expert, I know they file plans and they have to file with the Commissioner so they cannot be changed daily, to my knowledge. But since I am not the Insurance Commissioner, I want to take that as a question to go back and get an answer and either put one in or, if there is one, I will make sure that we get a clearer answer.

Chairman Kirner:

We have one other person who wants to ask a question, which I will have her do, and then I would like to see a representative of the Division of Insurance come forward.

Assemblywoman Seaman:

I am a little worried about mandating the insurance companies to provide information on the Internet website. As we know, drug prices change. Assemblywoman Kirkpatrick brought up a very good point. Prices are constantly changing. Have you thought about the cost trickling down to the consumer? Right now, people can call the insurance companies before purchasing a plan and find out if they cover their medications and services. My husband and I do that when we can switch to another company. We usually call to find out if they cover his medications or his services. Her point brought up another question. If we are going to enforce this and prices do change, will we have this perpetual problem of trying to figure out whether the information was just put up? Was it changed? It brings forth a lot of different questions that I have.

Senator Farley:

Great questions, and what I want to back away from is the fact that when the prices change, the insurance companies have the mechanisms to make sure at any given time that you are paying the right amount. It is not like there is a lag that the price changed and somehow it was not caught and we did not get charged the correct amount of money. There are systems in place.

When you call a health insurance company or you call a broker, it is not necessarily in your personal interest. Not to say they are bad, but it is what Assemblywoman Kirkpatrick was saying. How are we controlling people from selling the wrong thing to somebody when you are the broker or you are the insurance company, versus if I put that information in your hands, and you are allowed to go on the website and choose? Then, maybe you call the insurance company and say, "I was comparing this with this on your website. What are the differences; what do I really need to get here?"

Most of the larger health insurance companies are halfway there. They are already providing a lot of this information to their members. The step now is to provide it to the consumers when they are purchasing a plan. I will let the Insurance Commissioner talk about how often the prices are allowed to change, when the plans are filed, and how he regulates that because he is the expert. I think that will clear up a lot.

Assemblywoman Seaman:

Did you think about the cost that will trickle down to the consumer? There may be costs that are going to trickle down?

Senator Farley:

Yes, it is really hard because the technology is already out there. I have asked how much does it cost to do something like this? I cannot get an answer. We are not asking them to re-create and put together information that is not already available in their accounting system and that they have not already filed with the Insurance Division. We are asking them to put it on a website or something that is accessible and searchable for the consumer. From that perspective, I do not know that we are talking about hundreds of millions of dollars. We may be talking about tens of thousands of dollars to potentially a six-figure number. The reality is when people go in and purchase drugs, they never know that it is a moving target, and they never know how much they will end up paying when they get to the pharmacy. It might be worth it to give people that information so they can be making good choices about what they are buying and how they are living on a budget. That is my intent.

Chairman Kirner:

Members of the Committee, thank you very much. Mr. Krueger, I asked you to come forward because I would like to get a perspective on this topic from the Division of Insurance. As I am reading this amendment particularly, it talks about how the Commissioner shall adopt regulations taking into consideration the appropriate federal guidance setting forth a standardized format for display and verification, et cetera. My earlier question was, who is going to be responsible if we were to move forward on this? Who would be responsible for maintaining the website?

My second question is, the Senator talks about the costs, and I see you have a fiscal note of \$38,000 next year, \$73,000 the year after, and \$147,000 every biennia thereafter. Based on that, I am presuming your Division will take responsibility for that website. You are familiar with pharmacies. It was said there are 30,000 drugs that are constantly changing. I will bet since we have

been sitting here, perhaps 200 of them changed. How in the world would you keep up with that? Not just you; the big companies can handle it, but there are smaller insurers that may have difficulty. We would like to pepper you with a few questions, if we may.

Mark J. Krueger, Insurance Counsel, Division of Insurance, Department of Business and Industry:

I will do my best to answer all your questions. As to your second question first, who would maintain the website, that ties in directly with the fiscal note. We did an unsolicited updated fiscal note after the changes were made to S.B. 328 (R1) that removed the fiscal note. There is no actual cost to the Division. The reason for that is because the Division would not be maintaining the website. The fiscal note was originally put into place because the original bill required the Division to maintain the website, gather all the information from the carriers for the formulary data, and maintain it on our website. When the amendment passed that on to the carriers to actually maintain it on their websites, it removed the fiscal note.

Chairman Kirner:

So your vision is that the carriers, all 30 of them or whatever number, would maintain and pay for a single website?

Mark Krueger:

No, they can maintain the formulary data on their website that they already have.

Chairman Kirner:

Their formulary?

Mark Krueger:

Their formulary data, and then we would have a link to their website on the Division's website.

Chairman Kirner:

I am a bit confused because I thought the advantage here was, as a consumer, I could go to one website, pick out my drugs, and see which one would be best for me to solicit a policy from. It sounds like I have to do my own work.

Mark Krueger:

I will give you the classic attorney answer: it depends. You do, to a degree; you have to click on the Division's website if you go there, which will link to the carriers' websites.

Chairman Kirner:

Are there any other questions from the Committee?

Assemblyman Nelson:

I would like to repeat the question I posed to Senator Farley. My understanding is that the pharmacies or the suppliers to the pharmacies set the drug prices, not the insurance companies. They may be able to get access to that information, but it is not the insurers who actually set those prices. I am wondering, logistically, are they going to be able to keep all these prices on there? They can obviously, for the different plans they sell, post the information on the tiers, the copays, and the deductibles, but can they control the drug prices?

Mark Krueger:

The prices are set by the pharmaceutical companies, and as I understand it, the Division has some regulations pending that address the cost sharing that is passed on. The regulations attempt to lock in the cost sharing for at least a year, the idea being that if you pay for the premium, you should not also be hit with an additional cost for the change in the pharmaceutical prices. That is pending currently in a separate regulation. Regarding Chairman Kirner's initial question as to the regulations, if we were to draft the regulations, I believe we would take into account the different ideas about how you would tier up the different costs and have a link on the different websites, which would get industry input as well as consumer input.

Assemblyman Nelson:

I am not sure you answered my question. Maybe I did not pose it properly, but I think it would be great if the prices stayed at a certain rate for a long time so people could plan. I guess what I am saying is, do the insurance companies set those prices? Or do they have the capability of putting on their own websites exactly what those prices are? If they get a bill, let us say it is an 80-20 copay, they pay 80 percent and the customer pays 20 percent. Let us say the prices do not change and they are at a set rate for a year. Do they know all those prices?

Mark Krueger:

If I was not clear, the prices can change. There is nothing set that will restrict the prices from changing, other than the pending regulation. If the prices change, then they would be updated on the formularies by the carriers, and you are correct, to answer your specific question. The carriers do not set those prices.

Assemblyman Ohrenschall:

When I asked the Senator earlier about section 22 and the link to the formularies in NRS 689A.405, are most of those formularies online now or not online? Do you see that as an obstacle to section 22 working, having the Exchange's website have links to those formularies? Are they already online, or are we going to need them to cooperate?

Mark Krueger:

Some carriers have the links to the formularies online, and some are really detailed. Just to be sure I was clear about the prices, as I understand it, the prices themselves are not displayed, just the cost-sharing amounts are displayed. I wanted to be clear about that.

As to section 22, as I understand it, the provisions link back to section 1 of the bill, which then would require the carriers to list these formularies on their website. To answer your further question, most formularies are online.

Chairman Kirner:

We are about an hour into this. I will entertain questions from Committee members, and then I would like to hear from those who are in favor of the bill.

Assemblywoman Kirkpatrick:

I keep going back to how this will be established in regulations, in the sales world or the manufacturing world, and that is what everybody does. They manufacture drugs, then sell them—it is a commodity and people have to have it. It is a stable piece of everybody's life, and within that book of business, and that is what it is called, you have to account for the highs and lows for the entire year or the entire time frame that you can change pricing.

I am going to use a ridiculous analogy, but it works for me so hopefully you will understand where I am coming from. In my world, the price of chocolate changes twice a year. It changes in January, and it changes in July if there are any peaks or any spikes that come in because the market was bad. In your world of prescription drugs, maybe there were no bottles to be had and you had to package them a little bit differently or you had to send something out. We have to accommodate for that within our margin to ensure that we do not lose money that entire four months during the process that went on.

I am trying to understand, and I get that we are trying to contain the cost. For me, I think this gives people an avenue to charge more to ensure that they cover their profit over time, as opposed to letting them do it. In my world, I am going to charge as much as I can get to ensure that I can cover anything that is

going to happen that could negatively impact my margin until I get the next opportunity to change my price. How would you ensure that we would not see the opposite? At certain times of the year, the price of crackers goes up during the Jewish holiday. I sell food for a living; somebody else sells pharmaceutical drugs, but in the grand scheme of things, it is a commodity and it is something stable in people's lives, so I want to understand how people are expected to have a 365-day-a-year business but you are cutting into their time frame on where they can adjust.

Senator Farley:

I want to bring us back to what this bill is actually trying to accomplish because I think there has been a lot of miscommunication on what this bill is actually doing. We are not asking and we are not interfering with the health insurers, the pharmaceutical companies, the pharmacy benefit managers (PBM)—we are not interfering in that marketplace. This bill does not address any of that. This bill involves the information you currently have, for example, Plan A through Plan C; those plans have associated formularies for the drug costs and what the cost sharing is to the consumer. You must now take that and post it on our website pursuant to the Insurance Commissioner's guidelines and regulations.

We are not asking for or getting in the middle of any type of negotiation because that is a bigger bill somewhere to come here soon that will be days and days of hearings like this. What we are saying is that the health insurance companies need to take the information they have, put it on their company's website, and make it accessible to both potential purchasers and current members. That is it. When the insurance companies talk about cost, we do not set the cost; we are not asking to nor are we talking about that. We are saying, take what you know, what you are already charging your consumer, and put it on the website so the consumers know it too.

Assemblyman O'Neill:

I have heard in testimony that prices can fluctuate fairly quickly. To either of you, what would be the remedy if one of the insurance companies does not keep its website—that we are requiring them to set up at some cost to them, apparently—current minute to minute?

Senator Farley:

I will turn the question over to the Insurance Commissioner. For me, at this point, my knowledge is that would be a takeaway to come back and amend what I currently have.

Mark Krueger:

To answer your question, the Division is neutral on the bill. We simply would draft regulations as instructed by the statute, so once a regulation is passed, it has the force and effect of law. A violation of that would then be a standard violation as you would have any other violation of a regulation.

Assemblyman O'Neill:

Do you see in the bill, as it is now, where there is a remedy or a penalty in here that you could then absorb into regulation that you would enforce by regulation? I do not see it.

Mark Krueger:

There would be another statutory provision that makes it a law that if you violate a regulation adopted by the Commissioner, that would be a violation of the Nevada Insurance Code, Title 57 of the *Nevada Revised Statutes*.

Assemblyman O'Neill:

What is that remedy? What is the penalty?

Mark Krueger:

I do not have that off the top of my head, but there are penalties in place.

Assemblyman O'Neill:

Do you have any idea what some of those would be?

Mark Krueger:

A monetary fine and anything that would be regulatory over your license.

Chairman Kirner:

I will invite those who support S.B. 328 (R1) to come forward.

Barry Gold, Director, Government Relations, AARP Nevada:

I have been working with all the different groups on this bill, and I can tell you this is a priority for a lot of the patient advocacy groups that are looking to help their consumers. We really need to bring this bill back to the consumer's perspective. What the patients are looking for is a shopper. They need to know how much each drug they take costs. It is that simple. If they are going to buy an insurance plan, they want to know how much it costs. You would not walk into a grocery store that did not have the prices for the individual items clearly posted so you know whether to go to grocery store A or grocery store B. It is really just that basic information they are looking for.

The other thing I wanted to mention in terms of the confusion over how much drugs cost and whether they could put that down there, the actual cost is important and with many plans, in fact, probably most plans, the drugs are on a copay, not so much a coinsurance so they cost \$5, \$10, \$15, or maybe \$500 and the ones who are shopping to buy insurance need to know, "Is my asthma medication going to cost me \$10 or is it going to cost me \$500?" It is really that simple.

Because of that AARP, on behalf of its 314,000 consumers who will be shopping for insurance, strongly urges you to pass this bill.

George Ross, representing Astellas Pharma US, Inc.:

We are very happy to have been involved with this bill, and we certainly thank and appreciate Senator Farley bringing it and for skillfully defending it in this hearing.

As I am sitting here, I thought I was about 30 years younger. I began to think I was back in 1985. We are dealing with very skilled, highly technologically able companies, yet it is as if there is no technology at all. The same companies who can keep the prices up, who can track all their volumes, who can put all the formularies together on paper and send them to us every time the health plan is due, find it virtually impossible to keep their websites updated. I find that rather interesting, and I think you need to think about that.

This bill is designed for consumers who will be buying their health insurance to purchase it more easily and more effectively, and for people who have children who must take two or three pills to manage a chronic illness. Those of us who are adults, prior to getting on Medicare, still have to get into Part D, but nevertheless, the older you get, the more pills you take. There will be more and more people buying insurance. I know there are many plans and many policies—that is just the way life is. You want to have enough information to make an intelligent decision. More and more people are going to be buying their own insurance under the Affordable Care Act. More and more companies are going to find it economical to pay the \$2,000 fine, give their employees a little raise, and send them to the exchange. Those people, once they figure out, well, I can use this level of deductible, that level of deductible, now I need these seven prescriptions. Number one, we need searchability: are my pills on that formulary? Number two, if they are, or the type of pill, if I can take different types of the same one, are they on the formulary? Number three, which tier are they on? How much are these pills going to cost me?

Are they on tier one for \$10? Is it going to be on tier two for \$40? Is it going to be on tier three for \$250? A friend of mine has to pay \$700 every month for his medicine. Does he always have to pay \$700, or can he find it for \$200 on somebody else's plan?

This is a bill designed to help consumers make more intelligent decisions. Technology is advancing rapidly, and ultimately, the idea is to be able to get on your computer and go to this plan, go to that plan, go to another plan, and find the one for you that is the most effective and economical—the plan that has the pills you need at the best price. I think anything else on this is somewhat diversionary.

We worked many times with insurance companies and met with them many times. In the amendment that we have proposed ([Exhibit C](#)) we tried to address the insurance companies' concerns. We could not come to an agreement. You will note that we said, "The Commissioner shall adopt regulations, taking into consideration the appropriate federal guidance." We did not want to be frozen with federal guidance. We did not want to have to conform to federal guidance because federal guidance does not require searchability and does not require you to know the cost in a dollar way. We know corporations like to have some conformity across states, and that is why we wrote it that way.

The amendment continues, "Such regulations must require that to the extent practicable without undue cost." The insurance companies pushed and pushed for that type of language. We realized where they were coming from and we gave that to them. Why is that type of language there? Because we have a marketplace with a wide variety of insurance companies. Some of the companies will tell you they virtually do this already, so they should not have to worry. Some of them cannot; some of them are smaller. For some of them, we are only a small part of their market. For those, that is why this is there, so the Insurance Commissioner can take their particular situation into consideration and, essentially, let them off the hook.

Section 1, subsection 1, paragraph (a), of the proposed amendment determines the tier of that drug—that is what is important. You need to know what tier the drug is on and what it is going to cost you. This is an important factor. Might it change over time? Yes, it might. But at least at that point, we will be making that decision. You are going to have the information you need, as a consumer, to make an intelligent decision. Let us not forget that. With all the other diversions, this is the most technological and visual thing I have ever seen for some of those questions. How can they possibly maintain a website?

The whole idea is you get a consistent website so it is understandable to a person who speaks English. I do not know if we are going to get to Spanish or not. But it is certainly one language and, in time, maybe there will be more.

A person with average intelligence, which most of us have, can get on there and figure out which pills you need. Right now, I get a formulary every year, two inches thick. Luckily, I had a great employer with a great insurance plan. But I just about need a medical degree to figure out what they are telling me. You need to understand that. We have a common way of looking. If you have a common plan, it is easy to jump around and figure out what you need.

Did we delete a lot of this bill? Absolutely. We had included a number of mental health informational requirements. Why? Because those of you who live in Nevada know that one of the biggest crises we have had in this state is mental health. One thing that came out of our work this last year and a half, with the Southern Nevada Forum, which I coordinated, was the incredible lack of information, the incredible inability of people to find out where to turn. This was to help that. The insurance companies objected, and we took it out.

Originally, we also had this for individuals, small groups, and larger plans. The insurance companies objected to that. We took that out. We have made a number of adjustments trying to take into consideration the insurance companies' concerns, but I would just beg you to remember the consumer first. This is a consumer-friendly bill. It is designed to help the consumer make an intelligent choice. I know it is a bit of a burden for some. There is an out for those for whom it is a burden that does not make sense financially or technologically. I understand the need to answer the question as to why there is not more precision for the regulating bodies to do the regulations. In those meetings we had, especially the one where we all met with the Insurance Commissioner, it became clear that nobody, neither the insurance companies nor the regulators, wanted their hands tied. They wanted the flexibility because we all recognize that in the blink of an eye, technology changes. We have apps on our iPads that we would not have dreamed of two or three years ago. Consequently, the more precision we put in this law, the harder it is to develop regulations that will be consistent with what companies are capable of. I ask you to fairly consider this amendment. We think it meets the vast majority of the opponents' objections without losing the purpose and intent of the bill.

**Tom McCoy, Nevada Government Relations Director, American Cancer Society
Cancer Action Network:**

On behalf of 15,000 Nevadans who will be diagnosed with cancer this year alone and thousands of others who are survivors, let me explain our position on this bill. We supported the bill as it was initially introduced and had to step back as various hands got involved in changing the language. We are comfortable with this amendment ([Exhibit C](#)). We would like, as Mr. Ross said, to have had some other aspects of this bill still included, but we are comfortable with this amendment because we feel it makes a difference.

I think it is important, as I listen to some of the questions, that we understand that tiering is tiering—those are locked-in prices. Those prices do not fluctuate. We pay the \$10, the \$20, the \$40, whatever our tiering is. The real issue is we get into the cost sharing or coinsurance. As a side note, for the last four years, I have been on the Consumer Assistance Advisory Committee of the Silver State Health Insurance Exchange. I spent a lot of time, and we were listening to various witnesses and different insurance companies over the years talking about various issues having to do with health insurance. Some of you may remember that when we were running our own portal, we had the formulary. You could search on the Silver State Health Insurance Exchange and know exactly what was available from what particular plan you were looking at. It was so revolutionary, if you will, that even California copied it. *The Washington Post* did a story on it. From a technological standpoint, we know this can be done. This is something that will make a difference in the consumer's ability to understand.

When we shop for insurance, we see what the premium costs. In the case of a lot of the people we represent with cancer as well as other chronic diseases, that is a small part of what the insurance picture is really all about. The prescription aspect is very important. Individuals need to be able to search. It may be that this particular plan is going to provide them with better coverage for their particular situation. I think that with the shopability, if you will, this is trying to accomplish where we should be. I should be able to look at plans before I buy. Right now, you have to have a member identification (ID) for the particular company I have insurance with. I have to enter that member ID to find out certain information. That should not be the case. Anybody who is interested in shopping as a potential enrollee should have access to that information, and right now they do not, consistently.

Chairman Kirner:

We will open the hearing to questions from the Committee members.

Assemblywoman Carlton:

I have a question for Mr. Gold and one for Mr. Ross. Mr. Gold, representing your membership, I just pulled up the Medicare formulary list, and I am assuming most of your members are Medicare-eligible. It seems to me that their issues are pretty much addressed. All I did was type it in very quickly, and I got 15 hits on the first screen of where I can find AARP's Part D formulary, the Medicare formulary, the covered drug list, Humana's drug formulary, so I am not sure what this would do for your folks that they do not already have available. I am just trying to figure out that part of it.

Barry Gold:

AARP is for people aged 50-plus, so we have people ranging from 50 to 100-and-something. The people who are on Medicare might have slightly different information in terms of that, but buying Part D coverage can be also very difficult. People might not know exactly how to find it. That is why we have things like the State Health Insurance Assistance Program (SHIP), where there are volunteers who can help people find that information. But then all those individuals who are not on Medicare, the people who are aged 50 to 64, who are really the ones who probably have more chronic illnesses than a lot of the other people in the community and take more prescription drugs historically than anyone else in that age group, they are the ones who will be buying the private plans, and they are going to need to shop to find out how much the drugs cost for all those conditions they have.

Assemblywoman Carlton:

What percentage of your membership is that?

Barry Gold:

I do not have that for you right now. I can find that out if you like.

Assemblywoman Carlton:

I think that is an important number to have to see what the actual impact would be. I would appreciate that because when you send me things with AARP on it, it goes in the trash—I refuse to admit it. I am just not going there.

My question to Mr. Ross is, I remember years ago I was having a discussion about disclosure and you know right where I am going, so it will not be a surprise. What is good for the goose is good for the gander. If we want the consumer to have numbers and information on this, I know there have been many times in this Legislature that different legislators have asked for information from the drug companies on the cost of drugs, how they spend their money, the incentives they give doctors—things along that line—and we were pretty much told well, you know, we do not really want to share that.

That is my concern. Those numbers are good for the consumer, too. If we are going to talk about consumer information, maybe that is something we need to discuss again, since it is ten years later and technology has advanced and you can provide that information, too.

Mr. Ross and I really like to debate things. We are always friends, though.

Chairman Kirner:

Mr. Ross, would you like to respond?

George Ross:

I would respond that some of that is proprietary data. The rest of it belongs in a different discussion.

Chairman Kirner:

Are there other questions from the Committee?

Assemblyman Nelson:

Perhaps Mr. Ross can answer this. You mentioned that you had made a number of concessions in the amendment. You carved out the larger insurance company plans at the request of the insurance companies. I will ask them the same question: why do you think they wanted that carve-out? Why limit this just to these individual plans? Is it just for the consumers, that they are the most vulnerable, the ones who have to get their individual plans?

George Ross:

It would be useful for the plans, but the real benefit of this is for the individual who is figuring out what plan he buys. Within a plan, it is useful information, as the sponsor pointed out. In certain times it is very useful. It is useful for somebody who is given a choice of five plans within a company to have that. I think it would be terrific, but at the same time we were trying to focus this bill, given the questionable cost and applicability. Despite what I said, we are not ignorant. We do not want to ignore the fact that it is a burden. This will focus on the people who are home. It would help them the most, which is the individual who is buying insurance. I think most of us would predict that more and more people will be buying their own insurance as time goes by. If it turns out to work beautifully, if the bill passes, you all can make a policy decision if you want to expand it.

Assemblyman O'Neill:

Mr. Gold, if I understand correctly, AARP offers insurance now, correct?

Barry Gold:

No, AARP does not offer insurance. The insurance plans that have the AARP name on them are actually endorsed products. They are sold through companies like UnitedHealthcare and Aetna, so AARP does not own any insurance companies or offer them.

Assemblyman O'Neill:

Can I go now to these insurance plans that you currently endorse, and see what I am going to pay for various prescriptions as a nonmember?

Barry Gold:

I do not have that information, and we have nothing to do with that. When people furnish us information, we give them the 800 number of the insurance companies to check.

Chairman Kirner:

Mr. Gold, how is it that you endorse a company, and you do not know what the company is doing?

Barry Gold:

There is a separate section of AARP—AARP's corporate structure. I work for the nonprofit part of it, which is why I am here testifying in front of you and lobbying. There is another section of the corporation that is a for-profit corporation that works with the insurance companies, and the best way to put it is, we like to offer products for our membership that offer good value. The best way I like to say it is we ask them to always do this, this, and this but never do that, that, and that. Besides that, I do not get into that part of the business at all.

Chairman Kirner:

I submit to you that if you wish to testify before this body, you should have an understanding of what your products are.

Will those who are in opposition to this bill, please come forward.

Jay Parmer, representing America's Health Insurance Plans:

I am here on behalf of America's Health Insurance Plans (AHIP), the national trade association representing the health insurance industry. America's Health Insurance Plans' members provide health and supplemental benefits to more than 200 million Americans through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid. America's Health Insurance Plans is fully supportive of transparency

and supports legislative goals to that end. However, S.B. 328 (R1) interferes in health insurance plans' ability to manage costs through prescriptive processes around formulary disclosure.

This bill as written does not get to the root problem of making prescription drugs more affordable. We have serious concerns about this bill, as it will make it harder to control drug prices across the health care system. I had a few other comments I am going to put on the record, but for the sake of time I would like to take a moment and address a couple of the points that were made earlier by those in support of the bill. It is correct that similar legislation, not the same legislation, has been considered and passed in some degree in four states. In California, there are new formulary disclosure requirements that passed last year. I will tell you that the health insurance plans oppose the bill, believing it is overly prescriptive and will ultimately lead to micromanagement of formularies, which will increase costs. The bill that passed in California will be very hard to implement and should not be replicated in Nevada, pure and simple.

In Colorado, they issued cost-sharing rules and are following the federal requirements for disclosure of formulary. There are no prescriptive formats or templates to be done by the regulator. In Minnesota, the bill that passed there does not interfere with formulary management by drug plans. In Hawaii, again, there was no prescriptive format or micromanagement of the formulary process. The bill just requires the carrier to post their formularies and update them when there are changes to that formulary.

Chairman Kirner:

Mr. Parmer, the bill sponsor mentioned Texas. What do you have on Texas?

Jay Parmer:

I do not have anything on Texas. I am speaking to the four bills that were mentioned as being bills that passed this session.

Consumer protections already exist regarding access to information about prescription drug coverage. I am referring to the *Code of Federal Regulations*, Title 45, Section 156.122. Senate Bill 328 (1st Reprint) goes beyond the requirements of the Affordable Care Act and, furthermore, prescribes the process for disclosure that would create a separate process and mechanism for consumers than what is readily available in the marketplace today. This bill will not only drive up the cost on the overall health care system by creating a unique set of administrative requirements, but will restrict the ability of health plans to manage and contain pharmaceutical costs.

If the goal is true transparency for consumers regarding the price and costs of drugs, this bill should require that certain information be submitted when a drug costs more than \$10,000 per month, limiting the reporting to the highest cost drugs. I believe that was a suggestion made by Assemblyman Nelson, and that seems to make a lot of sense to us.

Keith Lee, representing Nevada Association of Health Plans:

I represent the Nevada Association of Health Plans, an association of several insurers, both large and small, several of whom are on the Exchange and others who are only in the private sector.

I would like to make a couple of points. We have worked with Senator Farley, Mr. Ross, and others on this bill, virtually since the day the session began. We have worked on the product you see in the first reprint, a product on which we agreed to disagree and continue working. We were continuing these meetings until last week when it appeared we were not going to be able to come to an agreement. We are in opposition to the bill, and we are in opposition to the amendment that is set forth ([Exhibit C](#)).

We use the word "individual" plans. Understand that means individual and family plans. You are not going online or you are not just purchasing a plan for yourself; it is also for your family. We are talking about individual and family plans, as opposed to group or other types of larger plans that really have a different kind of structure.

Finally, I have to disagree with my friend, Mr. Krueger, at least with my understanding of it, with regard to the regulation that is pending before the Insurance Commissioner. It is my understanding that the regulation that is pending does not lock in drug prices. What it does is address the issue of how often health insurers, my clients and others who are represented at this table, can change the formulary during a calendar year. I believe that is what the regulation is. We are not talking about locking in drug prices. One other point I would like to make is under the law, for every dollar of premium we receive, 85 cents of that goes to the medical expenses of the insured: that is, medical and prescription drug expenses. What we are talking about is that the overhead for the company on each premium dollar received is 15 cents.

Make no mistake. This bill creates a mandate, but it is not an unfunded mandate. It is a mandate that will be funded by your constituents—those who are insured by the health plans that are covered by this bill. This bill would apply to all health insurers in the state of Nevada who issue individual health plans. If this bill passes, those companies will have to make a decision.

Do they want to go forward and implement this, or do they wish to withdraw from the market? It seems to us that in making that decision, the insurance company is going to consider three factors: (1) the state of the technology available; (2) the robustness of the insurer's website; and (3) the cost of the technology and cost of upgrading the website to accommodate the new technology.

As I said earlier, this would apply to all health insurers: those who have a large membership, who, in the instance of two of my association members, are statewide, and it also affects those small companies that are very local or regional and have a lot fewer number of bodies insured. We are talking about a cost factor that is going to be considered. Those companies will consider those three factors and make the decision to go forward and comply with the statute and pass the cost on to its insured or to withdraw from the marketplace, reducing the competition among carriers, therefore putting upward pressure on premiums.

There are several of my members who are on the Silver State Health Insurance Exchange. As you all are aware, the Silver State Exchange has been changed from a state exchange to a portal to the federal exchange. Those insurers that participate in the Silver State Health Insurance Exchange have standardized formats for the formularies set by the feds. One of the issues we have with this bill and this amendment is that this bill sets the federal standard that the companies have to comply with to be part of the exchange. This bill sets those standards that those companies comply with as the floor, not the ceiling. Our concern among others is that the Commissioner may come in and during the regulatory process decide that the format that the feds have approved needs to be different for those very same insurers who are also in the private sector. What we are talking about is the potential of the Commissioner ordering private insurance companies who also comply with the federal requirements under the exchange to have a different requirement, a different setup. This, of course, would cost money, and this is another factor that I discussed earlier.

I guess I have to ask a rhetorical question: what is wrong with the formulary format that is part of the federal exchange and that so many people are able to understand and cope with?

I might also add that insurers now have the formularies available with tiers, with copays, with deductibles, with searchability functions. Not all of them are on websites yet. They are all moving in that direction. Under current law, all insurers who issue or work in the individual area have to have an 800 number—that is required by law. The consumer can call that number and get specific information regarding prescription drugs or any other issues of

coverage regarding those particular plans. The health insurance market is very competitive. Each company is looking for a competitive edge and a better, more consumer friendly website than the competition. After all, the business plan is to increase membership, not chase membership away.

As Mr. Parmer alluded to previously, the Centers for Medicare and Medicaid Services (CMS) are regulating the space already. Mr. Parmer referred to the *Code of Federal Regulations*, Title 45, Section 156.122. I would like to read paragraph (d)(1) into the record:

For plan years beginning on or after January 1, 2016, a health plan must publish an up-to-date, accurate, and complete list of all covered drugs on its formulary drug list, including any tiering structure that it has adopted and any restrictions on the manner in which a drug can be obtained, in a manner that is easily accessible to plan enrollees [the members], prospective enrollees [the shoppers], the State, the Exchange, HHS, the U.S. Office of Personnel Management, and the general public. A formulary drug list is easily accessible when: (i) It can be viewed on the plan's public Web site through a clearly identifiable link or tab without requiring an individual to create or access an account or enter a policy number; and (ii) If an issuer offers more than one plan, when an individual can easily discern which formulary drug list applies to which plan.

We believe that with the natural competition in the state among insurers and what the feds are doing in regulating this space, the consumer has and will continue to have more information available to him regarding transparency of cost of drugs, all without a statutory mandate.

Finally, let us not overlook the 600-pound gorilla in this debate on drug costs and transparency, and that is the big drug companies. Those are the ones who set the price on which we, as insurers, decide what tier that drug goes in, what the copay is, and what the deductible is. If we are going to have a discussion about how we are going to control health costs, prescription drugs particularly, to the consumer in this state, we have to start where it all begins, and that is with the pharmaceutical companies who set the prices. There is no cap on what those prices can be. There is no cap on how often they can change those prices, and that is the 600-pound gorilla we need to deal with. We understand that the big drug companies spend more money on marketing on an annual basis than they do on research and development. If insurance companies and

their formularies are transparent to the public, and they should be, then the information on the cost of drugs from the pharmaceutical companies must be just as transparent and made just as readily available to the public.

James L. Wadhams, representing Anthem, Inc.:

In the time I came to sit down at this table, I pulled up the Anthem website. I am looking at what is called their most popular plan, Anthem Bronze. To make it simple, it says for preferred drugs you pay a 40 percent coinsurance. That raises the point, in fact, that was raised by an earlier speaker, Mr. Gold, of AARP. How would you buy groceries without the price? The point here is that with this particular insurance plan, we need the price of those groceries before we could possibly tell the consumer what their exposure is. If you look at the amendment that has been offered by Mr. Ross ([Exhibit C](#)), it requires the insurance company to state the estimated dollar amount paid by the enrollee. Until we have the price of groceries, we cannot tell them what their discount cost will be. I think that is a critical element. The other piece that Mr. Lee said, to create a different standard for Nevada, when we are in this world today where the regulations are being driven by the federal government under the Affordable Care Act, creates the potential for us to lose opportunities to purchase insurance, not enhance those. I would draw those two points to your attention and suggest that this bill needs more work.

Michael D. Hillerby, representing Hometown Health:

Hometown Health is based in Reno. We are a Nevada-owned and -operated company that serves Nevada. We would be one of the smaller companies that you heard referenced. We are opposed to S.B. 328 (R1) as well as the proposed amendment. There were a variety of other conceptual amendments I think I heard discussed by the sponsors. We would need to see those to understand the impact. Mr. Wadhams and my other colleagues here at the table have talked about some of the challenges of our providing specific dollar amounts for information we do not have.

I want to assure my colleague, Mr. Ross, we are aware it is 2015. It is not 1985. We make available on our website a formulary. It is one click away from the home page. You can see what tier the drugs are in. You can look at any of the 40 different individual and family plans that are available. The reason there are so many is people shop for a variety of different reasons. They may want to be in a preferred provider organization. They may wish to be in a health maintenance organization. They look for high deductible plans, low deductible plans. They may want pediatric dental care coverage. They may not, if they are a family that does not have children. We provide those options. At each one of those, without a member login, you can click on the explanation of benefits and see some pretty significant detail on the drug. Is it a cost share?

We pay 80 percent; you pay 20 percent. Is it a flat copay? You can look at the formulary. Is it one click? No. Would we love to have it one click? Absolutely. We have people in 40 different plans, and they are built for a variety of different needs for those individuals and families. Once you are in that as a member, you can get that information pretty quickly. If you are a shopper, you have to make a couple of different clicks.

I have a 61-page formulary open that Assemblywoman Kirkpatrick could print if she wanted to and have it. I can search it on here. I can go to the index and look up the drug name. I can search and find exactly where it is and what tier, and I can go over one tab and look at the explanation of benefits and find the price. I cannot do that in one place. It would be remarkably and prohibitively expensive even if we had the information which again, as my other colleagues here at the table have said, we do not. We do not set nor can we control the answer to Assemblyman Nelson's earlier question, the price the drug companies charge. We do not have that information. We contract with the pharmacy benefit manager. They do their best to put a package together that is attractive and get pricing. We make available the information we have. We are happy to do it. We are required to do it, and we make it available.

Assemblywoman Neal:

I was looking up last night where formularies are and different companies that may list them. You can pull up Blue Cross in California, and they have their Medicare formulary. Tricare popped up and you can see the recent formulary changes, you can see the quantity limits for the prescription drugs, you can view the prior authorization requirements for certain prescription drugs, you can get nonformulary drugs, you can get all this information. You can click on the prescription cost, all of this. So, please tell me again, what is the problem and why it could not be housed in some format onto the Division of Insurance website if other companies and other places have managed, for their own specific insurance company, to put an extensive amount of information on their own personal site.

Keith Lee:

I will try and answer that and, it may not be a complete answer, so perhaps some of my colleagues could help with the answer. We have no problem with the Insurance Commissioner regulating in this area as long as the ceiling for his regulatory processes with respect to the formulary format is what CMS requires now. I read part of the *Code of Federal Regulations* to you that is effective for health plans beginning January 1, 2016. So many of our companies are able to do that now. You mentioned Tricare; that is the insurance company for retired military. One of my members has that in the state of Nevada. I cannot speak to them because I have not gone on that site, but I suspect that whatever that

website does in California is very similar to what can be done in Nevada. I do not know if that answers your question. I will yield to Mr. Hillerby or others who may give you a better answer than I have.

Assemblywoman Neal:

What would be the cost if other companies have done it and they have decided for whatever reason, perhaps because of their business model, it makes sense for them to put this kind of formulary information on their website so their customers can access this information, whether they are military or not. What is the cost of having the website that does that same function, and what is the burden or the cost in relationship to the insurance companies acting in a coordinated way, sharing the information with the Division of Insurance, which is a consumer agency for the state of Nevada? What are the cost burdens or problems that you would encounter by sharing the information so that even a limited amount of information is there? I am not saying 30,000 drugs, but maybe there is a tier, maybe there is a category that could be shared, but what is it? What is the cost burden? What are we expected to say? "This is going to cost me a million dollars to do this, and that is why I do not want to share the information."

Michael Hillerby:

I will try and answer those questions as best I can. First, this bill does not require sharing this with the Division of Insurance website. I think that was talked about by the sponsors. That was one option originally to have all this in a state-maintained website, and there would have been a fiscal note from the state to do that. This puts the requirements on each individual company. We publish our formulary. It is public information, and is two clicks from the home page. It is 61 pages and lists all the thousands of drugs and tells you what tiers they are in. We do that. You can look at the explanation of benefits for a plan and see exactly what your cost share is, as a percentage, or your copay if it is a specific dollar amount, or your deductible depending on what the plan is. What this is talking about is having that in exactly one place in one click.

To answer the other part of your question about what information do you not want to share, we are happy to share all of it. The key piece we do not have is the drug price itself. You have heard from a number of other people. We do not set that; we do not control it. We do not necessarily know what it is, and it can be changed minute by minute, depending on how the market goes. Our members are going to see a change when they go to the pharmacy if from one month to the next the manufacturer of that drug has changed the cost of that drug and they are in a coinsurance where they are paying a percentage.

If you are paying a flat deductible or you are paying a set copayment of \$10, \$20, or \$30, depending on the tier and the drug, that is not going to change for you as a consumer. It will change for the insurer. Our percentage of that cost is going to change. Again, if you are in a cost sharing, an 80-20 split, a 60-40, or whatever your plan may be, you are going to see a change in that cost as a consumer from month to month.

We are also going to see it as the insurer, but that does not mean we knew what it was before it was set—before you paid for it—or that the drug companies are required to tell us.

We cannot share information we do not have. We are happy to share all of our formulary information, everything that is covered in the formulary, what tier, the copays, the deductibles, all of that. That last piece of a coshare cost, a percentage coshare, and what price that drug is going to be from day to day at the pharmacy, we do not know.

Chairman Kirner:

I am going to try and move this along because we have another large bill to hear.

Assemblyman Nelson:

One of the witnesses before you mentioned the fact that there are some plans or some insurers where you cannot search the website until you are already a member. I am curious about all your clients that you represent. Mr. Hillerby has already said that his main client, whom he is representing today, allows nonmembers to search the websites. Is that typical? What is the experience of your clients?

Keith Lee:

I believe all my members, and I think we have seven if my count is accurate, have the ability to search the website. They all have their own search tools. As Mr. Hillerby says, his is two clicks away; others might be three clicks away. Again, so much depends on the order and magnitude of the company. Two of my members are statewide. They have a lot of members. Mr. Hillerby's is regional. Others are even less regional and more local than is Mr. Hillerby's client—that depends on the robustness of their website right now. What capability does their website have currently? As I said in my presentation, this is very competitive, so they are looking at upgrading their websites. They also have big federal government looking over their shoulder telling them what they have to do by plan year 2016. It is all a function of the particular company and how robust they want their website to be.

Current law requires all this information, and you all get big packets in the mail every year that contain the formularies, the providers available, all those sorts of things available to you. Each company is required by law to have an 800 telephone number, both in that package and on their website.

Assemblyman Nelson:

Specifically, my question is, can anyone search the website even if they are not a member yet?

Chairman Kirner:

I think that is a yes or no.

James Wadhams:

Yes.

Chairman Kirner:

We will entertain those who are neutral.

Liz MacMenamin, Vice President, Government Affairs, Retail Association of Nevada:

I was not sure how I was coming to the table on this bill. Many of you have known me for many years. I always oppose mandates. I have been working and looking at this bill from the sidelines for a while now. After listening to some of the testimony, I am a little concerned, but I came to the table specifically to clear up Assemblyman Nelson's question about pharmacies. Pharmacies do not set the price of drugs. The drug prices, as you probably have heard in some of the other testimony, are set by the manufacturers. Oftentimes, those contracts and those prices change daily for the pharmacies. I just needed to clear up that information.

Chairman Kirner:

Would the bill's sponsor like to make closing comments?

Senator Farley:

Yes. I want to bring this back to what this bill really is. It seems as if we went into a lot of different places. This bill is not about the cost of drugs to the health insurer. All we are saying is whatever information you have now in paper format, put it online. Make it searchable; make it easy. All of these people said, we can find the pages and pages and pages of formulary online.

All I want is to have somebody be able to type in the name of a drug, pull up the formulary, and give that person the cost or cost sharing. We are not asking for them to do something that Assemblywoman Neal stated quite clearly: Other people are doing it. Other people are managing it. The sky did not fall, and it puts the right information into the consumers' hands. It is not about all these other issues.

I also want to thank the opposition and the health insurers because they have been meeting with me since the get-go. They have been working in good faith, and I appreciate everybody's effort. I think this is a huge issue. This is a good issue, and this is about the consumer.

Chairman Kirner:

We will close the hearing on Senate Bill 328 (1st Reprint) and open the hearing on Senate Bill 374 (2nd Reprint).

**Senate Bill 374 (2nd Reprint): Revises provisions relating to energy.
(BDR 58-800)**

Senator Patricia Farley, Senate District No. 8:

I am here to talk about Senate Bill 374 (2nd Reprint) for your consideration. Senate Bill 374 (2nd Reprint) does two major things: it addresses design professionals and air change standards, and it also has provisions relating to net metering.

As you may be aware, existing law requires the Director of the Office of Energy, Office of the Governor, and the governing bodies of a local government to adopt certain standards for the conservation of energy in buildings. There is currently a conflict between existing laws and the provisions in the *Nevada Administrative Code* (NAC) with respect to the design professionals. Design professionals are required to design according to the code adopted by the local governing body. However, the Director of the Office of Energy must continually adopt the most recent version of the *International Energy Conservation Code* (IECC), which is the model building code adopted by many state and local governments for the establishment of minimum design and construction requirements for energy efficiency.

Adoption of the most recent version of the *International Energy Conservation Code* creates an unintentional conflict with the code of ethics by the State Board of Architecture, Interior Design and Residential Design and applicable standards adopted by local jurisdictions. The code of ethics requires design professionals to design according to state law. In addition, the NAC sets the IECC as the standard to be adopted by the Director or the local jurisdiction.

The regulation also states that deviation from these standards requires a petition to the respective licensing board. Unless such petition is granted, failure to design to such standards may be grounds for disciplinary action. The conflict unintentionally jeopardizes the licenses of such professionals who may be designing to a code adopted by a local government rather than adopted by the state.

I would like to explain the importance of the provisions regarding net metering and this bill. Nevada is a national leader in renewable energy with one of the most aggressive portfolio standards in the nation. We have had net metering for close to two decades. Today, Nevada enjoys robust jobs in the renewable energy industry that include rooftop solar as well as large-scale solar, geothermal, and wind developments. Over the years, this body has placed limits on the amounts of net metering that can occur because of financial impacts to other customers who do not install solar generation. Rather than having to revisit this cap issue every legislative session, this amendment ([Exhibit D](#)) requires the Public Utilities Commission of Nevada (PUCN) to do a thorough analysis of what the appropriate costs and subsidies are that should or should not be borne by utility customers in this state.

This amendment places all of these decisions in the hands of regulators and gives those regulators adequate time to work on this very important matter. At the same time, the amendment gives the Commission the ability to make sure the rooftop installations continue, pending their process. To achieve this, the proposed amendment ([Exhibit D](#)) calls for the creation of a new, fair, and reasonable net metering tariff that does not shift costs from customers with net metering generation to those who do not have solar. This new tariff will be in place on or before December 31, 2015. If for some reason the existing 3 percent cap is reached prior to the conclusion of the Commission process, the Commission will have the ability to put in a temporary tariff subject to true-up or adjustments once the final tariff has been approved.

The Commission is the right governing body to determine the appropriate tariff and will have oversight to review, modify, and improve the tariff and all of the other terms and conditions through open and transparent proceedings with all parties involved and with input from every stakeholder.

Chairman Kirner:

Does the Committee have questions for the Senator?

Assemblywoman Neal:

I have two questions. Section 1, subsection 1 says, "Except as otherwise provided in subsection 5, such regulations must include," and then when you go

to subsection 4, paragraph (b), it says, "Except as otherwise provided in subsection 5, may adopt higher or more stringent standards and must report any such higher or more stringent standards." What is this higher standard, and where does it come from?

The second question comes from section 2.3, subsection 3, which says, "To avoid a significant disruption of the net metering market, the Commission may, in its discretion and without a hearing, approve a tariff submitted pursuant to subsection 1 subject to any requirements relating to adjustments which the Commission may impose." I am trying to understand the intersection of subsection 3 in section 2.3 and section 1, subsection 1, which gives a carve-out to what code exempts them from being under the specific code that was cited in subsection 1, and why there would even be a situation where they would in their discretion and without a hearing approve a tariff.

Senator Kelvin D. Atkinson, Senate District No. 4:

I believe what you are citing is the ability from the PUCN to assess the tariff in case they exceed the 3 percent. Right now, net metering is set at 3 percent. There is some belief by some of the solar folks that they will exceed that, so this allows the utility to put them in the tariff category while they are going through the rulemaking and setting the policies. They do not necessarily have to use that if they do not exceed it before they are able to get it done. If not, this will allow them to go there.

Assemblywoman Neal:

What is the higher code that could apply under section 1, subsection 4, paragraph (b)? What is this higher code that would be adopted because it says, "Except as otherwise provided in subsection 5, may adopt higher or more stringent standards and must report any such higher or more stringent standards." If it is not the IECC, then what is the higher code?

Paul A. Thomsen, Director, Office of Energy, Office of the Governor:

I am the Director of the Governor's Office of Energy. The bill has two parts: part one amends *Nevada Revised Statutes* (NRS) 701.220 and has no impact on the second part, which starts at section 2 of the bill and amends NRS Chapter 704. For the building code section, just to be clear, we set a minimum threshold, which is the current *International Energy Conservation Code* (IECC), for which building officials have to build to. They cannot amend the code to weaken the code or make it less efficient, but they can amend it to make it more stringent. So, the code in section 1 is the IECC code. Once you move to section 2.3, you move to NRS Chapter 704, which is the discussion of net metering and moving from the net metered amount to a new tariff rate from the Public Utilities Commission of Nevada.

Assemblywoman Neal:

But why would you say in section 1, subsection 5, "The Director or the governing body of a local government shall not adopt a standard or code which mandates a requirement for air changes per hour that is outside the following ranges." It is a carve-out. Why?

Paul Thomsen:

This amendment ([Exhibit D](#)) was put forward by the Southern Nevada Home Builders Association, the Builders Association of Northern Nevada, the Builders Association of Western Nevada, and others. In the most recent building code, to make buildings as efficient as possible, they had a standard in there which required something very convoluted about air changes and limited the number. The builders came to the Office of Energy and to Senator Farley and said that is really an unachievable goal. Can we create an amendment to the standard that would allow us to only meet four and one-half air changes or seven air changes? What you see in section 1, subsection 5, again, only pertains to NRS Chapter 701, which is the building codes, and the building codes say, we cannot do anything that materially weakens the building code. This amendment states that we shall not adopt a standard that is less than four and one-half air changes. We conceded that position to the builders and said we accept that. We will adopt the most recent building code but not require you to meet the air changes of less than four. That is all that does. It has no carve-out, no effect on net metering, solar generation, or energy in any way. It strictly pertains to the building code section of this bill.

Assemblyman Nelson:

Thank you, Senator Farley, for bringing this bill. Obviously, solar is the future and we have lots of it in our state. It is great to take advantage of it.

I briefly addressed this with you prior to the hearing. I am considering proposing an amendment which, I hope, you will find to be friendly. I want to make sure that there is no gap in the tariffs. I have heard different opinions as to when the cap will be reached. Some have said August, others say it will not happen until next March. I think the solar companies do not really know because they only know what they are selling themselves and do not know what their competitors are selling. My question is, would you be amendable to an amendment that says that if the cap is reached prior to the new rules that the PUCN is going to promulgate and establish, that the current tariffs would be able to stay in place so that there is no interruption in the solar companies and their employees proceeding?

Senator Farley:

In general, because this is just being talked about, I am going to be neutral. Currently, there is a provision in place, and I can let Senator Atkinson speak to this as well, where there is a tariff and there is a way for them to bridge through. Through negotiations or by your body, if there are changes, my goal overall is that the PUCN has enough legislation in which to regulate this industry in the best possible manner. With that, I will let Senator Atkinson respond. He is a cosponsor of this amendment and, obviously, has a lot of years of experience in this area.

Senator Atkinson:

I believe that was a discussion we had yesterday. I am not seeing it here. I thought it was part of the amendment. We had heard exactly what you were talking about and had gotten some language from Arizona, which indeed happened. Some of the current customers were hurt, and so we adopted that language.

Assemblyman Nelson:

I have some language I will give you after the hearing. It is really minor.

Senator Atkinson:

I believe we are on the same page.

Assemblywoman Kirkpatrick:

I have several questions, and I will put them all on the record so we can get through them. I have a little angst with section 1, subsection 5, about this new code. I am assuming, Mr. Thomsen, this is for you because I find the amendment somewhat less friendly in my mind. They have been doing this since 2009 since that code has been in place. All of a sudden they say they cannot do it, to comply with the current code and they want to go the newer ones, but yet they want to be exempted from the piece that they have been required to do since 2009. If you tell me there have not been any houses built, I will disagree because there is another bill in this building that says there have been so many permits issued that now they do not want to be subject to the sprinklers.

I want to understand that, and in section 1, subsection 6 of the bill, we are actually saying that they are not subject to any disciplinary action. I think there is a piece in section 3, subsection 1, paragraph (f), that already excludes them, so why are we putting in language that would not?

I have been down this road before you were in the Office of Energy, and we made huge strides in adopting energy codes that made sense. To the point: the newest codes are above Leadership in Energy and Environmental Design (LEED) standards, correct? Within our homes, in 2011 we were 71 percent energy efficient. In fact, I think the state of Nevada got all these great awards for being one of the top energy efficient states across the country. I do not understand adopting a new code to say we cannot do those and to say that these folks have to be exempt spelled out differently than currently what is in the bill because we did think of all that. Some of these changes were made in 2011, and we have been down this road before. I have worked on this for a long time along with Senator Atkinson. Because of these two separate pieces, let us be clear about the policy that we are being asked to adopt.

The bill is a little confusing to read because, as Assemblywoman Neal said, it has different sections that refer back to subsection 6, which currently does not exist in statute but you are including a new subsection 6, also in NRS 701.220. That is where the confusion comes because it seems that that section would already be in statute when you go to put the books together. It is confusing when we get to those pieces. I understand why you want to put subsection 6 within the current statute that was adopted in 2011, but if you go further in the bill, it refers you back to that piece.

This is a big issue, and I want to make sure we have a real discussion and that is one section of it. I understand wanting to keep NRS Chapter 701 separate from NRS Chapter 704B.

Paul Thomsen:

I will try to answer all three questions as precisely as I can. Every three years we are required to adopt the most current IECC code that is available. So you are absolutely right that we started with the 2006 IECC code, and in 2014 we adopted the 2012 code. The 2012 code for the first time required these air changes to get to an incredibly low number. The experts who design these buildings have said that they will probably revert that number higher in the 2015 code, but because it is in the 2012 code and because we adopted it, builders will have to start building to that code. They said getting to three air changes could be prohibitively expensive or not necessary in certain places. It was a big jump. Las Vegas could probably tell you the previous air changes were something like six and then it dropped significantly to three. We wanted to give them a variance in just that section.

You bring up something very important. Section 1, subsection 5 says, "The Director or the governing body of a local government shall not adopt a standard or code." We propose to strike "or code" because having those

words means we cannot adopt a code that has that standard. We do not support that. That came in as Amendment No. 821, and we would ask that to be removed. What we are trying to do in this section is say that we are still going to adopt the most aggressive code. Ninety-eight percent of the building code is good. It reduces energy consumption. It is good for Nevadans. It puts dollars in people's pockets for energy they do not have to purchase, but in this one section on air changes, we want to be very prescriptive and say that you do not have to meet an air change standard that is less than four and one-half—that is it. The rest of the code stands, and we continue to move forward.

Second, the trouble for developers. My simple explanation for this is when we adopt this code in our statute, it says we have to adopt the most current code, but then the local jurisdiction, which has authority over this, has to adopt it. Sometimes that happens at a different pace. We can adopt the 2012 code. It may take the local jurisdiction 6 months, 12 months, 24 months to adopt it. The statute does not set a deadline for when the local jurisdiction has to adopt the most recent energy code. What we found was most jurisdictions adopt the whole suite of codes, whether it is electrical codes or building codes. The efficiency codes are on a three-year cycle. We wanted to provide them the flexibility that they can incorporate this when they adopt their codes. The question was, in the interim, what are design professionals supposed to do? The Energy Office has said you have to design to the 2012 code, and it might take them a year for the local jurisdiction to adopt that code. The developer language is just to say if a design architect or builder is meeting either the local code or the Office of Energy code, they are in compliance. There was confusion about that before, and we wanted to clear that up so there was no discussion of designs not building to the appropriate code. That is why we supported that.

Regarding the last section you brought up, section 4, we go to another section of NRS 625.410, which is outside my purview as the Energy Director. It is the code, I believe, for architects and design professionals. It references subsection 6 of NRS 701.220, so you have to go back to the bill's section 1, subsection 6, where it describes the design professional. We had to pull in the design professional from NRS 625.410 into NRS Chapter 701, which is our energy building code. The attempt is to streamline it. Does that explain it?

Assemblywoman Kirkpatrick:

It does. I had to read it a couple of times to understand why we are jumping back and forth between different statutes. I think that is an important piece. We have been in this when our state was not growing and we tried to step back to help the developers. Is this the last time we are going to change this?

I feel like we change this every time we adopt a new code to exempt tons of people. Why bother adopting the code? Why not change the statute to say, "Do whatever you want"? We keep going back to whatever folks want. We exempt them and, at least for me, it is personal with the 2009 regulations and then the 2011 regulations.

There is plenty of opportunity for hearings. We do workshops and all of those things, but every time somebody does not get what they want, they come to the Legislature and we change it. It is this group this time; it was another group last time, and I can go back to 2007 and show you. Why not come up with a different solution to address that for the long term? If we do not want to build and be part of that standard, then okay, let us just lower the standards in our state. I feel as if that is what we are constantly doing. I do not know if you have an answer for me, but I have specifically worked with you on trying to get people to do it, and local governments still always have the flexibility, but we always come back to the Legislature to undo what the Legislature tries to do. I guess there is no response to that, but thank goodness you will not have me here next time. Hopefully, somebody else picks up the accountability piece on that part.

I want to understand section 2.3. Senator Atkinson, you and I have been down this road for a long time in determining how to keep solar going in our state, and I think there is some misconception out there, at least from the horrible emails that I am getting from the solar people. I do not know why I would try and help them at this point, but because I believe in solar, they seem to think, in my recollection, that there has always been conversation on subsidies. We started in 2005 trying to work backwards from where we were. In the beginning, we wanted to grow it. You and I had that discussion, and we had people like Black Rock Solar who were here long before, and they are not even in the building this session. There was Mr. Brooks who had been doing this long before any of us got here, and we always said we were going to lower the subsidies to where it came to a point it was affordable. From my perspective, I think the emails that were sent by the current companies are from misguided folks, which is great because I have 1,800 emails that say, "How dare we [the Legislature] go back on our word?" I believe it was very clear all along in 2007 on what the expectation was.

You were here, Mr. Thomsen, for part of the geothermal piece, and I want to bring the history to the table because I think it is important that people know, this is not our first rodeo when it comes to solar. Since the solar company killed my consumer bill, I want to make sure that we have a real discussion on what the expectation is of this state. I believe Senator Atkinson, Mr. Thomsen, Ms. McKinney-James, former Assemblyman Bobzien, Mr. Kyle Davis, and I went

out on a limb to bring solar to our state, not to be browbeaten on why it is going better than expected. I just want to be clear on that.

It has always been our attempt to back down the subsidies because at some point, why should the neighbor next door have to compensate for that to work? I do not see anywhere in here where we are capping it. That is what the press is saying today, that we are capping it; this is killing solar; this is not fair. I do not believe that is true because we have always set a standard, and I will bet that Ms. McKinney-James could tell you about a fight she and I got into in 2007 on the dollar value we set to grow this program. There is some history, and solar always becomes an issue because people get excited about it.

I guess it is sexy language to talk about, but at the end of the day, we as legislators have a responsibility to ensure that we take care of all the ratepayers. We have always had a number. We have always said if it grows to this, we will be great and in 2007, it was on solar that we were having this very same argument. Is the intent to stick with what we have always said and to back down to subsidies? I know that the PUCN is going to have to do it, but I want to be able to go home and explain what we are supposed to be doing. The water always gets muddied. It is a very hard topic to have a conversation about and the headline never matches exactly what happens in this building. I know there are tons of folks listening, and I do not have to be nice anymore. I was trying to put in a consumer-friendly bill to ensure that consumers knew exactly what they were getting, and people thought I had no integrity. I am a little bit angry about net metering when it comes to having a policy discussion. I will stop ranting so you can answer some of the questions, but I have some more pieces within the bill I want to go through.

Senator Atkinson:

I understand and recognize Assemblywoman Kirkpatrick's expertise in the area. We have both worked on it for quite some time. While she suggested folks may be happy that she is out of this building next session, I am not one of them. I have enjoyed working with her throughout the years on these issues.

Your speech or rhetoric is on point, and I totally agree with you. I think you said you received 1,800 emails. I received well over 3,000, and they are all addressed to Assemblyman Kelvin Atkinson. So I am not sure if there is some disconnect to almost four years ago when I was here or there, and then I know that some folks from the solar industry were going around last night putting literature on people's cars. I do not mind strong-arming. I do not mind folks lobbying for their issues, but I believe there is a line, and I believe it has been crossed. But that is an argument for another day.

I thought about this the other night and just to answer some of the things you were just talking about, there is a song that says, "[As happens] when there is a billion dollars on an elevator." You have two billionaire companies fighting over who is going to win when it comes to the ratepayer. When I look at this Committee, I think you understand that that is our job. It is our job to protect the ratepayer. I believe that we, as a legislative body, over the years have said that we will do what is right when it comes to the ratepayer. We have never thought that it was a good idea to go from 1 percent to 10 percent, and we have done that in increments to give this industry the opportunity to get off the ground. We gave them 1 percent three sessions ago. Then we increased it to 2 percent the session after that, and then last session, they came to us and said, "We need another percent. Help us, help us, help us, please." We said, "Is this it? This is the last time. We are not doing this again."

You mentioned subsidies; we are not going to continue to allow a company to continue to be subsidized, as you said, by folks who are not using the system. Their argument will be yes, but it is making it cheaper for the folks who are not. The problem I have always had with the solar industry is that if you can afford it, you can get a system. For the folks who really need reduction and need help with their energy bills, they cannot afford a solar system. You have these folks subsidize the folks who can pay for a system. I know someone in this building who just bought a solar system and it is paid for 100 percent. That would be nice, but you and I cannot do that. We have done that and have gone up in 1 percent increments so when I saw this year that they were trying to go from 3 percent to 10 percent, I was alarmed. I asked what that number would mean to the ratepayer. I got all these numbers and in the end, I was told that it would, in fact, be a savings to the ratepayer. I asked for proof of that and was told there was a study that we had this summer—you were on the Committee, too, Assemblywoman Kirkpatrick—that said this number suggested that there was a savings to the ratepayer. I have asked to see that. I have not seen it. I have asked four or five times. I have not seen it. No one has produced it. No one has told me what it was.

I still believe what I believe. I believe that the more you continue to put these subsidies in that the ratepayer has to suffer. So, the reason for S.B. 374 (R2), which is why I signed on to it with the Chairwoman from the Senate Committee on Legislative Operations and Elections, is that it does give the PUCN the flexibility to deal with this issue. I met with the then-lobbyist for SolarCity. He sat at the table and told me to my face, "I do not believe the Legislature should be involved in this issue. This issue should be with the PUCN. They should decide." So I am not understanding what the argument is today. We did exactly what they asked. We kicked it to the PUCN and said, "You decide. The Consumer Advocate is on board; they are going to be

involved." So they got what they wanted. We are not setting a cap. We are not doing it. I am just like you. I find it disingenuous. These emails that we are getting and saying that we are capping the cap—that is kind of crazy to me and almost suggesting that the Legislature should not be involved in the industry. It was good for us to be involved when we were helping them and giving them 1 percent, and now it is time to take us out.

Chairman Kirner:

I do not want to focus on what the bill does not do. Let us see if you can describe what the bill does do.

Senator Farley:

The bill, in general terms, is meant to move solar out of the Legislature. Being a new state senator, I was asked to carry the first version of this and got into the history and how difficult this was and realized that by setting this up under the PUCN, it is actually putting it in the right place with the right people to make these decisions, to protect the industry, to protect the ratepayers. This is not something that we can come back and talk about every two years because there are ongoing issues with the industry and utilities, so the PUCN was the right place to put this.

All the legislation is to give the PUCN the appropriate authority and rules in which they can create regulation and continue to manage without constant input from the Legislature. I am hoping we did that, and that will explain why I said to Assemblyman Nelson that I am neutral on amendments, but it has to be that it helps the PUCN govern solar industry and all of these industries effectively and not have us do it. I think we are there.

There was an amendment distributed this morning that makes minor changes. It is Proposed Amendment 7525 ([Exhibit D](#)). It has a minor change in section 4, which is allowing the PUCN to manage the previous customers who have contracts for different rates that are under net metering. If there is any grandfathering, it would allow them to grandfather but it would allow them to set the regulations and the provisions in which they make those decisions.

Chairman Kirner:

If I understand this correctly, the most recent mock-up ([Exhibit D](#)) addresses the need of current customers and whether or not they should be, and how they should be, grandfathered. Is that right?

Senator Farley:

Yes.

Chairman Kirner:

So if I am understanding this portion of the bill, the bill tries to direct the PUCN to conduct a study and to decide whether or not there should be, and I am going to use the word "tariff," and I do not know if that is the right word. There should be a charge of some sort to solar customers, and that charge would be a function of should they or should they not have to pay anything for being taken off the grid. NV Energy, in this case, has paid for the grid and paid for the transmission.

The other part of this bill on that topic says that if net metering runs out by the end of the year, we are giving the PUCN authority to adjust that net metering on a temporary basis—is that fair—so that nobody gets hurt. If it comes after the first of the year, then the game plan is already in play. Is that the long and short of it?

Senator Farley:

Yes. I am going to jump in. I want to make clear one point you made. It does not give the PUCN the ability to increase net metering. It gives the PUCN the ability to use a temporary tariff, and that is the bridge we are proposing.

Chairman Kirner:

Define the temporary tariff. I may be using the word tariff incorrectly.

Senator Farley:

It gives them the ability to impose a rate that will be charged to solar customers if they run out. It will not be under the net metering; it will be under a tariff system so that the customers will know what they are charged in the interim between the industry hitting the cap and the actual study being completed and the tariff being finalized by the end of the year.

Chairman Kirner:

I have heard that there is a difference of opinion as to when the net metering will expire. Some people say this fall; NV Energy says it is after the first of the year. Do you have any information on that?

Senator Farley:

No. I have the same information you do, and that is why this was so difficult. We could not even ask both sides of the industry to sit down with us, and I asked them to come up with a 90-day window. Tell me if the utility thinks it is going to be October of this year, or actually SolarCity would say October of this year, and NV Energy may say February. They could not even get close.

December 31, 2015, was just picked to say, "Okay, at the end of this year, if they have not hit the cap, they can continue. If they have hit it, the temporary tariff should be decided. If they hit it in October of this year, then a temporary tariff would be used as a bridge to get them to the final tariff.

Chairman Kirner:

So there is a bigger question for me, and this may be related to something Assemblywoman Kirkpatrick said. We, basically, are subsidizing this industry; that is, the federal government is. At some point, the federal government subsidies are going to go away, correct? Maybe we will get testimony where they can talk about their business model, but I am wondering how the business model will look, even if we do what we say we are going to do in this bill. Going forward, what happens—and that is speculation, perhaps?

Senator Atkinson:

I think you just hit the nail on the head, which is what some of us have been talking about for quite some time. Assemblywoman Kirkpatrick is shaking her head because we had this discussion, but you are absolutely right. When these things go away, you do have to change your business model somewhat. If you have made billions of dollars the last few years, you should be able to afford to do that. While we will have some people disagree with that, that is exactly what we believe. Some of these industries will have to change their business model to fit what Nevada is going to be doing.

Chairman Kirner:

I want to take a few more questions from the Committee. Then I will ask that we bring some other folks up. Do you have another question, Mrs. Kirkpatrick?

Assemblywoman Kirkpatrick:

I do, and I probably should have mentioned former Senator Townsend because he got me into this energy conversation. He started me thinking. I am concerned because the whole goal is to get them up and running and, as we do with any industry, we give a subsidy to encourage people to come to Nevada and now, Mr. Thomsen will tell you it is a \$6 billion industry within our state. That is mostly large-scale matters—that is not even the outer stuff. I do not know if I agree with having a bridge because the point was, at least in all of my discussions, that this was it. This was the time frame that it was available. This was factored into the plan, and at some point, we were going to have people start going to a different amount. I am going to need a little bit of time to get to that piece because I have gone around and around with people in this building. We wanted them based on performance. We have had those discussions. What is the expectation of the PUCN? I see they are asked to go and define whether or not there should be a tariff. Is there a bill that they are

going to come back with in two years? Are they going to be able to put the tariff in no matter what and set it, and then we, the Legislature, are giving up our authority and letting them do it all? I do not know if I like that either, but I am open for discussion.

Senator Atkinson:

I believe that section only is going to come in effect if it appears that they are exceeding the 3 percent cap that is in place now. They will use that to help get them through. I am with you; it does not bother me either way if the 3 percent ends in October and we say, "That is it." I do not have a problem with that. If you want to make that amendment, I am sure we would be fine with that.

Assemblywoman Kirkpatrick:

I have an amendment that is about six pages long, and I am going to add to it.

Senator Atkinson:

I am fine with that. I know it would be a good amendment, but some of it is to help with the existing customers. We did not want the existing customers hurt before the rulemaking came out.

Senator Farley:

The other thing is, we have an industry, and they have to be able to go out to the market and talk to their clients and their customers about what this will cost. If we do not have a bridge, then we do not have a way for them to do that. We are hurting people who are working.

Assemblywoman Kirkpatrick:

In all fairness, that is kind of a sore spot with me because let us not talk about the subsidies that we give folks to come here. I can go toe to toe if the Chairman will let me go, but I am trying to be respectful in this situation. I can go back to former Assemblywoman Gansert when she was the Minority Leader who did not want to give anything. We begged, borrowed, and stole to get her to come along, so there is a little history here, and Ms. McKinney-James, I hope you can enlighten some folks. I get it. I get that people could lose their jobs, but the Legislature did their job and carried out their responsibility. You want to give them a subsidy?

Senator Farley:

It is not a subsidy. I am saying there is a temporary tariff—that is the bridge. The tariff would be a cost. It would not be net metering. It would be a tariff that would allow them to go to the customer and say, "You now have to pay this for solar services versus getting the subsidy." The word subsidy and how that was calculated got very confusing and convoluted. I do not think we are

raising the net metering. I think we are just putting a price in place until the study is done. I do not have all the history. All I am trying to do is come back with what seems to be a fair and reasonable approach to take to move this industry and the utility as Senator Atkinson said, to protect the ratepayer—that is what we are here for.

Assemblyman Ellison:

I am really happy to see that some of the problems we run into across the state are being addressed with the air changes in the 2009 and 2011 Sessions. I talked to the building departments and the fire departments all across the state, and I am glad you hit on this. The other day in our meeting we brought that up also that this is a big problem in the energy code. It got so tight that it created a problem all its own, and we are addressing that and trying to fix it. Thank you. I am glad you are addressing it because it is important, mostly to our fire departments and building inspectors.

Assemblywoman Neal:

I have two questions relating to the subsidy/temporary tariff. When reading section 2.3, subsection 3, help me understand this part. It says they have the discretion to do an action without a hearing but when you read lines 9 and 10, this nonhearing activity that will occur allows them to substitute for any rates, terms, or conditions contained in the tariff. I am wondering how that works, first, because you might substitute a term, rate, or condition and then other parties have no knowledge, no notice, or awareness of it. I am wondering the effect of that.

Second, this was the criteria of what the Commission shall do by regulation. In section 2.7, subsection 3, paragraph (a), the word "and" was stricken, so subparagraphs (a) and (b) used to work together, and now they are treated as separate things. My question is if it used to be a combination where you had to look at the energy efficiency program "and" do a comparison of a diverse set of scenarios of the best combination of sources of supply, what then is the effect of the deletion of "and"? You added another sentence that now includes the deployment of distributed energy. You are changing what the conversation is because when you place a period, they are now separate discussions versus a combination of the regulation conversation. Help me understand. I thought these were not battleground questions.

Senator Farley:

Our quick, simple answer is we are going to defer that to the PUCN to go through that for a more technical explanation.

Chairman Kirner:

Here is the issue I have with our bill, so far. The bill has not been explained, really. Who is going to pay for the studies? Is the PUCN going to pay for it? Is that charge going to be passed to the customers through the utilities? How are we getting to where we have to go? The PUCN will have a chance to come to the table, but there are some questions about the bill.

I want to bring up some other people and go through a few of these particular pieces. I think the PUCN is testifying neutral, correct? Are you in favor? We will take those who are in favor of the bill and maybe you can sort some of this out for us.

Donald J. Lomoljo, Utilities Hearings Officer, Public Utilities Commission of Nevada:

I think it might be helpful to step back and explain a couple of points on the net metering piece of S.B. 374 (R2). First, the timeline: what the bill proposes is that the utility would be required to provide both a cost-of-service study and a proposed tariff no later than July 31 of this year. That requirement is found in section 4.5, subsection 1, of the bill.

Then you need to go back to section 2.3 of the bill as to what the Commission can do with that proposed net metering tariff. Specifically, under subsection 3 of section 2.3, "the Commission may, in its discretion," make that tariff effective almost immediately. I say almost immediately because the Commission will notice the tariff filing as it does with all of their filings that come before the Commission and allow petitions for leave to intervene and written comments to come in, consider those comments, and then determine whether to make that tariff effective at that date. I would expect that the tariff could be effective no later than September 15 of this year, which would provide a bridge beyond the current capacity limitation in NRS 704.773.

After that point, the Commission will conduct a proceeding on that tariff that must conclude by the terms of Senate Bill 374 (2nd Reprint) no later than December 31, 2015. That limitation is found in section 4.5, subsection 4, of the bill. The Commission will hold an open hearing, will solicit evidence, written testimony, and allow the cross-examination of expert witnesses. All of that evidence will be considered by the Commission, and the Commission will determine a just and reasonable rate and a final net metering tariff no later than December 31, 2015.

The bill does provide lifting of the 3 percent cap with the Commission making a determination on a successor net metering tariff no later than December 31, 2015, but with the availability of a bridge temporary net metering tariff that I would expect would occur no later than September 15, 2015.

Assemblywoman Kirkpatrick:

Can you explain to me "tariff"? It is a new word for this industry, this discussion. I believe we have never called it anything like that. Who pays that tariff? Is it the person who has the leased solar system on their home? Is it NV Energy? Does it go into their rates? Who pays that? Is it the company that signed folks up? We worked on trying to understand what the contracts were so we would know how to address all these issues. We do not have any of that information. What, in your mind, is a tariff? A toll? I know what that means, but I need to understand what tariff means in the broader picture because if you are going to set a tariff rate, at some point the energy company is responsible for ensuring that they are the provider of last resort when it comes to energy, just in case the sun does not shine. Is that what you are talking about for a tariff?

Donald Lomoljo:

Tariffs are a general term in utility regulation and those are the rules, rates, charges, and terms of service under which customers take service from the utility company. Tariffs are approved by the Commission and, in general rate cases, those rates then flow into the tariffs of that utility. In this case, the Commission would be presented with a proposed tariff from the utility that would contain rates and charges applicable to net metering customers beyond the 3 percent cap in NRS 704.773.

Assemblywoman Kirkpatrick:

When you say beyond the current 3 percent cap, that was defined by the Legislature two years ago as where we were going to be. We get tons of emails that say get rid of the cap, but we do not have an arbitrary cap in place. This was a lot of money over a long time that helped us get to that. I just want to be clear because it is hard to explain to the press. I have had constituents calling me thinking it is something totally different than it is and that we are getting rid of solar, and I do not want that. I have worked too hard to build this industry to ruin it over one bill. I want to understand when you say that is currently what we allocated as a state. I want to get rid of the word "cap" because I think it means bad, but it was an allocation that we, the Legislature, worked on to ensure we could get there, correct?

Other states have 20 percent or 10 percent by 2025, so I want to make sure we do not mix the terms, and I want to talk about the allocation that we as a state wanted to help grow the industry. When this tariff comes in, they will still be responsible for having to pay for it like we do for others, the provider of last resort. Am I getting this right? I am trying to make it simple because I want to make sure that for all the press who are listening online and all the constituents who are listening, we are very clear in what we are saying. This is not something to muddy up.

Donald Lomoljo:

Correct. The allocation, as you term it, would be lifted. That would be opened up under this bill. Beyond that allocation, those net metering customers, per the bill, would be subject to the rates and charges determined by the Commission in an open and transparent rate process before the Commission.

[Assemblywoman Seaman assumed the Chair.]

Assemblywoman Fiore:

I have a question, especially from two of my constituents who are having issues with net metering. They installed the solar, and it is not working as of January because they were supposed to call NV Energy and they are saying that something is happening with the net metering. How are we going to fix this to where people are getting solar but they cannot actually use the service?

Donald Lomoljo:

If their solar system is not working, that is a contractual issue between that homeowner and their solar provider.

Assemblywoman Fiore:

No, it is not. What they are saying is they have to call NV Energy for net metering issues. There is a step that is not being processed.

**Shawn M. Elicegui, Senior Vice President, Regulatory and Strategic Planning,
NV Energy:**

With me is Stacey Kusters, Vice President of Renewable Energy and Origination with NV Energy. Ms. Kusters' team is, in part, responsible for the administration of net metering and programs that incorporate and implement net metering, so she may add to my answer ([Exhibit E](#)).

First, when a company receives a request to install a net meter, it has to go out to the premises and inspect the premises for safety and proper installation of the system. When we visit sites, approximately 30 percent of the systems that we inspect are not suitable for connection to the system and there is work to be done.

The second issue that we are currently facing is we have seen a significant increase in the number of requests for net meter installations. Specifically, a year ago, we received about five requests a day. Those are up to 70 requests a day. We are working overtime, mandatory as well as voluntary overtime, to install net meters within ten days of the request for service, provided that the system meets the applicable safety and interconnection standards. I do not know if your constituents have a system that has not met those standards, but there are systems in our queue, or our line, that have failed to comply with the appropriate standards for a significant period of time.

Assemblywoman Fiore:

He requested this in January and we are now in May. Is that a normal wait time?

Shawn Elicegui:

January to May is not a normal wait time. We have committed and we strive to install net meters within ten days of a complete request, provided the system is appropriately installed.

Assemblywoman Fiore:

Since I have you here in my Committee, what is your telephone number because I am going to have them call you directly and say, "It has been five months."

Shawn Elicegui:

I will give you my direct dial telephone number.

[Chairman Kirner reassumed the Chair.]

Chairman Kirner:

You can give her your number after the meeting.

Assemblyman Ohrenschall:

The new, proposed language in section 2.3, subsection 4 of the mock-up ([Exhibit D](#)) seems a little unusual to me in terms of perhaps tying the Commission's hands in determining that tariff. It reads, "In approving any tariff submitted pursuant to subsection 1, the Commission shall determine whether and the extent to which any tariff approved or rates or charges authorized

pursuant to this section are applicable to customer-generators who, on or before the date on which the cumulative capacity requirement ... is met." I am wondering what your thoughts are on that because the original bill does not have that, and I wonder how you would go about determining that tariff if the original bill passed versus this proposed amendment.

Donald Lomoljo:

The language in the proposed amendment, section 2.3, subsection 4, offers the Commission additional discretion. It allows the Commission to determine any limitations on grandfathering of existing net metering customers under the existing statute, NRS 704.773.

Assemblyman Ohrenschall:

Thank you for clarifying that.

Assemblywoman Bustamante Adams:

Can you expand a little on the concept of providing a bridge and the timeline one more time just so I make sure I understand it?

Donald Lomoljo:

To explain it, to understand the bridge, you need to read section 4.5 of the bill in concert with section 2.3. Section 4.5 requires the electric utility to, on or before July 31 of this year, file a tariff that would be a successor net metering tariff with the Commission and a cost-of-service study.

I should go back to a question asked by Chairman Kirner about who would pay the cost of the cost-of-service study. That study would be performed by the utility company and provided to the Commission.

After July 31, the Commission would publicly notice that tariff filing, which typically takes 30 to 45 days. The Commission would solicit written comments and petitions for leave to intervene from interested parties. The Commission would receive those comments, evaluate the comments, and determine whether the successor net metering tariff should be put in place immediately or should wait until December 31 or some time in between. I would anticipate that the Commission would be able to place a successor net metering tariff into place by September 15 of this year, subject to the full rate proceeding, which would conclude on December 31, at which time the Commission may adjust the temporary tariff.

Chairman Kirner:

I know we have other questions, but we have a lot of people signed up in favor and against. I am going to move to other people who are in favor of this bill. We still are up against a deadline.

If there are others who are in support, please come forward. My intent is to limit your presentations to short presentations, so if I interrupt you, it means you have gone too long. We will take testimony from those in Las Vegas.

Nat Hodgson, Chief Executive Officer, Southern Nevada Home Builders Association:

I was prepared to go into quite a bit of detail on section 1 of the bill, but understanding what has already taken place, I submitted all my documents to the Nevada Electronic Legislative Information System when this bill was heard in the Senate. This is all on section 1, and I am hoping I can also address some of Assemblywoman Kirkpatrick's concerns.

Unlike every other code that we adopt, this is the only one that is written making it a mandatory adoption of the latest code by the Office of Energy. I worked very hard with the State Board of Architecture, Interior Design and Residential Design because they have a code of ethics that I think no one realized existed until about seven or eight months ago that made a conflict between the way local governments work today with stakeholders and, together, they come up with amendments that make sense. They go forward to their counsel or commission, the codes are adopted with those amendments, and life goes on. This has been happening as far back as I can remember, but this came to my attention saying, "By the way, no matter what the local governments do, there is a little sentence in here that overrides every jurisdiction." I worked very well with Mr. Paul Thomsen of the Office of Energy. I do not think anyone had that intent and did not intend for the local building officials of the building departments to not have the authority over their jurisdictions. This just cleans that up. I went to both boards of engineers. They concurred with it as well. The part about discipline, that was just to make sure that if you are in the City of Las Vegas that only has the IECC 2009, and you designed to that and built to that, they are not disciplined by the State Board of Architecture, Interior Design and Residential Design because the Office of Energy adopted the 2012 IECC code.

I look at this as cleaning up an unintended consequence. Section 1 of the bill actually does the opposite of what some people think it does. I am trying to encourage people to go to the latest energy code. We have anywhere from the 2003 code to the 2012 code active now in southern Nevada. The biggest single thing that stopped the 2012 code from being adopted in all the

municipalities in southern Nevada was the three air changes per hour. In 2006, there was no requirement. In the 2009 code, it was seven. We went from seven to three—quite drastic. Most states that have adopted this have amended out the air changes altogether or have gone back to five or seven. I know of two states that kept it in but have a statement that says we are going to keep the three but we are not going to enforce it. I think that is not the way to go. This encourages the builders to promote the building officials to adopt the new code. We have only two jurisdictions in southern Nevada that have adopted it. Unfortunately, we are running up against this air change per hour. Going to four air changes per hour for nonsprinkled houses still leads the nation in what has been adopted. That is two of the three issues in section 1.

The other one is to allow sampling inspection that we have local amendments for because we encourage our members to go onto what is called the above code program. Section 1 is trying to let the local building officials do what they had been doing with the industry and to encourage us to be able to adopt the latest energy codes. The presentation to the Senate was 30 to 45 minutes.

**Daniel O. Jacobsen, Technical Staff Manager, Bureau of Consumer Protection,
Office of the Attorney General:**

We have two concerns about net metering. The first is that we did not want to see the industry come to a screeching halt when the 3 percent cap was met. We believe S.B. 374 (R2) allows the Commission to make sure that does not happen. From all the discussions I have had with the folks at the PUCN and looking at this wording, I believe that is their intent. The industry will not come to a screeching halt if they reach the 3 percent cap.

Our second concern is that we try to represent all consumers. We are very concerned that the PUCN be allowed to adopt rates so that net meter customers provide a reasonable amount and an appropriate amount of cost recovery for the part of the electrical system that they utilize. They have lines running to their house. Maybe they do not buy very much electricity; maybe they buy quite a bit at night. We think that the PUCN should have full flexibility to adopt rates that are reasonable. We believe this bill does that. It does not bias the outcome. It allows all parties to participate.

A third point is, the bill says that customers who install net metering before the 3 percent cap will continue to pay prevailing rates for the class of service they happen to be in right now. If a customer is a residential customer, they would continue to pay somewhere between \$10 to \$15 a month as a basic service charge and then whatever the rates are. They would continue to be compensated at full-tariff rate for the surplus electricity they generate and provide back to the grid.

There may well be some subsidy provided to existing customers, but we have the impression that those customers made their investments based on the prevailing tariff rate, and they should be allowed to stay on that. Based on those reasons, we are okay with the bill and are in support of it. We think it is a good way to move forward, and we do not think there is a need for any amendments at this point.

**Rose McKinney-James, Managing Principal, Energy Works LLC, and representing
Bombard Renewable Energy:**

I am joined at the table this afternoon by Mr. Bo Balzar, who is also with Bombard. We appreciate the opportunity to come here today to show support of S.B. 374 (R2) as amended. Before I turn this over to Mr. Balzar, you saw that I came to the table because as Assemblywoman Kirkpatrick mentioned, I have been active in this space for some time, and I wanted to offer a couple of points for clarification. It happens quite frequently because this body has been very active in advancing these policies over a period of time. I want to make sure we understand some important distinctions.

Firstly, we are really talking about a delta, where a net meter customer produces more power than they use. The delta of what they produce is what they are given a credit for. The question we are trying to address is how to quantify or how to monetize that delta.

Secondly, with respect to caps, the cap is on the peak system, the number of systems within the peak system of utility. I want to make sure we understand that distinction.

Thirdly, with respect to subsidies, and I feel as passionately about it as you do, we established a solar generations program. We put \$255 million in that to assist this industry. It created a series of rebates. Those rebates have been on a declining basis for some time and now are at a very low level. They helped dramatically increase the number of folks who have taken advantage of this.

We are mixing in our conversation apples, oranges, and red tomatoes. I just wanted to offer that and I am happy to try and respond further. I think the Commission is probably the best arbiter of those comments. I think that what you see before you is an effort to reach an agreement on some key principles related to net metering. Assemblywoman Kirkpatrick has provided some historical perspective. I think it is really an important perspective. This is an important tool in the state's efforts to advance and support its significant renewable energy resources. In a prior appearance before this Committee, I attempted to share the rich history of Nevada and prior efforts to develop a solid policy framework to support renewable energy development.

Those efforts began, as Senator Farley mentioned, more than two decades ago. I know that because I was here. We have subsequently encouraged, recruited, and incentivized. We have built an industry that responded directly to customers who choose to produce power using clean energy. More importantly, we finally have the critical mass of companies providing those services. Some of those companies are in the room today. Net metering is designed to credit customers for power they produce beyond their own use. This is clean power that goes directly to the grid, in my view, to the benefit of the entire system. We believe that S.B. 374 (R2) has the potential to allow the appropriate state agency to engage in a process that has the capacity to rightsize the current regulatory regime and result in the lack of need for any caps going forward. It has been challenging to bring this to the Legislature each session because of the changing landscape and complexities. It is important to bring certainty to net metering and to the solar industry. We began this program two decades ago with a commitment for only 100 customers, north and south. This was a test for both consumer interest and system impacts over a period of years. We have now grown to thousands of customers.

Last session, this body directed the PUCN to conduct a study to look at both the cost and benefits of net metering which determined, based on the data available, that net metering indeed offered a net benefit to the grid and had limited impact on ratepayers. We believe net meter customers should pay their fair share, but also be equitably compensated for their contributions. We have to underscore fair. The analysis must consider all aspects of the process. It requires a balanced approach. We believe the PUCN is the appropriate forum for this analysis. We believe it is essential to send the right signals to the solar industry that we recognize the significant economic development benefits stemming from this important new industry. This has been a negotiation, and you will hear different perspectives on the best approach to achieve the goal. We discussed at length our view that some bridge was necessary to avoid disruption. I believe that is built into this amendment. We failed to reach agreement on the best way to quantify this approach, but we believe that there is a way to achieve it. I believe the Commission has the capacity to address this in a timely fashion. It is absolutely critical that we find a path forward to measure and to ensure legislative direction on this policy. We cannot leave Carson City without a statutory solution. We face a setback of enormous impacts if we fail to do so. I have offered my clarifications on subsidies. I will not go into my view that fossil fuels have been receiving subsidies for many, many years and started well before renewables.

As far as the federal government is concerned and the tax credit you mentioned, Chairman Kirner, this is an incentive that is in place to develop an industry that we feel has great value, particularly in Nevada.

Bo Balzar, Operations Manager, Bombard Renewable Energy:

We are part of Bombard Electric, an electrical contractor that has been in Nevada for over 30 years. We have been installing commercial, residential, and utility-scale solar photovoltaic (PV) systems in Nevada for more than a decade. My support for [S.B. 374 \(R2\)](#) is based on a practical business consideration. As previously mentioned, we believe net metering is an important tool for both the solar industry and our customers.

Bombard Renewable Energy has installed more than 100 megawatts of residential, commercial, and utility-scale projects, with nearly 1,000 of those projects being net metered systems. Over the past several years, we have successfully worked with the utility, with the Legislature, and with all stakeholders on various opportunities in both the commercial and residential space for solar. Ideally, we would like to see the net metering caps eliminated, but we also recognize the importance of balancing that interest of ours with the customers and ratepayers. I understand the issue of net metering that the utilities face is dealing with the net metering kilowatt-hour that they receive from the net metered system, compared to when that kilowatt-hour is delivered back to the customer in the form of a credit. The utility has taken the position that there is a cost difference, and this cost difference is shifted to non-net metered customers. I believe there is a benefit to all ratepayers when individual ratepayers make an independent, voluntary investment in renewable energy. I believe the PUCN is the appropriate place to resolve any rate design issues or concerns as it relates to the cost and benefits of net metering.

Paul Thomsen:

I rise today in support of this bill as the Director of the Governor's Office of Energy. I want to thank Senator Farley and Senator Atkinson for bringing this bill before us today. We want to echo the comments that we support the concept that the PUCN is absolutely the best place to evaluate the tariff, the value, the credit—that is what they do. They are engineers and economists. That is what we are talking about here: what is the appropriate value that should be paid to folks who push power to the grid? That is the simplest way I can say it today.

Joshua J. Hicks, representing Lennar Ventures:

We are in support of the bill, but with a bit of hesitation. I put a conceptual amendment for Lennar ([Exhibit F](#)) into the Nevada Electronic Legislative Information System. Our concern is that anytime you go into a new system like

this, and Lennar is one of the builders who builds rooftop solar on new construction, there are quite a few people who find that a very attractive feature on their house and ask to have it. Anytime you are switching into a different system, you create some uncertainty, which is the basis for some hesitation. The conceptual amendment that I have submitted deals with that ([Exhibit F](#)). It was trying to make sure there was some consideration given to new residential construction and everything that goes into that, including the fact that everybody knows that there is rooftop solar on there right from the beginning.

Upon reviewing the bill a bit further, in talking to some of the stakeholders—and I want to thank Mr. Lomoljo at the PUCN who has been very helpful—I think our concerns are actually met in the existing language of the bill, so I am withdrawing that conceptual amendment. There is language in the bill that talks about the ability to establish one or more rate classes. I think that will be helpful to making that case to the PUCN. Obviously that is something we would have to do. There is language in the bill about taking into account the public interest in setting these kinds of rates and the terms and conditions. I think that is an open-ended enough term that will allow builders like Lennar or other interested parties to go in and make their case for a separate rate class and separate treatment which, ultimately, would be up to the PUCN whether they would accept or not. I think that is the framework, and I think that is what this bill is really about: establishing that framework. We are willing to support this and go with it. We think the PUCN is well equipped to handle this and think we will end up with a good result at the end of the day.

Tom Clark, representing Sempra U.S. Gas and Power, LLC:

I can shorten this and say, "Me, too." We support all the testimony and amendments that have been brought forward. We think it is really good policy, and we would like your support.

Chairman Kirner:

At this time, we will invite those who are opposed to the bill to come forward.

Robert List, representing SolarCity Corporation:

I think all of you today have had an opportunity to get exposed to the complexities of this business of regulation that goes into the utilities and the solar industry itself. Let me say at the outset, we absolutely support the concept of turning this matter over to the experts and the expertise of the Public Utilities Commission of Nevada. We are a little awed to be here in opposition at this point to the bill. The only reason we are opposed to it is we believe it needs a little bit of tweaking.

I understand there is a proposed amendment that Assemblyman Nelson alluded to earlier, and we believe with that adoption, which you will hear more about in moment, that the problem is solved. This is, of course, a very major public issue. It affects every ratepayer in the state of Nevada, both residential and commercial. We appreciate this hearing and compliment the Committee on that. This is the first hearing that this bill has had in either house. The chance to air it before this Committee is very, very much appreciated.

I have been on all sides of this during my career in the industry, having been a regulator when I was Attorney General and having been a policy maker when I was Governor. I have seen the evolution all the way from the days when the utilities had a complete, total monopoly to the time now when there has been a gradual opening of the market to competition, to consumer choice, and that has happened not just in Nevada but has happened all across America. We really are in a new era in which that has been allowed to prosper, particularly solar, which has made an enormous difference in Nevada.

I want to make clear that we are not asking the ratepayers who are not solar users to subsidize. The state rebates and the federal tax credits will soon expire. We are not asking for a handout. We are asking only for a level playing field and suggest this amendment will clear up an ambiguity that we believe currently exists. I do not mean to criticize Senator Farley or those in the Senate; we simply want to clarify one item, and I think it is a very important one.

It is my pleasure to introduce a gentleman who is the cofounder and the Chief Executive Officer of the most dominant solar entity in the country. Mr. Lyndon Rive, CEO of SolarCity, will explain in a bit more detail why we think that a little clarification will be helpful and would resolve the issue.

Chairman Kirner:

Is the amendment you are talking about a friendly amendment?

Robert List:

I believe it is. Senator Farley indicated that she was neutral on it, and we consider it to be a friendly amendment.

Lyndon Rive, Chief Executive Officer, SolarCity:

I appreciate the opportunity. I thought I would start with a little history because we have expanded into 17 different states and we opted to come to Nevada. The Legislature did a great job. It changed policy and made solar a real viability.

Just two years ago, very few systems were installed. In the last two years, we have had massive growth. Our company started with no employees two and one-half years ago and has over 1,400 employees in the state now. Massive, massive growth—in just two and one-half years. The state itself employs about 7,000 solar jobs. This is done because of good policy and because of the great work that has been done, and we appreciate that. You have put in place a rebate program and part of the rebate program was to incentivize the industry and, in return, the industry reduced its costs and would not be dependent on the rebates. We are doing that.

The rebates in the early days started off as high as \$3 a watt. They have now gone down to 15 cents a watt and they will soon be gone. The industry has reduced its costs and kept up with that reduction, and we have delivered our part. We are continuing to reduce our costs and make it possible without any state incentives. We are doing that and we are very grateful for that initial kick to get us to the size we are. It would not have been possible if we did not get the kinds of scale. Thank you very much.

Now, onto the future. With this growth, we are getting very close to the 3 percent net metering cap. NV Energy says we will hit that cap in March 2016. The current poll out there says that the new rules say we will be out in December. If those two things happen, perfect. We have no issue. We totally agree with the current poll. What happens if NV Energy is wrong and we hit the cap beforehand? How do you explain the value to your customer? The current bill proposes a temporary tariff. I do not know how I would get a customer to sign up on something they do not know what they are signing up for because a temporary tariff rolls into the new tariff. The new tariff comes out in December.

Let us say that in the unlikely event the industry hits the cap in October, what does the industry do for three months? What do you tell your customer? How do you even tell your customer what the value is? You can use the temporary tariff, but that is just going to convert into the new tariff, so you cannot tell your customer the value. You cannot present anything about solar to the customer. In residential solar, the jobs take one day to install. What do you do as the next step when you cannot make the sale to the customer? You will have a stop of the industry for about two or three months. And for what? The new rules will be out. All we are asking for, and the one simple change we would like to make is to please keep the old rules until the new rules are in place. That is it. We are supportive of it. We want the PUCN to make the decision. We agree that is the right place to make the decision, but to have us stop and start or to not be able to explain to our customers what they are getting, the adoption will just stop.

I apologize for anything that is bad regarding the emails you have been getting. This is a confusing issue. It is very complicated for customers. It is also complicated for the industry itself. The consequence here is massive versus the business struggling. You cannot make the sale. If you cannot make the sale, you cannot do the installation. If you cannot do the installation, you have to lay off the people. It is as simple as that—over a hypothetical two-month period. If NV Energy is correct, this is a nonissue. If they are wrong, massive devastation. All we are asking is to continue with the old rules until the new rules are out.

Assemblywoman Kirkpatrick:

You said you got no state subsidies. Let us go back and clarify that. You did get \$1.2 million. You did get money for training of all those employees that you hired. You just cannot argue with me on those issues because in our budget the other day, you did get those things. I am not going to have this argument with you. I have been sitting here for four and one-half hours, but you do not get to come to the table and tell Nevadans that you did not get anything and that you came here and that you did it on your own. I appreciate that you came here. I appreciate that you hired all those folks, but you did get subsidies. I was a supporter of solar when there was nobody else on this dais who cared about it. You do not get to come to the table and misrepresent what you got from our state.

I am trying to understand how we got into this situation because for me it is very clear what the legislative intent was last time. I cannot believe I am being nice to you because as mean as your folks have been, how they have insulted my integrity, I do not know why I would want companies like that in our state. I am happy to show you the emails that came from SolarCity themselves. Here is what I would say, "I do not care what you say about me, but own it." You do not get to come to the table and not tell the truth. The emails came from SolarCity in particular that said, "This is what the Legislature is trying to do." That is not the truth. We can agree to disagree all day long, but the truth—you sit in front of that dais that tells you that you are bound by law to tell the truth. I want to understand, and I get it. I want to support solar. I do not have to like it, but I support the industry because I think we have made huge strides and have spent a lot of time, and many other people have as well. I am willing to be fair and have a real discussion about policy, so I want to understand. Do you get to keep the energy credits from your current customers? Do you get to pass that tariff along? I do not know because we do not know what you sell to consumers, so we are assuming that you are going to tell us the truth on what it is because that is how we do our job.

Within every single market, there are peaks and there are valleys. I know in the food industry, I better gear up because in May, it is going to be a little bit slow, so I am going to have to prepare and oversell in March to get me through. What is it that you lose in particular? Is it the credits that you will not be able to sell because outside of sales, there are still other things that you can keep doing? People hire a lot of salespeople when they are trying to grow a product. When things flatten out, you tend to let go. What is it within those two months that you, as your company, as your industry, lose to our state?

Lyndon Rive:

My opening statement was thanking the Assembly for the incentive and coming into the states. I do own it. We did get an incentive and thank you very much for that incentive. We have grown the company from 0 to 1,400 people. I absolutely do own it, and thank you again.

In terms of the challenge that we are facing, when a homeowner goes solar, they get a solar system installed. The excess energy that is generated gets back fed onto the grid. That relationship is with the utility. In our case, in our business model, we have what we call a power purchase agreement with the customer. We will sell the energy to the customer. Our rate is a fixed rate. We publicize that we do not have any differences in one customer versus others—one fixed rate. We sell it for roughly 10 cents. There are so many different utilities, I forget exactly the cost but I think it is around 10 cents. The charge to the customer is for now, let us say 10 cents. When they consume energy, their rate is 12 cents. The energy they get from us, they save 2 cents. That is how the agreement works—it is fairly straightforward.

The new rules when they do come out, however they are established, will be incorporated into our agreement with the customer. We are not opposed to the new rules. We are just saying, continue with the old rules until the new rules come out. To have this intermediate rule, what do you tell your customer? You can tell your customer, "I am going to charge you 10 cents. I think the utility is going to charge you 12 cents. The current rule says that it is 12, but I do not know what the new rule is going to be." If it is not 12, you are stuck with that new rule. No customer is going to sign up. They might as well wait two months until they see the new rules. Once we know what the new rules are, and the new rules are implemented, we will incorporate that into our contract and make sure that the business can continue to survive.

Assemblywoman Kirkpatrick:

I get that piece. Where in your business model, and I have asked, how can you adjust to a new revenue package so quickly? You and your folks said absolutely, pretty quick. They could do it within three months. Now you are telling me that you cannot adjust to your business model. I listen. We can agree to disagree. I just want to know what the truth is so that I can figure out how to best accommodate.

At the end of the day, I do not care if you are company A, B, C, or D. I just want consumers in Nevada to be able to have options. I want consumers in Nevada to be protected from the unscrupulous folks. I want ratepayers across the board to stop subsidizing an industry that is doing well. I am trying to understand how all these things come together because as you said, this may have been the first hearing. I am glad to have this hearing, and I think it could go five more hours, but I do not want to be mean to the Chairman. This discussion is far from over. We have to understand the issues because I do not know what you promise. How in your business model would you have balance if you had not been doing so well? In my business model, I oversell in March to carry me through the summer.

Lyndon Rive:

Our installation time frame for a customer is roughly one day. That is how long it takes us to install a solar system. Sometimes it takes two days, but for the most part it takes one day. If we are making sales on the old rules, you can tell the customer you are paying 12 cents per kilowatt-hour, and we can offer it to you for 10 cents and you save 2 cents—very straightforward and the customer knows what they are getting.

Now the old rules go away and there are temporary rules in place. These temporary rules are only going to last for about two or three months, maybe only one month, but I do not know what the new rules are, Mr. Customer. In that specific case, I will not be able to sign up the customer. It is not that I can rush my sales. If I rush my sales, I just push the date earlier. It goes from October to September. Actually, it has the reverse effect because then I have to wait from September to December before the new rules come out. Using the other example you just mentioned, I cannot plan for the winter, for lack of better words. You just hit the cap so you just accelerate the winter sooner. The best we have come up with is just to continue on the old rule, and once the new rule is out, you implement the new rule, and the switching time from the new rule to the old rule, the industry can do that very quickly. We just need to know what the new rule is. We just do not know what it is.

Assemblywoman Kirkpatrick:

That is the great thing about the Legislature: you cannot bind the next one to what the previous one did. Let me ask this and I will stop asking questions, but this conversation is far from over and folks do not get to say, "I want to talk to you about energy," and then not. Stop by my office, Mr. Rive. I have scheduled appointments as late as 10 p.m. because that is about the time I get back.

Lyndon Rive:

How about this? I will have a one-on-one with you and see you directly after this and we can talk for hours.

Assemblywoman Kirkpatrick:

Absolutely. I am up for it, so I hope you are up for me. Why do you assume that you are going to get to the cap? How many new customers is that going to be that would put you in that spot? In my world, I know I am going to run out of a pallet of croissants if I oversell to company A. I am going to say, "You can only take 30 cases, and let me slow this down"? How are you as the industry, why are you not tapering back just a little bit to do that?

Lyndon Rive:

That is a fair question. We do have the option to not hire and not grow and just plateau and do not hit the cliff.

Assemblywoman Kirkpatrick:

Plateau for a short time frame until we can put new rules in place, correct?

Lyndon Rive:

Everybody has to agree. It is a competitive landscape. What will happen is everybody will accelerate. Everybody is growing as fast as they possibly can. I am not seeing a change in the growth. You want to bring jobs to the state. Consumers want solar. The adoption rate is growing as fast as it can. That is just a natural behavior. There is no rationing. Either you get it or you do not get it with a customer. In your doughnut example, I cannot sell 30 doughnuts and say to the customer you only get 10—this is an all or nothing. Using the same doughnut example, I cannot say, "I think I am selling you doughnuts, but they may not be doughnuts; they may be something else you may not like."

Chairman Kirner:

I am understanding you to say, we like the bill, but the portion we do not like has to do with some sort of a temporary number. Is that right?

Lyndon Rive:

Correct.

Chairman Kirner:

All the other aspects of the bill you like, including your opportunity to testify before the PUCN as they begin to make their decision on what they want to do.

Lyndon Rive:

The word "like" is an aggressive word.

Chairman Kirner:

It is a four-letter word.

Lyndon Rive:

Given the alternative of death, we support it. We just want to ask for the one change.

Chairman Kirner:

I understand. When you go before the PUCN, should we pass this bill, you will have the same argument?

Lyndon Rive:

In front of the PUCN, the argument will be slightly different. With the PUCN, it is going to be the debate of the cost and the benefit that solar brings to the grid. That will be a slightly different debate, but there will be a debate.

Assemblywoman Carlton:

I am just trying to wrap my brain around it. When the PUCN does this, they are going to schedule a hearing, and we just heard they can do it fairly quickly. They will have a time certain when they get done with the findings of this, and they will say to you, "On this date, this shall be the rate." So you will have consistency along the way. It will not change until they have determined a rate because that is just impossible to do. You do have consistency. Is there something in here that I am missing? I do not want it to be two paragraphs' worth. I would like it to be a couple of sentences.

Lyndon Rive:

The way the bill is written is that the final rules will come out in December. If, in the unlikely event that the cap gets hit earlier than that, there will be temporary rules. Those temporary rules will convert to the final rules once the final rules are out, but you do not know what they are until they are out.

As a consumer, if you are going to buy a solar system, you know you are on this temporary rule for two months, maybe three months, but you do not know what the final rule is. Would you sign up?

Assemblywoman Carlton:

First of all, I think Assemblywoman Kirkpatrick's bill on protecting the consumers was the first step in this whole thing, which apparently was not palatable to anybody who wanted to protect the consumer. I find your "protecting the consumers" argument a bit disingenuous. I think you are protecting your business model, not the consumer. That is my problem with this.

Lyndon Rive:

We are absolutely protecting the industry. On the effect to the consumer, let us be clear on what happens to the effect on the consumer. I want to make sure there is no misinterpretation.

Assemblywoman Carlton:

Chairman Kirner, I got my answer. I think I am fine.

Chairman Kirner:

We wanted to end at 5:30 p.m. and we are now past that. There are a number of places that members have to go to.

Susan Glick, Senior Manager, Public Policy, Sunrun, Inc.:

Sunrun is a rooftop solar company. As Mr. Rive has mentioned, no one gets everything they want in politics, and we are willing to come to a compromise. We have suggested a modest amendment ([Exhibit G](#)). These modest amendments are far from ideal. They would bring at least some modest civility to the thousands of families who are facing an uncertain future with the net metering discussions. These amendments are not by any means everything that solar wants. After months of discussion, an overwhelming majority support an increase in the net metering cap. But you are not going to increase the cap today because that ask is not in this bill, and that ask is not in our amendment. What we are asking is very modest, and we want you to please go a small way to protect your constituents by accepting these modest amendments, which would ensure the status quo until the Commission can take the time in December to decide on the future of the program.

Robert S. Uithoven, representing The Alliance for Solar Choice:

We appreciate the opportunity to be here today. This was our only opportunity at a hearing this session. We have certainly been active in seeking one, and it has been difficult, so we appreciate the time and the late hour.

This is an important consumer choice bill as we see it. We have a modest amendment ([Exhibit G](#)) that we are seeking support for. This industry affects hundreds of job providers and hundreds of millions of dollars of private investment in Nevada. Just as Berkshire Hathaway Energy, the parent company of the monopoly, NV Energy, has a right to stifle our efforts to provide consumer choice, we appreciate your giving us the right to be here today to seek some fairness in this legislation.

Nevadans simply want to generate their own power. That is what we are trying to allow them to continue to do. This body has done a great job in providing the opportunities that have gotten us to where we are today. Others have testified on the enormous popularity of rooftop solar. We believe that allowing residents in Nevada to generate their own energy is an important goal for this Legislature. We are not getting everything we had originally wanted at the beginning of this legislative session, that is clear. But we look forward to working with the PUCN and hopefully we can get some minor adjustments to this bill through an amendment. We hope the sponsor of this bill will remain neutral and maybe lean a little bit in favor of supporting it.

Chairman Kirner:

Is there anyone else who is opposed to this bill?

Elspeth Dimarzio, representing Toiyabe Chapter of the Sierra Club:

I will not read my two pages of testimony but will say that the Sierra Club concurs with Mr. List and Mr. Rive and supports the amendment they have proposed.

Chairman Kirner:

Is there anyone else in opposition?

Robert Johnston, Senior Staff Attorney, Western Resource Advocates:

Western Resource Advocates is a nonprofit conservation organization, and our energy program works to develop and implement policies to reduce the environmental impacts of the electric power industry in the interior West by promoting expanded use of renewable energy, energy efficiency, and other clean energy resources.

I had signed up as neutral on this bill, but having heard the presentation of the bill and the amendment, my observation would be that there is 99 percent agreement here. I would support the amendment offered by the former opponents of the bill, what they have characterized as a friendly amendment, and what Senator Farley has characterized as neutral.

I would like to make one point. We are talking about a very small amount of energy. Assume, for example, that the 3 percent cap was exceeded before December 31, 2015. Assume you blew by it by 50 megawatts, which I think is an outside reach of how far you could exceed it. Fifty megawatts of solar PV generation turns out to be about 93,500 megawatt hours of energy. By comparison, NV Energy's retail sales in the state are \$29 million plus. By comparison, NV Energy's projected energy efficiency savings for 2016 are 700,000 megawatt hours. As Mr. Jacobsen has stated, the intent of this legislation is to make sure that solar customers are contributing their fair share to recovery of great costs. Whether this excess over the cap, but before December 31, is covered under the old rules of existing law or is covered under the new rules being developed by the PUCN, really does not matter that much. Regarding the impact on your rates, on the rates of your constituents, you would not see it. It would be de minimis. That is based on my long experience in this field. My concern would be that this interim measure, this tariff to cover this likelihood, I think you should consider whether that is worth the bother, if the concern is the impact on nonparticipants.

Kyle J. Davis, representing Nevada Conservation League:

The only issue we are opposed to was brought up in the initial stages of this hearing: section 1, subsection 5, having to do with the energy codes and standards and where a code was added. Mr. Thomsen covered this pretty well. We have a concern that this would prevent the Office of Energy from being able to implement energy conservation codes. We would hope that the "or code" would be taken out, and we would just be talking about standards in that case.

Regarding the issue of net metering, we have worked for many years with Assemblywoman Kirkpatrick on this issue. It has always been a complicated issue, but we have tried to expand the opportunities for solar energy in Nevada. We have done that in Nevada with great success. It has been a bipartisan issue with multiple legislators I have worked with over the years. I agree that the Public Utilities Commission of Nevada is the most appropriate venue to determine the relative cost and benefits and to properly allocate those. I think what we would say as we move through this process is we want to ensure that this remains an option for consumers and that we figure this out in a way that works for everyone. Our primary goal is to ensure that Nevadans continue to have the opportunity to install solar to reduce their energy bills and reduce pollution. We really appreciate the sponsors of the bill trying to craft a solution that gets at this and can allow for this option to move forward.

Assemblywoman Carlton:

I remember the year we went ahead and said yes, NV Energy, go ahead and spend \$255 million doing this, and those were ratepayer dollars that went toward this. To say a small amount of money has been invested is not accurate. I know I have paid for it, my constituents have paid for it, but we all believe in it. I just wanted to make sure that the record is clear on that, and I am not sure how much solar there is out there right now, but I look forward to contacting the PUCN and getting that number and doing some basic math and finding out how much did this really cost my constituents in the long run. I do not want it to be on the record that this is not a big deal because it is. It has cost us money for years, but we have done it because it is the right thing to do.

Chairman Kirner:

At this time, I will entertain those who are neutral. Is there anyone who wishes to testify neutral? I see two people in Las Vegas.

Louise Helton, Vice President and Founder, 1 Sun Solar Electric, Las Vegas, Nevada:

I am the owner of 1 Sun Solar Electric. We started in 2008. We made it through the incredibly difficult times as the recession held us in its grip. We have had a difficult and uncertain rebate system to navigate. We have made it through the valley of the shadow of those dark times and we find ourselves at a decision point that could well eliminate our industry due to this uncertainty that while you are posing it as just a possible bridge time, it is very much a concern to those of us in the industry. We have experienced uncertainty in the past and it has made a tremendous difference. The net metering cap does need to be managed to allow this industry to grow. It is not going to be talked about that we are going to raise the cap this new way; that we are going to manage it instead is fine with me.

I have a couple of concerns. People have really not seemed to be paying attention to the study prepared by E3 [Energy and Environmental Economics of San Francisco] that the Legislature paid for last session ["Nevada Net Energy Metering Impacts Evaluation"] which provided reports after in-depth research and found that in Nevada, net metering reduces electricity rates. The study analyzed costs and benefits comprehensively and included factors unique to Nevada, such as the benefits net metering has in contributing to Nevada's renewable portfolio standards. Overall, the study did not estimate the substantial cost shift to nonparticipants to do net metering going forward. The study results showed a benefit from 2014 to 2016 that net metered systems benefited ratepayers by \$174 million, and that the expansion of net metering would not impact rates for nonparticipating customers. Those were the results of the study that you commissioned.

I have been trying to be engaged in the system all the way along, attending all of the meetings from last interim session, coming up to Carson City twice this session, making telephone calls, and doing as much as I could in order to engage in this conversation. I appreciate the opportunity to be here today and share my opinion. As a small business person, my concerns are just about NV Energy being the only arbiter of what the costs would be that need to be shifted to solar customers through net metered customers. Also, I know that the Public Utilities Commission of Nevada is a very capable body. My concern as a small business person, it is very difficult to engage without hiring an attorney. That makes it very difficult for our small businesses to engage in this conversation. While we appreciate that the large companies have been at the table and have had a lot to say in the way things have been handled up to now, we hope that in the future, small business people, local companies who have been doing business for years, will also be able to engage in the process.

Scott Shaw, Director of Research and Commercial Development, GoSolar, Las Vegas, Nevada:

I concur with Louise Helton on everything she said from the E3 report to trying to engage at the PUCN level and at the legislative level. I am neutral on this bill. I also believe there needs to be a balanced approach as far as where the PUCN is getting their data to establish these new tariffs. Our company, GoSolar, is local. We have been going through the ups and downs since 2008, through one of the worst recessions Nevada has seen. We have gone from 7 employees to a little over 50 now, and that is our greatest concern: our customers that we deal with on a daily basis and the people we employ.

Ray Bacon, representing Nevada Manufacturers Association:

Louise just stole about 90 percent of my comments on this. The only thing I will add is, the issue is net metering, and that does not necessarily mean exclusively solar. There are other options out there. Wind is probably not viable in this state, but there is waste heat generation and even more effective use of the energy that we are already consuming at this stage of the game. This is a bigger issue than that, and I agree very much. We have made monumental progress, but take a look at what has happened to the technology of the installations. They have changed drastically in the last five years. The panels now snap together instead of requiring miles and miles of wiring harness. The technology is going to change; distributive generation is going to change, and that will change the model that NV Energy winds up dealing with probably within a decade—maybe longer than that—but it is going to change. Good, forward-looking policy, whether it takes place at the PUCN or elsewhere, such as in this body, is essential to the future.

Chairman Kirner:

We appreciate the SolarCity employees who came to participate in the process.

I will close the hearing on S.B. 374 (R2), and I will open the meeting to public comment. Seeing no public comment, this meeting is adjourned [at 5:50 p.m.].

RESPECTFULLY SUBMITTED:

Connie Jo Smith
Committee Secretary

APPROVED BY:

Assemblyman Randy Kirner, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Commerce and Labor

Date: May 20, 2015

Time of Meeting: 1:56 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 328 (R1)	C	George Ross, representing Astellas Pharma US, Inc.	Proposed amendment
S.B. 374 (R2)	D	Senator Patricia Farley	Proposed amendment 7525
S.B. 374 (R2)	E	Shawn M. Elicegui, NV Energy	Presentation
S.B. 374 (R2)	F	Joshua J. Hicks, representing Lennar Ventures	Proposed amendment
S.B. 374 (R2)	G	Robert S. Uithoven, representing The Alliance for Solar Choice	Proposed amendment