

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

**Seventy-ninth Session  
May 24, 2017**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Kelvin Atkinson at 8:35 a.m. on Wednesday, May 24, 2017, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Kelvin Atkinson, Chair  
Senator Pat Spearman, Vice Chair  
Senator Nicole J. Cannizzaro  
Senator Yvanna D. Cancela  
Senator Joseph P. Hardy  
Senator James A. Settelmeyer  
Senator Heidi S. Gansert

**GUEST LEGISLATORS PRESENT:**

Senator Aaron D. Ford, Senatorial District No. 11  
Assemblyman Chris Brooks, Assembly District No. 10  
Assemblywoman Ellen B. Spiegel, Assembly District No. 20  
Assemblyman Justin Watkins, Assembly District No. 35

**STAFF MEMBERS PRESENT:**

Marji Paslov Thomas, Policy Analyst  
Bryan Fernley, Counsel  
Daniel Putney, Committee Secretary

**OTHERS PRESENT:**

Alanna Bondy, American Civil Liberties Union of Nevada  
Wendy Stolyarov, Libertarian Party of Nevada  
Janine Hansen, President, Nevada Families for Freedom

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John Eppolito, President, Protect Nevada Children  
Donald Gallimore, Sr., Protect Nevada Children; NAACP Reno-Sparks Branch  
1112  
Brian McAnallen, City of Las Vegas  
Javier Trujillo, City of Henderson  
Lea Tauchen, Retail Association of Nevada  
Shannon Rahming, Chief Information Officer, Division of Enterprise Information  
Technology Services, Department of Administration  
Misty Grimmer, Nevada Resort Association  
Michael G. Alonso, Caesars Entertainment; International Game Technology  
Jesse Wadhams, Las Vegas Metro Chamber of Commerce; Nevada Hospital  
Association; Nevada Independent Insurance Agents; MEDNAX, Inc.  
Samuel P. McMullen, Association of Gaming Equipment Manufacturers  
Jessica Ferrato, Solar Energy Industries Association  
Travis Miller, Great Basin Solar Coalition  
Casey Coffman, Sunworks  
Natalie Hernandez  
Allen Eli Smith, Black Rock Solar  
Jerry Snyder, Black Rock Solar  
David Von Seggern, Sierra Club, Toiyabe Chapter  
Ender Austin III, Las Vegas Urban League Young Professionals  
Larry Cohen, Sunrun  
Naomi Lewis, Nevada Conservation League  
Katherine Lorenzo, Chispa Nevada  
Joshua J. Hicks, Sunstreet Energy Group  
Daniel Witt, Tesla, Inc.  
Kyle Davis, Nevada Conservation League  
Tom Polikalas  
Mark Dickson, Simple Power  
Louise Helton, Founder, 1 Sun Solar  
Jorge Gonzalez, Nevada Solar Owners Association  
Joe Booker  
Verna Mandez  
Scott Shaw, 1 Sun Solar  
Donald Gallimore, Sr., NAACP Reno-Sparks Branch 1112  
Kevin Romney, Radiant Solar Solutions  
Judy Stokey, NV Energy  
Ernie Adler, International Brotherhood of Electrical Workers Local 1245

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Danny Thompson, International Brotherhood of Electrical Workers Local  
Nos. 396 and 1245  
Jeremy Newman, International Brotherhood of Electrical Workers Local 396  
Rusty McAllister, Nevada State AFL-CIO

CHAIR ATKINSON:  
I will open the hearing on Senate Bill (S.B.) 538.

**SENATE BILL 538**: Adopts provisions to protect Internet privacy. (BDR 52-1216)

SENATOR AARON D. FORD (Senatorial District No. 11):  
Recently, Congress voted to repeal Internet privacy rules that were passed in 2016 by the Federal Communications Commission (FCC). These rules would have given Internet users greater control over what service providers can do with their data. President Trump signed Senate Joint Resolution 34 in April, and he did so through the Congressional Review Act. This Act allows Congress and the President to overturn recently passed agency regulations. Unfortunately, passage of Senate Joint Resolution 34 prohibits the FCC from implementing similar rules in the future. Under the repealed FCC rules, broadband companies providing Internet service would have been required to obtain permission from their customers to use their sensitive data, including browsing history, geolocation, financial information and medical information, to create targeted advertisements. These rules could have served as a bulwark against excessive data mining, which is the collection of personal information on the Internet as more devices become connected, such as refrigerators and washers.

Consumers in Nevada have little to no competitive choice for broadband access, which makes them vulnerable to data collection by Internet service providers. Broadband providers know their customers' identities. The providers' position gives them the unique technical capacity to surveil users in a way others cannot. Under the repealed FCC rules, customers would have had the ability to decide whether, and how much of, the information could be gathered and used by Internet service providers.

The lack of privacy rules are harmful to cybersecurity. Oftentimes, the injected advertising and tracking software used by marketers have security holes that can be exploited by hackers. Huge databases of consumer data are enticing targets for hackers. We have recently seen the effects of the WannaCry hack

worldwide. Senate Bill 538 is important because it provides guidelines for Internet Website or online service operators with respect to using consumers' information.

Section 3 defines consumer as "a person who seeks or acquires, by purchase or lease, any good, service, money or credit for personal, family or household purposes from the Internet website or online service of an operator."

Section 5 defines operator as a person who meets the following criteria:

- (a) Owns or operates an Internet website or online service for commercial purposes;
- (b) Collects and maintains covered information from consumers who reside in this State and use or visit the Internet website or online service; and
- (c) Purposefully directs its activities toward this State, consummates some transaction with this State or a resident thereof or purposefully avails itself of the privilege of conducting activities in this State.

A third party that operates, hosts or manages an Internet Website or online service on behalf of the owner is not included in the definition of operator.

Section 4 defines covered information as "personally identifiable information about a consumer collected by an operator through an Internet website or online service and maintained by the operator in an accessible form." Such information includes but is not limited to a first and last name, a home or physical address, an email address, a telephone number, and a social security number.

Section 6 requires an operator to make available a notice containing certain information relating to the privacy of covered information, which is collected by the operator through an Internet Website or online service, to a consumer. The notice must identify the categories of covered information the operator collects and the third parties with whom the operator may share the covered information. The notice must also include a description of the collection process, a description of the notification process, a disclosure as to whether a third party may collect covered information and the effective date of the notice. An operator may remedy any failure to make such notice available within 30 days after being informed of the failure. Section 7 prohibits an operator from knowingly and willfully failing to remedy such a failure within 30 days. In the event of improper actions, per section 8, the Attorney General is authorized to

seek an injunction or a civil penalty against an operator who engages in this conduct.

Proposed Amendment 4699 ([Exhibit C](#)) changes the effective date to October 1 and exempts certain small businesses that do not typically use the Internet for all of their services. This exemption was requested by Facebook.

The City of Las Vegas has proposed an amendment I have not yet determined whether to consider, but I would like a representative from the City of Las Vegas to present the amendment so that we could discuss it.

CHAIR ATKINSON:

Has a representative from the City of Las Vegas talked to you?

SENATOR FORD:

Yes.

SENATOR GANSERT:

Section 4 discusses the different things included under covered information. The sixth item listed is an identifier allowing a specific person to be contacted either physically or online. If an individual looks for an item on, say, Amazon, Amazon can contact the individual about that type of item. The individual is essentially targeted for whatever type of item the good is. This sort of marketing already happens, and it seems like a company would need an identifier to locate the individual again. Does the sixth item preclude such an activity?

SENATOR FORD:

This bill applies to more than just Internet service providers; it applies to edge providers such as Amazon and Facebook. All of the language in this bill was worked out with the industry. I accepted this language in an effort to address any possible concerns. The sixth item listed under covered information would not disallow an edge provider to continue contacting a customer with whom the edge provider already has a relationship.

SENATOR GANSERT:

This bill may not preclude edge providers from this activity, but would it preclude Internet service providers? Are the two types of providers treated differently?

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SENATOR FORD:

Edge providers and Internet service providers are treated the same under this bill.

CHAIR ATKINSON:

Is S.B. 538 modeled after legislation from other states?

SENATOR FORD:

Two other states have enacted laws similar to S.B. 538: California and Delaware. Other states, I believe 19, are considering this sort of legislation because of the federal government's actions. Oregon, Illinois and Minnesota are three examples. Many states are looking at Internet privacy legislation because they see it as an opportunity to protect their consumers, even when the federal government has opted not to.

CHAIR ATKINSON:

I asked that question because I wanted to determine if there was a movement happening with this sort of legislation.

SENATOR SPEARMAN:

This bill is timely. There has been news of a certain metastore in Nevada that S.B. 538 directly speaks to.

If we wait until October, would there be remedies for people trying to circumvent the penalties of this bill?

SENATOR FORD:

To be frank, I do not know. I suspect our Attorney General could utilize a deceptive trade practice statute under *Nevada Revised Statutes* (NRS) 598 to intervene. However, the Attorney General is limited based on current statutes. Senate Bill 538 would provide more Internet privacy protections after October 1. The October 1 recommendation came from the Retail Association of Nevada because it is interested in the regulations of this bill, but it needs a little time to implement them.

SENATOR SETTELMAYER:

I am not concerned with who collects the information so much as what information is collected and what is done with such information. I might reach out to other states that have enacted similar laws to determine if these laws

have been able to be enforced. The Internet is so large that it goes beyond state lines and even national lines. How do we enforce a law like this?

I have a lot of constituents worried about the government. In light of this observation, how do you feel about the proposed amendment seeking to exempt the government from this bill?

SENATOR FORD:

I am reserving judgment on that particular amendment because I have not heard any discussion yet. You can specifically ask the sponsor of the amendment your question, and based on what the sponsor says, I can determine whether or not to accept the amendment. Illinois, for example, has a litany of exemptions, many of which I do not agree with. Some of these exemptions are for municipalities. In reference to the City of Las Vegas, it has services for its constituents that require the Internet. The City of Las Vegas is concerned that with the protections this bill provides, it would be unable to provide certain services for its constituents. However, I do not want to speak on behalf of the City of Las Vegas.

I do not disagree with you about what is done with the information collected. The repealed FCC rules went further than what my bill attempts to do. I am only requiring notice and information as to how a consumer may opt out. Other laws go further. The first iteration of this bill actually required permission before information was collected. If consumers said no, services could not have been denied to them for saying so. That requirement was onerous, so we have agreed to the language in front of you. We are hoping to take incremental steps toward providing notice to individuals so that they know what type of information has been collected.

ALANNA BONDY (American Civil Liberties Union of Nevada):

New technologies are making it easier for the government and corporations to learn the minutiae of our online activities. Corporations collect our information to sell to the highest bidder, while an expanding surveillance apparatus and outdated privacy laws allow the government to monitor us like never before. With more and more of our lives moving online, these intrusions have devastating implications for our right to privacy, but more than just privacy is threatened when everything we say, everywhere we go and everyone we associate with are fair game. We have seen that surveillance, whether by the government or corporations, chills free speech and free association, undermines

a free media and threatens the free exercise of religion. Americans should not have to choose between using new technologies and protecting their civil liberties. The ACLU works to promote a future where technology can be implemented in ways that protect civil liberties, limit the collection of personal information and ensure individuals have control over their private data. We support S.B. 538 because it provides notice to consumers about what data is being collected and allows consumers to make more informed decisions about sharing their private information online.

WENDY STOLYAROV (Libertarian Party of Nevada):

I strongly echo the ACLU's sentiments. Individual privacy is absolutely vital. However, we would oppose any amendment exempting the government from the notification requirement.

JANINE HANSEN (President, Nevada Families for Freedom):

We strongly support S.B. 538. This bill is critical to our State. According to a recent *Consumer Reports* survey, 65 percent of Americans lack confidence that their personal information is private and safe from distribution without their knowledge. The Internet privacy issue has moved to the states. One of the things the *Consumer Reports* survey mentions is the many states that are considering similar legislation. These states include Alaska, Connecticut, Illinois, Kansas, Maryland, Massachusetts, Minnesota, Montana, New York, Pennsylvania, Rhode Island, Vermont and Washington. It is absolutely critical that our privacy be protected, as it is one of our most important civil liberties. We are all at risk for identity theft and data collection, not only from private enterprises but also from the government.

SENATOR HARDY:

Ms. Stolyarov, you made a comment about an amendment exempting the government. Could you clarify your comment?

Ms. STOLYAROV:

Senator Ford had mentioned there was a forthcoming amendment that would exempt the government from the notification requirement.

SENATOR HARDY:

I am asking what you think.



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Ms. STOLYAROV:

I am not familiar with the text of the amendment, but if it does exempt the government from the notification requirement, the Libertarian Party of Nevada would be opposed to it. Everyone has the right to know who is collecting his or her data, even if the government is the one doing so.

SENATOR HARDY:

As you understand it, the government is included in this bill without any amendment, correct?

Ms. STOLYAROV:

I would hope so.

JOHN EPPOLITO (President, Protect Nevada Children):

I will read from my written testimony in support of S.B. 538 ([Exhibit D](#)).

CHAIR ATKINSON:

Are you in favor of this bill?

MR. EPPOLITO:

Yes.

CHAIR ATKINSON:

From your testimony, it does not sound that way.

MR. EPPOLITO:

We would like to see more from S.B. 538.

CHAIR ATKINSON:

You should have testified in neutral then.

MR. EPPOLITO:

This bill is a start; we would like to build upon it.

I will continue reading from [Exhibit D](#). We proposed an amendment to Senator Ford, but we do not think he is going to use it. We also proposed the same amendment to Senator Moises Denis for S.B. 467, but we are not sure if he is going to use it either.

**SENATE BILL 467 (1st Reprint)**: Revises provisions relating to technology in public schools. (BDR 34-1120)

This amendment would at least do something to notify parents of what is going on.

DONALD GALLIMORE, SR. (Protect Nevada Children):

We have been working for seven years to make sure people understand the effects of the breaches of Internet privacy. I will read the rest of [Exhibit D](#). In the amendment mentioned by Mr. Eppolito, we specify opt-in options for parents.

BRIAN McANALLEN (City of Las Vegas):

We have talked to Senator Ford, and I believe he understands what the City of Las Vegas is trying to do, which is protect the personal information constituents supply to the City of Las Vegas. Our proposed amendment ([Exhibit E](#)) would amend the definition of consumer in section 3. The amended definition would include anyone who accesses constituent services from the Internet Website or online service of an operator or exchanges information regarding such services by means of such a Website or online service.

We are trying to develop a new platform for our constituents. We would collect data voluntarily from constituents who select a variety of programs and put personal information online. As a public entity, we are subject to public records requests under NRS 239. Our new platform might not be covered under the current definitions and prohibitions on gathering public data in [S.B. 538](#). We are trying to protect this new platform as technology changes and moves forward. We do not believe constituents who visit our government Websites want their personal identification information to be public. If we do not provide specific protections for our constituents, they will not use our constituent services platform.

Our amendment further defines operator in section 5, subsection 1 to include a government entity. This provides protection for personal identification information. The amendment also adds subsection 3 to section 6, stating, "Notwithstanding any other provision of law, an operator is not required to disclose covered information regarding a consumer pursuant to a public records request made under chapter 239 of NRS."

The amendment was drafted by our attorneys in an attempt to cover new technology. If there is a better way to write the amendment that Senator Ford would accept, we are fine with that.

SENATOR HARDY:

Do you read this bill as not including the government? Do you propose the government be included to protect people's information?

MR. MCANALLEN:

Yes.

JAVIER TRUJILLO (City of Henderson):

We have communicated with Senator Ford in regard to local governments. We support this bill and its intent—we want to protect the personal information of individuals. We also support Senator Ford's and the City of Las Vegas' proposed amendments. We do not feel we are excluded because we have over one million visitors to our Websites. Our goal is to protect our constituents and to make sure their information is protected without being subject to NRS 239.

LEA TAUCHEN (Retail Association of Nevada):

As Senator Ford mentioned, we requested the amendment to postpone the effective date to October 1. This would allow us time to educate and assist our members with compliance. We appreciate Senator Ford's consideration and willingness to make S.B. 538 workable for the retail businesses conducting commerce online in Nevada.

SHANNON RAHMING (Chief Information Officer, Division of Enterprise Information Technology Services, Department of Administration):

I will read from my written testimony in neutral to S.B. 538 ([Exhibit F](#)).

SENATOR GANSERT:

What is your opinion on the amendment adding government to this bill?

Ms. RAHMING:

I have not seen the amendment.

SENATOR GANSERT:

There is a fiscal note from the Attorney General. Why did you not include one?

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Ms. RAHMING:

I did not include a fiscal note because I could not tell whether S.B. 538 would affect the State.

SENATOR GANSERT:

We may find out if there is an effect on the State after we figure out the amendment.

CHAIR ATKINSON:

I have received a letter of opposition to S.B. 538 ([Exhibit G](#)) from Christopher Oswald, Data and Marketing Association.

I will close the hearing on S.B. 538. The Committee will give Senator Ford time to work on the proposed amendments.

I will open the hearing on A.B. 276.

**ASSEMBLY BILL 276 (2nd Reprint)**: Revises provisions relating to employment practices. (BDR 53-289)

ASSEMBLYWOMAN ELLEN B. SPIEGEL (Assembly District No. 20):

This bill is about two things: disclosure and job termination.

About 30 years ago, I worked at a Fortune 100 company in New York City. My job got to be quite big; I was responsible for markets all over the place. As a result, my job was cut in half, and another person was hired to do the other half. Our jobs had the same responsibilities; we were simply responsible for different areas. We were putting in long hours. My colleague, whose name was Paul, turned to me and said, "I can't believe how hard we're working and how many late nights we're putting in, and they're only paying us \$34,000 a year." I looked at him and said, "How much are you making?" He replied, "\$34,000 a year." My salary was in the twenties.

The next morning, I approached my boss and told her, "Paul and I were talking last night, and he told me he makes \$34,000 a year. What's up with that?" She looked at me and said, "Well, Paul's a guy." I replied, "Yes, I know Paul's a guy, but what does that have to do with anything?" She said, "He needs more money. He wants to get engaged; he's saving up to buy a ring for his girlfriend. He's going to be supporting a family, and you're single, so you don't need as

much money as he does." At that point, I said, "I'm single, so that means I need more than he does because I'm supporting myself, and he's going to be part of a two-income household."

I told one of my friends, who happened to work in human resources, what had happened to me. She was incensed and said, "That can't be right." I then told her, "I'm telling you as my friend. Please don't do anything with this." The next thing I know, I am called into a corner office of a senior vice president of human resources. She told me, "There's the door." I then said, "Excuse me?" She replied, "There's the door; you're free to leave anytime. I will also tell you it is against company policy to be having these discussions about what you're earning and what your wages are. It's grounds for termination. It's pretty clear from what you told us—and yes, we spoke to Paul—that he initiated the conversation, so we're not going to fire you over this, but we are going to write you up and put it in your file so that if it happens again, you will be fired for having this conversation. By the way, we're not going to fire Paul because, well, he's a guy." I had heard there was wage discrimination, but it had never reached my consciousness that it was actually happening.

The wage gap still exists. In various hearings, you have probably heard that women earn about 78 cents on the dollar compared to men. For women of color, the disparity is even greater. As much as we like to tell ourselves the wage gap does not exist, it still does.

In December 2016, I read a story from Maddy Huffman:

This summer, I started a job at a powder-coating warehouse working next to a 400-degree oven in 100-degree Texas weather. I was always the first one in and the last one to leave. I picked up the trade quick and produced good, quality work in a safe and timely manner. When the rest of the crew complained it was too hot to wear steel-toed boots and jeans, I never wavered. It was brought to my attention that even though I would media blast, prep and powder, and maintain job flow, I was getting paid a dollar under every male I worked beside. When I brought that to the attention of the manager, I was told that if I improved my attitude and smiled more, they would consider me for a raise in a month or so. I gave them my two weeks' notice at that point.

She went on to talk about what she did afterward, and she landed on her feet just fine. I wrote to her asking if I could share her story, and she wrote back:

Hi, Ellen. Feel free to share my story. When I approached the manager with my pay concerns, I was told that talking wages was grounds for termination, too. It's funny though—I never brought up wages with the guys I worked with. I honestly didn't care or think twice about it. I was just happy to be working and learning something new, but when it reared its ugly head, I couldn't ignore it. Thank you for fighting for Nevada women and workers.

While I have been working on this bill this Session, I cannot tell you how many women who work in this building and are in this building have come to me and told me their stories. Most of them are afraid to come out and speak publicly because it is grounds for termination where they work. They are afraid of losing their jobs. Wage discrimination is something quiet.

Section 3 basically says somebody cannot be fired for having a discussion about his or her wages. If somebody cannot discuss his or her wages, then that person would not know if he or she were being discriminated against. The individual would not be able to make an informed decision about what to do, whether that be keeping the job, leaving it or trying to get an increase in pay.

Sections 1 and 2 address issues relating to termination and postemployment. These sections specify that an employer can ask an employee to sign a nondisclosure agreement provided it is supported by valuable consideration, is not too burdensome, does not make it impossible for the employee to obtain a new job and is appropriate for what the job is.

This bill has three other important clauses. The first one is what I call "the hairdresser clause." Many times in noncompete agreements, the employee agrees that he or she is not going to take clients away. This is perfectly reasonable from an employer's perspective because a business does not want an employee who leaves to take its entire book of business out the door. However, there is also the perspective of the clients. I am far more loyal to my hairdresser than I am to any hair salon. When my hairdresser has gone from one salon to another, regardless of what she has signed, I will seek her out. Many clients do this for all sorts of services. This clause states that if, say, a

client's hairdresser leaves and does not seek the client out but the client seeks the hairdresser out, then the hairdresser can provide services to that client.

The next clause provides layoff protection. If a company goes through something like a merger or a downturn and has to lay off employees, then those employees are only bound by their noncompete agreements while receiving severance pay. These individuals have to be able to get other jobs.

Another provision this bill contains is bluelining. If a court of law finds that provisions in the noncompete agreement are invalid, it can strike out the invalid components but leave in what is valid.

MISTY GRIMMER (Nevada Resort Association):

We support both portions of A.B. 276: the original part of the bill and the noncompete provisions Assemblywoman Spiegel was willing to add on our behalf. We are asking the Legislature to clarify in statute something that had been the practice of the courts for decades. However, a specific lawsuit came forth in which an entire noncompete agreement was thrown out because one portion of it was excessive. Section 1, subsection 5 would allow a court to keep the good parts of a noncompete agreement and toss out or renegotiate the excessive parts.

Assemblywoman Spiegel brought the other two scenarios she mentioned, which are absolutely legitimate, to our attention as well. An employer cannot lay somebody off and then say, "Oh, by the way, you can't go get a job either." Also, it is common practice that a business cannot tie the hands of its customers. A customer is allowed to go anywhere he or she wants. We support having all of these clarifications in Nevada law.

MICHAEL G. ALONSO (Caesars Entertainment; International Game Technology):

We support A.B. 276. This is a good bill. We like the provisions in it; they are reasonable.

JESSE WADHAMS (Las Vegas Metro Chamber of Commerce; Nevada Hospital Association; Nevada Independent Insurance Agents; MEDNAX, Inc.):

We support both components of A.B. 276. This is a good bill.

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SAMUEL P. McMULLEN (Association of Gaming Equipment Manufacturers):  
Sections 1 and 2 are key to us. An innovative industry needs to be able to protect itself, and it needs reasonable tools. This bill provides reasonable tools. We would appreciate the Committee's support of A.B. 276.

CHAIR ATKINSON:

I will close the hearing on A.B. 276 and entertain a motion on this bill.

SENATOR SETTELMAYER MOVED TO DO PASS A.B. 276.

SENATOR GANSERT SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

CHAIR ATKINSON:

I will open the hearing on A.B. 405.

**ASSEMBLY BILL 405 (1st Reprint)**: Establishes certain protections for and ensures the rights of a person who uses renewable energy in this State and revises provisions governing net metering. (BDR 52-959)

ASSEMBLYMAN CHRIS BROOKS (Assembly District No. 10):

As we have seen so far this Session, there are many important issues to discuss when it comes to customers' rights to generate and store energy in the State. Energy is constantly evolving, requiring renewed assessment and focus on energy policy in Nevada, which I am happy to say has been occurring these past few months. We have seen a lot of great legislation this Session that addresses customers' rights to renewable energy. Assembly Bill 405 goes hand in hand with these other bills, codifying some of the customers' rights into Nevada law. Assembly Bill 405 outlines what Nevada customers' fundamental rights around energy should be, setting a framework to protect Nevadans on what could be the biggest investments of their lives. This is especially necessary now as we move forward with new and potentially disruptive ways to access energy in Nevada.

This bill creates the contractual requirements for the lease, purchase or power purchase agreement of a distributed generation system. This bill establishes the



minimum warranty requirements for an agreement concerning a distributed generation system. Assembly Bill 405 also makes it a deceptive trade practice if a contractor fails to comply with these provisions.

Finally, A.B. 405 creates the Renewable Energy Bill of Rights, which applies to every Nevadan. As a pioneer in Nevada's solar energy industry, I know the experiences solar customers go through. It is one of the biggest purchases a person might make in his or her lifetime. The individual is signing a 20-year contract for complicated energy products. It is difficult to understand exactly what an individual is being asked to sign.

Nevada has a chance to be the Country's leader on solar energy. By creating a more streamlined process for customers, we make it that much more friendly to be a solar customer in the State.

I will read from a table explaining this bill's provisions ([Exhibit H](#)). This bill addresses three different models: the lease model, the purchase model and the power purchase agreement. Sections 9 through 11 address the lease model. Sections 12 through 14 mirror sections 9 through 11 but for the purchase model. Sections 15 through 17 mirror the previous sections but for a power purchase agreement.

In my career, I have seen people who sell distributed generation systems make wildly unrealistic claims about rates and savings. Section 18 prevents such claims from occurring by requiring a disclaimer on any contract or proposal in front of a customer. NV Energy suggested the inclusion of this section. This section is one of the more important components of A.B. 405.

Section 19 is also a critical component of this bill.

A lot of individuals read and speak Spanish but have to read complicated forms in English. Section 20 requires documents to be provided in Spanish if requested. NV Energy suggested the inclusion of this section as well.

Section 27 through the end of this bill deal with how we treat returned energy from a distributed generation system. This bill is essentially sections 1 through 26, which are the original parts of A.B. 405, and the provisions of A.B. 270, which take up the rest of this bill.

**ASSEMBLY BILL 270**: Revises provisions governing net metering. (BDR 58-686)

Assemblyman Justin Watkins was working on A.B. 270, but we decided to combine A.B. 405 and A.B. 270 into one bill. The provisions of A.B. 270 have been amended into A.B. 405.

The State's cumulative capacity for solar generation is currently 2.6 percent. It took Nevada 20 years to get to 2.6 percent. This bill offers a tiered reduction in the value of exported energy, referred to as a net metering adjustment charge, that is between 5 percent and 20 percent. The charge is dependent on the market penetration of solar energy in the State. As the market penetration increases, the charge increases.

In other words, we are basing the charge on peak demand. NV Energy has a peak demand of about 8,000 megawatts across the State. Capacity for solar generation is 2.6 percent of that peak, but this is only one part of the story; the rest of the story is about energy. NV Energy sold approximately 30 million megawatt-hours last year across the State. When we look at the capacity factor of distributed generation systems, it is around 22 percent if we aggregate all of the systems in the State. Considering we are only at 2.6 percent capacity, the capacity factor is 22 percent and only about 40 percent of the energy produced by a distributed generation system ever sees the grid, we are really talking about half of a percent of the grid's energy coming from distributed generation systems. When we talk about moving to a market penetration of 10 percent, that means roughly 2 percent of the energy in our grid would come from distributed generation systems.

It is important to keep these numbers in perspective. We are only moving from half of a percent to 2 percent, all the while creating jobs and giving Nevadans a choice of how they generate their electricity.

SENATOR SETTELMAYER:

I appreciate many aspects of this bill, but I have some concerns, mainly with the step-down process. What is the current exchange rate for solar?

ASSEMBLYMAN BROOKS:

There are two customer classes. One is for net metering. I am not sure where we are currently in the step-down process.

SENATOR SETTELMAYER:

You mentioned a market penetration of 5 percent. The concept of promoting renewable energy is important. I am willing to pay more for energy to do so, and many others are, too. However, how much would rates increase? Has there been an analysis of what this bill's provisions would do to a standard ratepayer?

ASSEMBLYMAN BROOKS:

Assembly Bill 405 would add a few pennies to the bills of average ratepayers, according to the calculations from NV Energy.

SENATOR SETTELMAYER:

How many pennies are you talking about?

ASSEMBLYMAN BROOKS:

I do not necessarily agree with the methodology used to calculate the costs. NV Energy considers lost revenue in what it would have sold to customers if it did not produce its own energy. This component is roughly half the calculation. I do not feel the calculation methodology is proper.

SENATOR SETTELMAYER:

I understand why you disagree with the calculations, but I would like you to find out what the costs would be. I am concerned about what this bill would do to the average ratepayer. Many businesses in my district use a lot of power, including myself.

The rate in this bill is based on 5 percent, but is that 5 percent of the total power sold in the State?

ASSEMBLYMAN BROOKS:

Are you talking about 5 percent on the rate side or the market penetration side?

SENATOR SETTELMAYER:

The market penetration side, if I am correct, takes into consideration the total power sold in the State. Are the percentages for market penetration based on the total power sold in the State or the power sold by Nevada energy companies?

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ASSEMBLYMAN BROOKS:

Assembly Bill 405 is an expansion of current net metering law, which applies to NV Energy. We are basing the numbers on NV Energy's 2016 peak demand across the State.

SENATOR SETTELMAYER:

It seems to me that the total megawatts sold refers to the total amount sold in the State, which brings in the various co-ops.

ASSEMBLYMAN BROOKS:

This bill refers to NV Energy.

SENATOR SETTELMAYER:

I will try to find the answer in the bill text.

ASSEMBLYMAN BROOKS:

There are two components. One is the all-time peak, which is a moment in time. This component is separate from the amount of energy sold in the State. The all-time peak for 2016 was 8,000 megawatts, and the amount of energy sold in 2016 was 30 million megawatt-hours.

SENATOR SETTELMAYER:

Is the energy sold only by NV Energy?

ASSEMBLYMAN BROOKS:

It is sold by NV Energy or the companies referred to in this bill.

SENATOR SETTELMAYER:

I did not read A.B. 405 that way.

CHAIR ATKINSON:

Which section of this bill relates to consumer protection?

ASSEMBLYMAN BROOKS:

Consumer protection is addressed in sections 2 through 20.

CHAIR ATKINSON:

Do these sections apply to all scenarios? There was some debate about this before. Some individuals felt they were covered, but some were not covered.

ASSEMBLYMAN BROOKS:

Yes. Within sections 2 through 20, the three different models—purchase, lease and power purchase agreement—are addressed. There are more similarities among these models than differences, but the definition of each model is unique. All three models require making the customer aware of the recovery fund. Also, there cannot be false claims about savings.

CHAIR ATKINSON:

Are you saying the consumer protection provisions apply to all scenarios?

ASSEMBLYMAN BROOKS:

Yes.

CHAIR ATKINSON:

What is the typical warranty for a rooftop solar system?

ASSEMBLYMAN BROOKS:

In the industry, the warranty is all over the place. This bill states that the warranty must be a minimum of seven years.

CHAIR ATKINSON:

How can you or A.B. 405 define what the warranty is? The warranty comes from the manufacturer.

ASSEMBLYMAN BROOKS:

I misspoke earlier. The warranty is a minimum of ten years. Assembly Bill 405 states that the company must provide, at minimum, a ten-year warranty.

CHAIR ATKINSON:

It is ten years, not seven, correct?

ASSEMBLYMAN BROOKS:

Correct. In the industry, there are warranties between 10 years and 20 years.

CHAIR ATKINSON:

This bill refers to the minimum warranty a company must offer, but can the company offer a longer warranty?

ASSEMBLYMAN BROOKS:

Yes. There are companies that offer warranties longer than ten years.

CHAIR ATKINSON:

In regard to lease customers, does this bill protect them for the life of the system for the entire term of the lease? I assume the system would be covered for the entire term of the lease.

ASSEMBLYMAN BROOKS:

Regarding the purchase model, the process is fairly straightforward. The system must be covered by a warranty from the company for a certain number of years. In a lease, the process is a little different. Customers do not own the equipment. It is in the equipment owner's best interests to make sure the system is operating. We did, however, include roof penetration in the minimum ten-year warranty requirement. The system would be covered under the minimum ten years. The owner would be on the hook for the system to work after that period. If the system breaks down, the owner is not receiving any money, and the lease customer is not receiving any savings.

CHAIR ATKINSON:

Which agency is going to police this bill's provisions? How will customers know where to go to have their issues rectified?

ASSEMBLYMAN BROOKS:

Section 20 makes any violation of sections 2 through 20 a deceptive trade practice and consumer fraud. If a customer feels a company has violated any of these sections, he or she has the right to sue to recover any damages. Under the deceptive trade practice statutes, the Attorney General can prosecute these violations. Additionally, customers can go through the State Contractors' Board for contractor violations, and there is a recovery fund associated with that. When fraud took place a few years ago, many solar customers accessed the recovery fund to recover some of their money.

CHAIR ATKINSON:

Are you saying there is no simple answer in regard to who is going to police this bill because of the different variables? I am asking this because we might get to a point where the provisions of A.B. 405 become tasking.

ASSEMBLYMAN BROOKS:

There is no enforcement agency specific to this type of contract. These solar contracts would be similar to many other contracts in that if a company committed fraud, the consumer would have recourse, which, in this case, would be to approach the Attorney General or sue. The most important part of this bill is that any violation of sections 2 through 20 would be considered consumer fraud. This provides a consumer with all of the protections under the deceptive trade practice statutes.

CHAIR ATKINSON:

In the past, people who were aggrieved were not sure where to go to have their issues rectified. Your description of what a consumer would do is not clear to me. We need to provide clarity with respect to that. People need somewhere to go. We can talk about this and work on it, but we need to figure something out.

SENATOR SETTELMAYER:

Section 28 refers to the cumulative installed capacity of all net metering systems in the State. I am concerned with that. With the turnout on the Energy Choice Initiative last election, it is clear things will change in the future. I am concerned about forcing one group to pay for the entire State. We should consider rewording this section to ensure A.B. 405 only applies to the regulated industry. We have some unregulated energy providers in Nevada.

ASSEMBLYMAN BROOKS:

This bill is already targeted toward the regulated energy industry, but I am willing to clarify that language. This bill refers to NV Energy. I am also open to adding language that would predict where our State might be in the future.

SENATOR SETTELMAYER:

I do not want A.B. 405 to apply to the entire State. I do not want people to pay for something they are not a part of. This bill refers to the entire State, not just NV Energy.

SENATOR GANSERT:

Because the majority of Nevadans voted yes on the Energy Choice Initiative last election, there is a sense that our State's citizens want an open, competitive energy market. Currently, we only have one major provider: NV Energy.

Section 10, subsection 19, which is probably repeated for the purchase and power purchase agreement models, gives options when it comes to the sale of the property or the death of the lessee. If we have open, competitive markets and different providers of energy in the State, I am not sure how this bill would work. Right now, it sounds like individuals get 20-year contracts. If we have a major energy provider that decides to no longer be an energy provider, what would happen to the individuals in 20-year contracts with that provider?

ASSEMBLYMAN BROOKS:

The question of what are we going to do has come up over and over again on almost everything we have done regarding energy this Session. First of all, the Energy Choice Initiative has to pass again, and then the Legislature has to come up with what it wants to do to meet the intent of the Initiative. Assembly Bill 405 addresses some of what the Legislature has to do by giving people a choice in how they procure their electricity.

From where we are now to the complete deregulation of the energy market, we are going to be somewhere in that spectrum. There could be a provider of last resort that is responsible for the customers in the State who have made solar agreements. If a company came to the State wanting to do business, that company could look at customers with net metered systems and the rules in place and then decide these customers were good to have in its portfolio. The company could court these customers through rates or tariffs.

In future sessions, Legislators will have to address where Nevada wants to go as a State around the subject of energy choice. Depending on how far we go down the path of energy choice, A.B. 405 might survive, or we might rewrite every energy statute in NRS.

SENATOR GANSERT:

If somebody has a 20-year agreement with a power company, can that power company transfer the agreement to another entity?

ASSEMBLYMAN BROOKS:

Yes. There are currently 40 or 60 power purchase agreements in the State between NV Energy and other entities. Those agreements would have to be transferred and dealt with.



The lease transfer provision you mentioned is between a business and a Nevadan; the provision does not involve the utility.

SENATOR GANSERT:

I am concerned about the warranty. The minimum warranty requirement is 10 years, but some contracts last 20 years.

You also mentioned a recovery fund. Are we planning for recourse if contractors go out of business? Are there contributions to the recovery fund to guarantee money is available in the long term?

ASSEMBLYMAN BROOKS:

There is a mechanism whereby all contractors pay into the recovery fund. There are provisions for recovering money if there was fraud or the contractor went out of business in the middle of a customer's project. All installing contractors pay into the recovery fund.

CHAIR ATKINSON:

Everybody on this Committee believes the Energy Choice Initiative will pass again; 72 percent of Nevada voters voted yes last election. Nevadans have spoken, and they will speak again in a couple of years. I do not agree that every energy bill this Session would conflict with the Initiative. Some energy bills would stand alone. Assembly Bill 405 is not as specific, and it puts years on a customer. Some of the other energy bills do not put as many years on a customer.

There are individuals who have some concerns with this bill. We may have to do something, and we may need some language that addresses whether the Initiative becomes a reality in the State. We cannot ignore this; we have to talk about it as we go forward. It is not fair to our constituents to ignore it.

SENATOR SPEARMAN:

In one or two sentences, tell me what the purpose of this bill is.

ASSEMBLYMAN BROOKS:

This bill is meant to bring solar back to the State and to protect consumers while we do it.

SENATOR SPEARMAN:

The question of consumer protection is a recurring theme throughout all of the energy bills this Session. If we are talking about consumer protection and renewable energy, how do these two things intersect? People do not understand how much energy Nevada imports and what the exposure would be if our base load increased.

ASSEMBLYMAN BROOKS:

That is one important component of consumer protection that incorporating renewable energy is trying to address. Over 80 percent of Nevada's energy is imported in the form of fossil fuels. By giving a consumer the ability to generate and store his or her electricity, the consumer is protected from potential price increases in the future. That is one of the key components of the choice to generate one's energy.

SENATOR SPEARMAN:

What do you mean by 80 percent? Do you have a dollar figure regarding how much our State pays someplace else to get our energy?

ASSEMBLYMAN BROOKS:

NV Energy sold 30 million megawatt-hours last year. Of that 30 million, over 80 percent was generated from imported energy, namely natural gas. I do not have an exact dollar amount.

SENATOR SPEARMAN:

Although you do not have an exact figure, it is clearly 80 percent, correct?

ASSEMBLYMAN BROOKS:

Yes.

SENATOR SPEARMAN:

The closest business model I could find was Xcel Energy, which operates in eight states. One of those states is Texas, which is completely deregulated and has choice for all of its consumers. It would be my expectation, in terms of what the Chair has said, to determine a way in which this bill would work. We could learn from Texas. My major concern is the fact that the price of natural gas is expected to increase. We need to work on something to protect consumers. If 80 percent of the energy we receive is ready to increase in price, we need to determine how to use A.B. 405 and other energy legislation for the

benefit of consumers. This bill is mainly for solar, but anyone who has heard me talk over the last two or three years knows I am trying to get our State to a place where we have a good energy mix, including solar, wind, biofuels, geothermal, etc. How can this bill help move Nevada forward and protect our State's consumers should there be a spike in the price of natural gas?

ASSEMBLYMAN BROOKS:

Choice will provide protection to consumers. There is a tremendous amount of reliability associated with the ability to create and store one's energy. This also insulates consumers from rate increases such as price shocks from out-of-state commodities. If somebody is generating a good portion of his or her energy, the other portion of it, which has to be bought and is subject to price escalation, is minimized. The risks are mitigated.

SENATOR SPEARMAN:

Is the storage piece of A.B. 405 complementary to a bill the Chair is sponsoring, S.B. 204?

**SENATE BILL 204 (1st Reprint)**: Requires the Public Utilities Commission of Nevada to investigate and establish biennial targets for certain electric utilities to procure energy storage systems under certain circumstances. (BDR 58-642)

ASSEMBLYMAN BROOKS:

Yes.

CHAIR ATKINSON:

Section 24, subsection 6 mentions priority. What do you mean by priority given to rooftop solar customers during the planning process?

ASSEMBLYMAN BROOKS:

The priority aspect is trying to address how we bring on new resources. Instead of potentially investing in a power plant where money is funneled elsewhere, we are looking at investing in and giving priority to Nevadans. If somebody is a Nevadan and that person has invested his or her money in a system, there is value to that. There is value to the system being a Nevada asset installed using Nevada labor. We would like to see that given priority in the planning process. "Given priority" is an intentionally vague statement meant to encourage planners when adding new resources.

CHAIR ATKINSON:

Some people place renewable energy and solar in different categories, but I look at them as one thing. Why would you not want the utility to look at all types of renewable energy?

ASSEMBLYMAN BROOKS:

We do look at all types of renewable energy. It is going to take all types of renewable energy to achieve our State's energy goals. Geothermal, wind, solar, distributed generation and storage are needed to achieve what most Nevadans feel our energy goals are. This bill addresses customer-generators. When we look at resource planning or the value of these systems, we want to make sure Nevadans receive priority in the planning process.

CHAIR ATKINSON:

Are you referring to Nevadans as a whole or Nevadans as the customers of these systems? Why would you not want the customer to pay for the least cost project?

ASSEMBLYMAN BROOKS:

We do want that. We are talking about half of a percent of the grid's energy. We want to increase that to 2 percent. When we look at the other 98 percent of our State's energy, there is room for everything. We want a small piece of the energy mix to receive priority in the planning process.

CHAIR ATKINSON:

Is this bill more about priority then?

ASSEMBLYMAN BROOKS:

Yes.

SENATOR SETTELMAYER:

I believe this bill gives priority to renewable energy in general. Assemblyman Brooks has used the term "rooftop solar," but I do not think that is the intent. Are you saying renewable energy in general receives a priority?

ASSEMBLYMAN BROOKS:

I am saying that customer-generators receive priority. Each Nevadan who generates his or her electricity receives priority.

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SENATOR SETTELMAYER:

I appreciate and agree with that concept. You keep on referring to rooftop solar, but I feel that is incorrect.

ASSEMBLYMAN BROOKS:

I will stop using that term.

CHAIR ATKINSON:

Many of us have been involved with energy issues for a while. We are trying to get things right.

Section 24, subsection 7 mentions a change in rate class. Can you explain why you are changing the rate class rooftop customers are currently in?

ASSEMBLYMAN BROOKS:

A residential user is a residential user. We want all residential users to be in the same rate class. When people are divided into different rate classes based on their behaviors, they can be assessed different costs and fees. There are no two ratepayers in the entire system that are the same. To break people up into multiple rate classes within a rate class opens up an individual to discriminatory fees. We want to keep residential ratepayers in the same rate class, regardless of how much energy the utility sells them, and address the value or credit of any returned energy.

CHAIR ATKINSON:

Section 24, subsection 4 mentions fair credit. Who defines fair credit? In my district, 31 percent are Hispanic and 28 percent are African American. There are also a lot of low-income families. How would fair credit affect my constituents?

ASSEMBLYMAN BROOKS:

Fair credit is meant to be a guiding principle for regulators who come up with tariffs and statutes governing how energy is returned. Fair credit is intentionally vague rather than a defined amount.

CHAIR ATKINSON:

Senator Spearman mentioned Texas has choice, and it seems like Texas is doing well. We have this bill in front of us, and we may move to choice. I do not know how many states had energy mandates and then moved to choice. I do

not think that was the case in Texas. We are trying to avoid moving backward in two years.

JESSICA FERRATO (Solar Energy Industries Association):

We have a survey regarding states that have moved to some form of deregulation and how they have handled it. All of these states except for one still have net metering. Texas companies still offer net metering to their customers. We can get you this information.

CHAIR ATKINSON:

Are you saying you can get the information for us, or do you have it?

Ms. FERRATO:

We have it. We will get it to you.

CHAIR ATKINSON:

I have asked quite a few people for information, but I have not received anything.

SENATOR CANNIZZARO:

How much does it cost for the installation of a solar project on a house? What are the upfront costs? What costs would customers pay over time?

ASSEMBLYMAN BROOKS:

It depends on the business model. The average solar system for purchase is around \$12,000. The lease and power purchase agreement models have little to no upfront costs, and customers pay a recurring cost based on the amount of energy their systems produce. Usually, customers pay a discounted rate of what the retail energy would cost. I do not know the percentage of customers using each business model, but the average installed cost is around \$12,000, which is considerably less than when I installed a system on my house about 15 years ago.

SENATOR CANNIZZARO:

If the \$12,000 is paid up front, does the customer pay additional costs over time, or is the \$12,000 the total cost?

ASSEMBLYMAN BROOKS:

An upfront purchase would be \$12,000. For example, in my house, I paid the upfront cost of installation, and I have not spent another penny since. That is not always the case, but that is my case.

SENATOR CANNIZZARO:

I echo some of the concerns raised by my colleagues. I am curious to see how A.B. 405 would affect ratepayers who do not have these types of systems. It is important for us to see the cost differential.

ASSEMBLYMAN BROOKS:

The renewable energy components of an average ratepayer's bill are a little over 2 percent. These components cover everything our State has done in the past 10 to 15 years in regard to renewable energy.

CHAIR ATKINSON:

We realize these components exist, but we want to know what the cost of an addition would be. You may not agree with the calculations done by NV Energy, but we still need to see a number.

ASSEMBLYMAN BROOKS:

The components of all renewable energy in our State equal 2 percent of an average ratepayer's bill. We are at half of a percent in terms of renewable energy from distributed generation. We are able to draw conclusions from these numbers. The added cost to a ratepayer's bill would be negligible.

CHAIR ATKINSON:

Section 24, subsection 3, paragraph (c) states that anyone can install a rooftop solar system, but it also states that the person does not need to obtain permission from the utility. I find this dangerous. Who assumes liability for this? Why would somebody not obtain permission from the utility?

ASSEMBLYMAN BROOKS:

This subsection refers only to systems that do not return energy to the utility.

CHAIR ATKINSON:

That is not clear.

ASSEMBLYMAN BROOKS:

Subsection 3 uses the language, "on the customer's side."

CHAIR ATKINSON:

That is why this provision is dangerous.

SENATOR SETTELMAYER:

I believe Assemblyman Brooks is referring to people who are off the grid. If people do not rely on the grid, the utility should not have a say. However, the way this subsection reads, if a meter is tied to the grid but does not feed energy into the system, the utility does not have any input.

ASSEMBLYMAN BROOKS:

If a person's system does not have the ability to export energy to the utility, then that person should not need to obtain permission from the utility to install the system. That is the intent. If the language is not clear, we should clarify it.

SENATOR SETTELMAYER:

Are you indicating that if somebody is not exporting energy but is still tied to the grid, the power company should have no say?

ASSEMBLYMAN BROOKS:

Yes. If somebody generates energy on his or her system and it has no ability to get back to the utility, then why would permission be required from the utility?

SENATOR SETTELMAYER:

I hooked up a barbed-wire fence to an NV Energy fence. I did not think anything of it. I found out that if there were a short circuit in NV Energy's system, it could travel two miles down the barbed-wire fence and kill someone. This has happened before. It is a safety issue. If a person's system is tied to the grid, the utility should have some input into that system.

ASSEMBLYMAN BROOKS:

Section 24, subsection 3, paragraph (c), subparagraph (2) states that the system must meet "reasonable safety requirements." There are building codes and equipment listing agencies people have to comply with. The industry and technology are changing rapidly. For example, I have a 27-kilowatt battery I use to drive. I did not ask the utility to integrate this battery into my electric system, nor should I have had to. It is not my intention for the utility to not have input



on generators that can feed into the system; that would be ridiculous and unsafe. This subsection is meant specifically for technologies that do not interact with the utility.

CHAIR ATKINSON:  
The language is unclear.

Does section 28 address the subsidy people are talking about?

ASSEMBLYMAN BROOKS:  
Section 28 lays out how returned energy would be treated. The Public Utilities Commission of Nevada (PUCN), the Bureau of Consumer Protection, NV Energy and the industry all weighed in and were unable to determine what, if anything, the subsidy was. There are many opinions about the subsidy. Instead of constantly litigating the subsidy, I am trying to put into statute that the State wants to encourage distributed generation and renewable energy. There are a multitude of factors that need to be taken into consideration that have not been thoroughly addressed. Assembly Bill 405 is a public policy decision to encourage a technology and a type of implementation of that technology.

CHAIR ATKINSON:  
Do you believe section 28 addresses the subsidy?

ASSEMBLYMAN BROOKS:  
Yes. As technologies become more affordable over time, the issue of a subsidy should be addressed.

CHAIR ATKINSON:  
None of the information about the subsidy was consistent. However, I believe there was a subsidy. I agree that the number may not have been consistent, but the subsidy was still there.

MS. FERRATO:  
We support A.B. 405. The Solar Energy Industries Association (SEIA) is the national trade association for the solar industry. Through advocacy and education, SEIA and its member companies work to make solar energy a mainstream and significant energy source by expanding markets, removing market barriers, strengthening the industry and educating the public regarding the benefits of solar. Assembly Bill 405 encourages the deployment of

residential rooftop solar in Nevada. Our goal is to make it feasible for residents to put solar on their homes in a timely fashion and in a sustainable manner that is fair to all customers and puts people back to work. In addition, we would like to ensure consumers are protected and that solar companies are held to a higher standard as the solar industry returns to the State.

Legislation is necessary because the solar industry in Nevada is at a standstill, and customers are not getting what they want. The 2015 net metering decision increased charges on solar customers, making rooftop solar unaffordable for Nevadans and all but crushing the rooftop solar industry here. Statewide solar applications fell by 99 percent, from 21,923 in 2015 to 287 in 2016. Nevada's solar industry was effectively shut down, and over 2,600 Nevadans lost their jobs. Assembly Bill 405 would restore rooftop solar policies and make solar affordable to Nevadans, which would bring solar jobs back to the State. At SEIA, we are seeing this effect firsthand. We have a number of member companies that have laid off and transferred hundreds of employees throughout the State. Many long-term local solar businesses have closed up shop, and some are in the process of doing so. Others are holding on by a thread. We are here today to ask for your support in reestablishing this industry, as solar has the potential for tremendous job creation. Nearly 260,000 Americans work in solar, which is more than double the number from 2010. By 2021, the number is expected to increase by more than 360,000 workers. In 2015, Nevada was the No. 1 state for solar jobs per capita, but in 2016, Nevada was one of the few states to actually lose solar jobs. We would like Nevada to benefit from these solar jobs and the local investment that comes along with them.

This bill would allow Nevadans to benefit from our natural resource by setting up a long-term rate structure that provides certainty and predictability for consumers in the solar industry. We would also like to reestablish the solar industry in a way that is thoughtful and allows for long-term sustainability in the State. For the past two years, SEIA has worked to ensure consumer protection is at the forefront of our industry. There is a simple reason why: our industry survives based on satisfied customers telling family members, friends and neighbors about their experiences. The disclosures, as outlined in A.B. 405, would allow consumers to understand key terms in their agreements, easily compare offers and ask hard questions of potential solar providers. Solar customers would have transparency and certainty that companies are going to adhere to strong standards.

Every agreement, under the consumer protection language, would require a cover page telling customers what is outlined in the agreement. The cover page would direct customers to go to the Contractors' Board based on issues with their contractors.

CHAIR ATKINSON:

You mentioned this bill would bring solar back. Where did everybody go?

MS. FERRATO:

Many companies, based on the net metering decision, left the State. It was not feasible for customers to purchase rooftop solar anymore.

CHAIR ATKINSON:

When you say you want to bring solar back, you give the impression that solar does not exist in the State anymore. That is disingenuous. The solar industry came to a screeching halt; there is no doubt about that. Some of the actions we took last Session left some uncertainty, but we are trying to fix this.

MS. FERRATO:

This bill would allow us to bring new jobs to the State.

ASSEMBLYMAN JUSTIN WATKINS (Assembly District No. 35):

I support A.B. 405. My bill, A.B. 270, was amended into this bill.

If this bill were to pass, consumers would talk to a lawyer for their issues. Section 20 makes any violation of sections 2 through 20 consumer fraud. Attorney fees and costs would be awarded regardless of what the damages were. If a solar customer were ripped off for \$50, as a lawyer, I could represent that client.

In regard to the ten-year warranty on the systems, that is four years longer than the statute of limitations on construction defects. A customer would be able to pursue legal action for four years longer than he or she would be able to pursue legal action for, say, the contractor that built his or her house.

CHAIR ATKINSON:

I think you misinterpreted my question about who would police this bill. When A.B. 405 is all said and done, there has to be a place where people go for their grievances. A customer can hire an attorney, but he or she still has to go to the

place that was designated. There has to be a place for a representative of a customer, such as a lawyer, to go to have the customer's concerns addressed.

SENATOR SETTELMAYER:

If people have problems with an energy company, they go to the PUCN because the company is regulated. Solar companies are not regulated, so customers are left with one option: hiring an attorney. I appreciate your comment about the attorney fees.

Everybody keeps on using the term "contractor." We should be saying "licensed contractor" because the Contractors' Board can only resolve issues for licensed contractors. If a contractor is not licensed, then a customer needs to talk to an attorney.

TRAVIS MILLER (Great Basin Solar Coalition):

We represent the majority of local installers in northern Nevada and well over 1,000 registered voters in the area as well. We tend to promote rate structures and energy options for consumers, especially in the energy field. We are in full support of A.B. 405. The Energy Choice Initiative won the support it did last election because of the issues that are being corrected in this bill. The Initiative should not be a cause for concern because it can go forward in the future.

As far as where somebody goes to correct an issue, the Contractors' Board is the first stop. There should not be any unlicensed contractors installing these systems. This bill provides the stability people in the community need to make an investment like this.

CASEY COFFMAN (Sunworks):

We support A.B. 405, especially because we support transparency in contracts. We also support best practices. The cost calculated for nonsolar customers is 26 cents per year. That is incredibly insignificant. Most people would be okay spending an additional 26 cents per year for the opportunity to have renewable energy in the State.

NATALIE HERNANDEZ:

I support A.B. 405. This bill would help put Nevada's clean energy economy back on track. It would promote the growth of innovative industries such as the rooftop solar industry, spur economic growth and create local jobs across our State. Renewable energy is where the Country is headed. Last year, solar

accounted for 1 out of every 50 jobs in the U.S. Nevada has the ability to lead the Country in solar and clean energy.

ALLEN ELI SMITH (Black Rock Solar):

I used to be an electrician at Black Rock Solar. Black Rock Solar chose to transition away from building solar systems in the State because of the business climate. I am encouraged by A.B. 405 because it provides the sort of accountability for an investment any homeowner would seek. It also provides for the Renewable Energy Bill of Rights, which is important. Empowering Nevadans to employ Nevada contractors to build solar arrays in Nevada and providing sustainability and independence for Nevadans are good things. These dollars stay in Nevada. I encourage you all to support A.B. 405.

JERRY SNYDER (Black Rock Solar):

Black Rock Solar was formed in 2007 and incorporated in 2008 to install solar systems on nonprofits and schools. We have been obliged to stop doing this because it no longer makes sense to do so on a nonprofit basis. However, we are going forward with trying to develop the solar field otherwise, and this bill is an important part of that. The 2015 PUCN decision has shown us how vital legislative leadership is in Nevada. I appreciate how seriously the Committee members are considering this bill.

DAVID VON SEGGERN (Sierra Club, Toiyabe Chapter):

I will read from my written testimony in support of A.B. 405 ([Exhibit I](#)).

ENDER AUSTIN III (Las Vegas Urban League Young Professionals):

This bill would not only encourage economic development and spur job creation but also have an invaluable environmental impact by increasing renewable energy generation. I am not here today as a dad, but if I were, I would tell you I am always thinking about what is next. Assembly Bill 405 looks at what is next. I am not necessarily here as a Nevadan, but as a Nevadan, I am concerned about the economy. This bill would strengthen a flooding industry that can diversify our State's economic base. As a social justice, economic and class justice fighter, I support destroying barriers to economic freedom for poor, disadvantaged and disenfranchised individuals. Assembly Bill 405 does this by opening the rooftop solar market to many who are on the lower rungs of the economic spectrum. As a preacher, I am charged to protect God's creation, and A.B. 405 does so by marching toward a greener Nevada. I hope the Committee considers passing this bill.

LARRY COHEN (Sunrun):

Sunrun is the largest dedicated residential solar company in the Country. We support A.B. 405, which would restore the rooftop solar industry in Nevada. I have managed Sunrun's Las Vegas branch since its inception in 2014, and I experienced the abrupt halt of the industry firsthand in 2015. After the 2015 PUCN decision, several hundred of our hardworking employees lost their jobs through no fault of their own. Many were forced to find work in other industries or move their families out of Nevada to keep their good-paying jobs working for Sunrun. Our employees have helped over 3,000 Nevadans take control of their electricity bills by going solar with Sunrun. Assembly Bill 405 establishes a fair approach to compensate families for the clean energy they generate and send to the grid. This bill offers Nevadans the freedom to choose rooftop solar to meet the energy needs of their homes. We appreciate the Committee's consideration of A.B. 405 and the opportunity to revitalize this innovative industry in the State.

NAOMI LEWIS (Nevada Conservation League):

I support A.B. 405. Almost everyone in Room 4412E of the Grant Sawyer State Office Building today supports A.B. 405.

Over 2,000 jobs were lost when the PUCN decided to change net metering rates. I have friends who were affected by this decision. Some of my friends had great-paying jobs with good benefits, but these jobs were taken away from them. Losing such a great job can be devastating, and when somebody is a college student who has to pay \$400 for a textbook, losing a job can hit hard. Assembly Bill 405 would bring these jobs back to Nevada and then some.

The University of Nevada, Las Vegas, has some great opportunities for students who want to get involved with solar energy, such as the internationally recognized Solar Decathlon team and the minor in Solar and Renewable Energy. If opportunities for solar energy are not in the State, people will be forced to move, and Nevada will lose some talented and intelligent people who can bring innovative change to the State.

I urge the Committee to pass A.B. 405 because it is important to me, my future and thousands of other people's futures in the State.

KATHERINE LORENZO (Chispa Nevada):

We support rooftop solar for several reasons. The future of our electric grid is smart, flexible and decentralized. Having community members produce electricity from their homes makes them think more about their energy use and feel a sense of connection to their neighbors. By bringing the solar industry back to Nevada, we are opening the door for our communities to obtain new, good-paying jobs and are supporting the generation of solar entrepreneurs. Additionally, this bill protects consumers from being misled or ripped off. By generating more clean energy and moving away from fossil fuels, we can reduce air pollution that affects our health and the environment. Communities of color are often on the front lines dealing with these impacts. I urge you to support [A.B. 405](#) to improve the well-being of Nevada's communities.

JOSHUA J. HICKS (Sunstreet Energy Group):

Sunstreet Energy Group is a provider of rooftop solar on new homes. It is a highly popular consumer choice issue to put solar on one's roof. There has been a lot of uncertainty in the last few years, and that has stalled rooftop solar installations. We support [A.B. 405](#) because it creates certainty and predictability. These are important facets of the homebuilding process because they help consumers and get everyone on the right track.

DANIEL WITT (Tesla, Inc.):

We support [A.B. 405](#). We firmly believe this bill has the potential to reinvigorate the solar industry in the State. Tesla, through SolarCity, has more than 1,200 employees in the southern part of Nevada, 550 of whom had to be relocated after the 2015 PUCN decision. We especially support the tenets of this bill that provide transparency and consistency throughout the distributed energy resources industry to protect consumers who choose to invest in these technologies. Nevada has long considered itself a leader in the renewable energy space. The Chair and this Committee have been extremely vigorous in their pursuit of renewable energy with bills like [S.B. 204](#), [S.B. 145](#) and [S.B. 146](#).

[SENATE BILL 145 \(1st Reprint\)](#): Revises provisions relating to energy. (BDR 58-54)

[SENATE BILL 146 \(2nd Reprint\)](#): Revises provisions governing the filing of an integrated resources plan with the Public Utilities Commission of Nevada. (BDR 58-15)

All of these bills work in collaboration with A.B. 405. This bill will advance reliable energy technologies like storage that will continue to make the grid more efficient over time.

KYLE DAVIS (Nevada Conservation League):

We support A.B. 405. This bill is a key piece to reestablish Nevada's reputation as a clean energy leader, which is well-deserved considering the clean energy policies that have been passed in the State over the last few years. We send a lot of natural gas out of State. This bill allows us to take more control of our clean energy future and gives Nevadans the option to control their own destinies through rooftop solar. We know Nevadans want to see more clean energy, and A.B. 405 is an important piece of everything we are doing this Session to help our State realize its potential as a clean energy leader.

TOM POLIKALAS:

I support A.B. 405. I would like to address the issue of risk. When we put all of our eggs in the natural gas basket, that could impact all of us as consumers. The U.S. Energy Information Administration reports natural gas prices will increase over the coming decades, and that is corroborated by private sector analysts who identify reasons why natural gas is going to increase in price. Liquefied natural gas terminals are being put in place so that U.S. producers can export to markets in Europe and Asia, where the price of natural gas is much higher. The expected economic impact is that natural gas prices will rise in the U.S.

I also support this bill because of jobs. On March 31, the Senate Subcommittee on Energy heard testimony from Jackie Kimble from the American Jobs Project. She identified solar and battery technologies as key sectors for an economic cluster that could bring 28,000 jobs to the State. The Subcommittee also heard testimony from Lee F. Gunn, a retired Vice Admiral of the U.S. Navy. He identified distributed generation as a key national security issue. Grid resiliency and international security are enhanced when we have more distributed generation.

Having worked for 15 years in utility marketing and communications, I can say that any customer is valuable. There is a tremendous value to acquiring a net metered customer.



MARK DICKSON (Simple Power):

We hope to increase our workforce with passage of A.B. 405. Last year, over 260,000 jobs were in the solar industry in the U.S., more than all of the other fossil-fuel industries combined. Our State also spent almost three quarters of a billion dollars purchasing outside energy. The solar industry is burgeoning, and we want to be a part of that. We echo the support of the other companies here today, and we fully support A.B. 405.

LOUISE HELTON (Founder, 1 Sun Solar):

I have seen colleagues lose their businesses and friends lose their jobs. I have seen suppliers close up shop and leave the State altogether. Distributors have lost money, and hardworking Nevadans have lost their solar careers. At the same time we were killing our solar industry, even though it was never our intention to do so, other places were building their solar companies, moving forward, adding lots of jobs and bringing economic diversification and development to their communities. The Clean LA Solar program was said to have created 4,500 jobs and generated \$500 million in economic activity, according to the Los Angeles Business Council. In the Interim, while we were hoping to make a policy correction, Nevadans tried hard to have their voices be heard. It was incredible that over 100,000 Nevadans signed the petition to bring back net metering. That is a difficult thing to accomplish. I have been fortunate enough to have a diversified business that has allowed me to hang on. I am begging you to pass this bill to allow us to put hardworking Nevadans back to work and to help us be a leader in the solar field.

JORGE GONZALEZ (Nevada Solar Owners Association):

We support A.B. 405. I lost my job when the solar industry in Nevada went down, but that did not drive me away from the renewable energy field.

The warranty is covered in three issues. One is the product itself. The real question, however, is the labor warranty. What is that going to be? I would love to see a number at ten years so that it matches the warranty on the product.

The price of solar has dropped drastically. If somebody buys solar right now as a homeowner and that person has the credit, he or she will pay less for power going out 15 to 20 years. Solar is feasible, and if people are waiting to go solar, they are going to be in a much better position if A.B. 405 passes.

JOE BOOKER:

I worked at a solar company that closed down in 2015. I lost my family there; I considered my coworkers my family. I ask the Committee to support A.B. 405 to bring sanity back to my life. I have been on the "solarcoaster" for a long time, and I would like to get off.

VERNA MANDEZ:

Ever since I was young, I have wanted to work in the solar industry. It is disheartening to me that my State does not allow me to advance in this field. Solar energy is the energy of the future, and it will benefit generations to come. My community wants solar, and I want to own a home one day where I can have rooftop solar. I want to be able to lower my electric bill through the natural sunshine of this overwhelmingly warm and sunny State. It is my right to go solar. The State should not infringe upon this right in any way, shape or form. Renewable energy is where the Country is headed. Nevada has the ability to lead the Country in solar and clean energy. Assembly Bill 405 is instrumental to the progress of the State. I hope you all put Nevada back on the path to be a renewable energy leader.

SCOTT SHAW (1 Sun Solar):

My former company, Go Solar Energy Solutions, could not hold on. We had to close our doors as a result of the 2015 PUCN decision. I am fortunate enough to work at another solar company and look forward to possibly hiring 50 individuals this year. This bill addresses all of the uncertainty the 2015 PUCN decision set into the market.

I support the consumer protections this bill would put in place. If there are bad actors in an industry, that is going to color the whole industry. It is important to adhere to transparency and consumer protections. This bill sets certainty in the rate of exchange for net metering.

DONALD GALLIMORE, SR. (NAACP Reno-Sparks Branch 1112):

We support A.B. 405. My family has used solar since 1983. We believe in solar and the future of solar. Twenty-six hundred jobs is a significant number, and we want to see those jobs come back.

KEVIN ROMNEY (Radiant Solar Solutions):

We are a licensed installer of solar and storage in Henderson, Nevada. We support A.B. 405. This bill would provide wonderful protections to consumers

and allow our State to reignite the economic engine of rooftop solar. This bill would allow us to produce energy in Nevada that is sold to Nevadans, allowing us to not need to import energy from out of State or outside of the Country. There are also national security interests through the local production of energy. We hope the Committee passes A.B. 405 so that rooftop solar businesses can grow the economy and, in turn, grow other businesses.

JUDY STOKEY (NV Energy):

We are neutral to A.B. 405. Two major issues need to be addressed before anything moves forward. The first issue is what would happen in an energy choice environment. There would be 20-year commitments if this bill were to pass. We also have grandfathered customers with 20-year contracts. We do not know who would be responsible for these customers if the Energy Choice Initiative were to pass again. The second issue is cost. Everybody has his or her own number, but our number comes out to be over \$60 million annually if this bill were to pass.

We want to make sure we go about this bill the right way. We would like to continue working with Assemblyman Brooks. The consumer protection piece of this bill is great. We need to make some minor modifications, but some unfortunate circumstances arose a few years ago.

ERNIE ADLER (International Brotherhood of Electrical Workers Local 1245):

We are neutral to A.B. 405 because we are trying to figure out how this bill works with all of the other renewable energy bills this Session. With the Energy Choice Initiative looming, people who sign up for leases need the ability to cancel their contracts if electricity is deregulated. Otherwise, they are going to be stuck with some fairly large monthly payments on something that does not benefit them. I have submitted an amendment ([Exhibit J](#)) to add a provision to allow people to get out of their leases before the 20-year period elapses.

DANNY THOMPSON (International Brotherhood of Electrical Workers Local Nos. 396 and 1245):

We are not against net metering, but we have concerns with the way this bill is written. It is prudent for people to have a mechanism to get out of their leases should the Energy Choice Initiative pass.

We are also concerned with section 24 regarding the permission aspect. This section talks about meters; people off the grid do not have meters. We fear that

some of our members would be killed by this. Without the permission of or information from the utility, a lineman could be putting his life at risk. This section includes the language "reasonable safety requirements," but we suggest replacing this with language conforming to all local and State requirements. I do not know what reasonable safety requirements are, but I do know what the codes are.

Unless these systems are installed by licensed contractors, the provision relating to the Contractors' Board does not mean anything. Requiring that both the installation and maintenance be done by licensed contractors is important.

JEREMY NEWMAN (International Brotherhood of Electrical Workers Local 396):  
I appreciate the Chair and Senator Settlemeyer looking out for the well-being of myself and other linemen. There are good and bad contractors out there. We want to make sure the utility is notified to ensure the safety of linemen in the field.

RUSTY McALLISTER (Nevada State AFL-CIO):  
We are neutral to A.B. 405. We have heard people talk about the Renewable Energy Bill of Rights, but I am wondering if we could have a bill of rights for customers who receive their power from the utility. Although 26 cents per year may seem insignificant, somebody still has to pay it. The companies that lease these systems receive a 30 percent federal tax credit that they sell to tax equity funds. Somebody has to pay for that. Nevada taxpayers have paid \$1.2 million in subsidies to bring one solar company to the State. Although the solar industry certainly needs to be brought back to Nevada, the average person is not going to be able to install these systems. Realistically, only a certain segment of the population is going to be able to have these systems. All of the people I represent have to pay for A.B. 405.

ASSEMBLYMAN BROOKS:  
I have three examples of states that had net metering and then went to choice: California, Massachusetts and Maine. I will submit the document containing these examples to the Committee.

Mr. Thompson made a statement about licensed contractors. I agree that only licensed contractors should be able to install rooftop solar systems. That is currently the law.

In reference to section 24, I am not against people notifying the utility or displaying placards. I want utility workers to feel safe if they approach an energy system. Section 24, subsection 3, paragraph (c), subparagraphs (1) and (2) could be clarified for the protection of our utility workers.

CHAIR ATKINSON:

I am aware California had net metering and then went to choice, but the state did not know there was an impending ballot measure. Because we know the Energy Choice Initiative is looming, we have to put some safeguards in. We all recognize choice is coming.

SENATOR SPEARMAN:

I wanted to address Mr. McAllister's point about people not being able to afford solar systems. I took this into consideration when sponsoring S.B. 407.

**SENATE BILL 407 (1st Reprint)**: Creates the Nevada Clean Energy Fund.  
(BDR 58-1133)

The Nevada Clean Energy Fund is designed to level the playing field for seniors and low- and moderate-income individuals. The Fund provides an investment opportunity for them so that they can participate in the renewable energy process.

Part of the renewable energy discussion is economic justice. Protecting the environment should not only be accessible to those with the right credit scores or those with cash lying around.

CHAIR ATKINSON:

I have received letters of support for A.B. 405 from Bo Balzar, Bombard Renewable Energy ([Exhibit K](#)); Laura Bennett, TechNet ([Exhibit L](#)); Janette Dean ([Exhibit M](#)); and Greg Ferrante, Nevada Solar Owners Association ([Exhibit N](#)).

I will close the hearing on A.B. 405 and open the meeting for public comment.

MR. EPPOLITO:

Senate Bill No. 463 of the 78th Session would have helped Nevada children. It was passed in the Senate 21 to 0. That would have been one of the strongest student data privacy protection bills in the Country. Unfortunately, the bill got

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guttled with an amendment. The Senate tried to protect Nevada children, but we still have nothing to protect them.

Two states have policies to protect their children: California and Oklahoma. In February 2016, the ACLU and the Tenth Amendment Center agreed on model legislation that 16 states started working on.

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CHAIR ATKINSON:  
Hearing no more public comment, I adjourn the meeting at 11:47 a.m.

RESPECTFULLY SUBMITTED:

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Daniel Putney,  
Committee Secretary

APPROVED BY:

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Senator Kelvin Atkinson, Chair

DATE: \_\_\_\_\_

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit / # of pages</b>		<b>Witness / Entity</b>	<b>Description</b>
	A	1		Agenda
	B	10		Attendance Roster
S.B. 538	C	5	Senator Aaron D. Ford	Proposed Amendment 4699
S.B. 538	D	66	John Eppolito / Protect Nevada Children	Written Testimony
S.B. 538	E	5	Brian McAnallen / City of Las Vegas	Proposed Amendment
S.B. 538	F	2	Shannon Rahming / Division of Enterprise Information Technology Services, Department of Administration	Written Testimony
S.B. 538	G	2	Christopher Oswald / Data and Marketing Association	Letter of Opposition
A.B. 405	H	16	Assemblyman Chris Brooks	Explanation Table
A.B. 405	I	1	David Von Seggern / Sierra Club, Toiyabe Chapter	Written Testimony
A.B. 405	J	1	Ernie Adler / International Brotherhood of Electrical Workers Local 1245	Proposed Amendment
A.B. 405	K	1	Bo Balzar / Bombard Renewable Energy	Letter of Support
A.B. 405	L	1	Laura Bennett / TechNet	Letter of Support
A.B. 405	M	3	Janette Dean	Letter of Support
A.B. 405	N	1	Greg Ferrante / Nevada Solar Owners Association	Letter of Support