

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

**Seventy-Third Session
April 15, 2005**

The Committee on Commerce and Labor was called to order at 12:54 p.m., on Friday, April 15, 2005. Chairwoman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Ms. Barbara Buckley, Chairwoman
Mr. John Ocegüera, Vice Chairman
Ms. Francis Allen
Mr. Bernie Anderson
Mr. Morse Arberry Jr.
Mr. Marcus Conklin
Mrs. Heidi S. Gansert
Ms. Chris Giunchigliani
Mr. Lynn Hettrick
Ms. Kathy McClain
Mr. David Parks
Mr. Richard Perkins
Mr. Bob Seale
Mr. Rod Sherer

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Debbie Smith, Assembly District No. 30,
Washoe County
Assemblyman Jerry D. Claborn, Assembly District No. 19, Clark County
Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1,
Clark County

Assemblyman Joe Hardy, Assembly District No. 20, Clark County

STAFF MEMBERS PRESENT:

Brenda J. Erdoes, Legislative Counsel
Diane Thornton, Committee Policy Analyst
Sarah Gibson, Committee Attaché

OTHERS PRESENT:

Danny Thompson, Executive Secretary-Treasurer, Nevada AFL-CIO
Phil Kinser, Manager of Program Development, National Commission for
the Certification of Crane Operators
Ron Havlick, Curriculum Instructor, Southern California Crane Hoisting
Certification Program
Jeanette Belz, Legislative Advocate, representing Associated General
Contractors of America, Nevada Chapter
Mike Willden, Director, Nevada Department of Human Resources
Robert Desruisseaux, Chairman, Disability Strategic Plan Accountability
Committee
David Lee, Executive Director, Las Vegas Taiwanese Chamber of
Commerce
Alan DiStefano, Director, Global Trade and Investment, Nevada
Commission on Economic Development
Bruce Bommarito, Executive Director, Nevada Commission on Tourism
Mark Fiorentino, Legislative Advocate, representing Focus Property Group
Richard Peel, Legislative Advocate, representing National Electrical
Contractors Association of Southern Nevada and Mechanical
Contractors Association of Nevada
Margi Grein, Executive Officer, Nevada State Contractors Board
Robert Crowell, Legislative Advocate, representing the Nevada Trial
Lawyers Association
Judy Stokey, Legislative Advocate, representing Sierra Pacific Power
Company and Nevada Power Company

Chairwoman Buckley:

I would like to call the meeting of Commerce and Labor to order. We have four
bills to hear today and a work session. I will open the public hearing on
A.B. 540.

Assembly Bill 540: Revises provisions governing certification of crane
operators. (BDR 53-1341)

Assemblywoman Debbie Smith, Assembly District No. 30, Washoe County:

Currently in Nevada we require certification of tower crane operators. This bill will require DIR [Division of Industrial Relations, Nevada Department of Business and Industry] to develop regulations for the certification of tower and crane operators, with exceptions that will be noted in testimony. This is about the safety of workers and the public. Cranes are being operated in the midst of an unsuspecting public. Due to the height lengths, boom lengths, and loads that are lifted, cranes should be operated by an experienced and knowledgeable operator. With the construction boom that we are currently experiencing in Nevada, this is the time to strengthen this segment of our workforce.

Danny Thompson is with me to provide some information regarding the bill. He will be followed by Phil Kinser with the National Commission for the Certification of Crane Operators (NCCCO). Mr. Kinser and Mr. Ron Havlick will be here and available to answer technical questions. We have worked for the past several weeks to build consensus on this bill. We have support from the mining industry, from the power company, and from local governments.

Danny Thompson, Executive Secretary-Treasurer, Nevada AFL-CIO:

In my younger years, I was president of the steelworkers union in Henderson; as such, I was a certified rigger. I didn't operate cranes, but I rigged all the things that cranes picked up. Things I have rigged have turned cranes over because an operator in the chair didn't know how to read the charts and didn't know the capacities of the crane. I have worked on a job with a hydraulic crane where the operator has to let the line down when he lifts the boom, called tool blocking. He pulled because he didn't know what he was doing and the limit switch was broken on the crane. He pulled the hook off the crane, nearly killing me and another man who was disconnecting a set of bottles. When that hook came off, a three-quarter-inch line went off the back of this piece of equipment; luckily, the apprentice was sitting behind in a place that he didn't get hit. If anyone had been back there, it literally would have cut them in two. These are very dangerous pieces of equipment. People who are familiar with them know the kinds of problems that they can cause and know their limitations. A couple of years ago in Laughlin, they were dismantling a tower crane, and through operator error, the crane fell over and several fatalities occurred. This bill would require certification of those operators. This is one of those things that really is in the best interest of the public.

Generally, cranes account for less than 10 percent of the heavy equipment currently in use today, yet they contribute to over 33 percent of job site injury accidents and nearly 25 percent of worker fatalities. Of that, 85 percent of those accidents are caused by operator error. This bill truly is a good bill. It is for the welfare of the public. In Las Vegas, our state bird now is the tower

crane because they are on every corner. When you drive down the road and you are underneath one of these things, you are truly in danger if that person in that cab doesn't know what they are doing. We wholeheartedly support this.

Chairwoman Buckley:

I had received inquiries from a few people, and I appreciate all the hard work that you did to meet with them and have this mockup amendment ([Exhibit B](#)) already prepared for us.

Phil Kinser, Manager of Program Development, National Commission for the Certification of Crane Operators (NCCCO):

NCCCO has been in existence for over 10 years, providing certification for operators across the United States. It is a nationally recognized program that has portability associated with it. Whether you are in California, New York, Virginia, or Hawaii, that certification is carried with it. It is also recognized by many of the State entities that govern licensure for certification of operators.

Currently, we are involved in about half a dozen other states that are looking at legislation for the certification of crane operators. I certainly support the premise that this is for the public safety, as well as other workers on the job site who are prone to injuries because of unqualified operators working the crane. If you look at a construction site, nothing happens without a crane. You can't lift anything. You can't move anything. There are a lot of workers that are subject to the qualification criteria of that operator, and their safety is of utmost importance.

Ron Havlick, Curriculum Instructor, Southern California Crane Hoisting Certification Program:

I would echo that in California, which enacted this law three years ago, we are seeing an increase in the recognition of certification as being vital to safe crane operations. In particular, we've seen an increase in the amount of training by about 500 percent. Crane operators who get certification realize they don't understand the regulations or the procedures to operate a crane safely. So in that anecdotal evidence, I see great a benefit to having a certified crane program that is accredited by a third-party agency, not leaving it strictly up to the employer to develop it without any oversight.

Assemblywoman Smith:

I wanted to note that there was an amendment ([Exhibit B](#)) provided for you. One of the things it does is extend the effective date to give everyone time to adequately get on board as the regulations are developed, and certainly the industry will have plenty of opportunity to be involved in developing those regulations. The effective date was an important change that we made to this.

Jeanette Belz, Legislative Advocate, representing Associated General Contractors of America (AGC), Nevada Chapter:

I am here to support this bill, and I look forward to developing regulation. I do have one point regarding the mockup. On page 2, Section 1, subsection 2—the green underline between lines 5 and 7—according to the way the amendment is written presently, it implies that you need to have a certification in keeping with the standards from the American Society of Mechanical Engineers. We just wanted to clarify that sometimes you may only need to meet one of those standards. This sort of implies that it has to be all of them. We would appreciate if Legal could look at how we could make it just the applicable one of those standards.

Assemblyman Jerry Claborn, Assembly District No. 19, Clark County:

I would like to go on record as supporting this crane certification. You have heard me brag for years that I represented the operating engineers for 24 years. It is time that something is done, and I just want to go on record that I hope you can support it.

Vice Chairman Ocegüera:

We will close the hearing on A.B. 540.

Assemblywoman Giunchigliani:

We also met with the director of the Division of Industrial Relations, who was comfortable with us moving this legislation.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 540.

ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.

Assemblywoman Buckley:

Did it include the amendment from the AGC?

Assemblywoman Giunchigliani:

It included the amendment.

Assemblywoman Buckley:

It included both, for the record. [Bert Tolbert submitted [Exhibit C](#).]

THE MOTION CARRIED UNANIMOUSLY.

Vice Chairman Ocegüera:

I would like to close the public hearing on A.B. 540 and open the hearing on A.B. 495.

Assembly Bill 495: Makes various changes concerning provision of prescription drugs and pharmaceutical services by this State. (BDR 40-1031)

Assemblywoman Barbara Buckley, Assembly District No. 8, Clark County:

Assembly Bill 495 will enable Nevada to create a Disability Rx program similar to the Senior Rx Program. As some members of the Committee may recall, we made significant efforts last session to arrive at this place. Last session, in consultation with the disabled community, we set aside a portion of the tobacco funds that were already dedicated towards funding programs that would help individuals with disabilities for prescription drug issues. This came after a dedicated effort by the Disability Committee to more directly target those dollars for the four needs that they felt were the greatest in the disabled community. One was Rx, one was for positive behavioral supports, one was for independent living, and the fourth one was respite. At that point, the tobacco dollars began that additional targeting. Last session, we suggested mandating the Department of Human Resources apply for a waiver. There was a waiver at the time that would allow us to get matching dollars from the feds and create a program to help individuals with disabilities with prescription drug costs.

Shortly after we passed that legislation, the Administration in Washington passed the Medicare prescription drug benefit and disallowed the waiver program, which stalled our efforts to help individuals with disabilities go forward with this innovative program. We are here today to do two things—to eliminate the language that already exists in a law that mandates the director apply for a waiver, because the waiver doesn't exist anymore, and to suggest instead mirroring what we are proposing to do with Senior Rx in light of the Medicare prescription drug program. That is to fill in the portions of Medicare prescription drugs, to fill in the “donut hole,” to pay for the premiums, and to take care of those expensive pieces of the puzzle that would allow a disabled person who is on Medicare who can still not afford their prescription drugs.

The bill did not come out technically very well. An amendment has been submitted ([Exhibit D](#)) that makes those corrections in the bill. I have worked on the bill as a collaboration with the Department of Human Resources and with individuals representing the disabled community so we could bring you a consensus product.

Mike Willden, Director, Nevada Department of Human Resources:

I am here to talk about how the Disability Rx would work. It will almost exactly mirror what we do in the Senior Rx program, with the same eligibility rules and the same processing. The only difference will be that the Senior Rx is for age 62 and over. This would be for the under-age-62 population with a proven disability that we use through our Social Security criteria. There is approximately \$1 million sitting in reserve at this point in time, which was put in place through the legislative process in 2003, that we have been unable to access. The 2.5 percent disability allocation will generate, depending upon the tobacco settlement funds declining or increasing over the years, about \$450,000 to \$500,000 a year for this program. So, \$1 million to start with, and \$500,000 a year moving forward. We will wrap or integrate this program with the federal prescription drug program, very similar to what we do with Senior Rx. We are looking forward to implementing this program as soon as authorization can be given.

Assemblywoman Gansert:

In the bill itself, it references the dollar amounts that you were just talking about. When I pulled up the Senior Rx, the amounts were different. In your language you have those thresholds; I am wondering if we could match it to whatever the Senior Rx Program is?

Mike Willden:

I thought they were the same.

Assemblywoman Gansert:

You have CPI [Consumer Price Index] here. Is it in the Senior Rx program also? Maybe we just need to amend it to match them.

Assemblyman Seale:

If I understand this correctly, the money for this program is already in place through the tobacco fund, and it is the tobacco fund that will be providing in the future as well, to the extent the money is there in the future, to support this program. Is that correct? Did I understand correctly?

Mike Willden:

That's absolutely correct. The 2.5 percent allocation out of the disability part of the tobacco dollars is what will fund it.

Robert Desruisseaux, Chairman, Disability Strategic Plan Accountability Committee:

The Committee recognized prescription needs for the disabled as a priority for individuals in Nevada. I can't say enough how much this excites me. One of my

frustrations in my role as an advocate for people with disabilities, as well as someone who is assisting them on a daily basis to access services in the community, is that individuals who become disabled later in life, individuals who have worked, who have paid into the system, and now are relying on that system for their care have never had access to prescription drugs by virtue of their number being above SSI [Supplemental Security Income] limits.

[Robert Desruisseaux, continued.] This provides for prescription coverage for those individuals. This is one step towards fairness within the system. This is going to capture individuals who have paid into the system through taxes and working; this recognizes that by providing some prescription benefits for those individuals and balances the scales.

I can't tell you how often we receive calls from individuals trying to get prescription help so they can maintain their health and their daily lives. This legislation will go a long way towards doing that. For that purpose, I support A.B. 495.

Vice Chairman Ocegura:

I will close the hearing on A.B. 495.

Assemblyman Arberry:

We are just wondering if it will be referred to Ways and Means.

Assemblywoman Buckley:

Technically, I don't think it needs to go because it is the tobacco [Master Settlement Agreement] dollars. Once it gets on the Floor, if you and your Committee want to take it, then I will argue with you then.

Vice Chairman Ocegura:

The Chair would entertain a motion to amend and do pass with the amendments by Ms. Buckley and suggestion by Mrs. Gansert.

ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 495.

ASSEMBLYMAN SEALE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairwoman Buckley:

We will go ahead and open the hearing on A.B. 492. Assemblywoman Giunchigliani is the sponsor.

Assembly Bill 492: Revises provisions relating to economic development.
(BDR 18-337)

Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County:

Assembly Bill 492 is a bill that I requested on behalf of Mr. David Lee. I have an amendment ([Exhibit E](#)), which I worked out with Mr. Schriver and Mr. DiStefano from the Economic Development Commission to try to make sure that we didn't change the direction of their concerns.

David Lee, Executive Director, Las Vegas Taiwanese Chamber of Commerce:

Let me briefly introduce the origin of A.B. 492. Two years ago, we at the Chamber nominated a candidate for Nevada state foreign trade representative in Taiwan. We were pleased that the Nevada Commission on Economic Development approved our nomination. Following the appointment, we observed that the program of foreign trade representative has proved its value in recruiting foreign investors to locate their businesses in this state. Currently, foreign trade representative offices have been established in China, Japan, Taiwan, and other locations in Southeast Asia.

Last year, we discovered that nothing in the current *Nevada Revised Statutes* empowers the Commission on Economic Development to appoint state foreign trade representatives. We then began to work on the issue. A.B. 492 has three objectives:

- To authorize the Commission on Economic Development to appoint state foreign trade representatives to establish their offices representing the state of Nevada away from the United States
- To require the Commission on Economic Development to establish the minimum qualifications of State foreign trade representatives;
- To require the Commission on Economic Development to evaluate performance of its state foreign trade representative at least every two years

Specifically, A.B. 492 proposes to revise paragraph 9 of Section 231.067 of the *Nevada Revised Statutes*. The Legislative Counsel Bureau (LCB) requires that each foreign trade representative either be a citizen of the United States or have a right to remain and work in the United States. We concur with this minimum

qualification, because the current appointment agreement calls for the foreign trade representative to assist the foreign investor interested in locating the business in the state to obtain a business license, permits, and authorizations. Approval of A.B. 492 would establish the statutory legitimacy of our foreign trade representatives and would support the credibility of their representation in promoting the State of Nevada before the government and people in those countries.

Assemblywoman Giunchigliani:

We missed two little key amendments. On line 24, it should be "Commission on Economic Development," because that's the proper term to use. Line 27 should say, "at least every two years."

Alan DiStefano, Director, Global Trade and Investment, Nevada Commission on Economic Development (NCED):

With the changes that have been suggested here, we did pass out a proposed amendment ([Exhibit F](#)) to A.B. 492 to correct three items, and those have already been discussed. One is to reinstate the original language in Section 9, on line 29, which has been done. Assemblywoman Giunchigliani just suggested changing "state of Nevada" to "Commission on Economic Development," and adding the words "at least" after the word "appointment" on line 35 would then satisfy us with those changes.

Bruce Bommarito, Executive Director, Nevada Commission on Tourism (NCOT):

We support the Nevada Commission on Economic Development and their efforts; they do fine work. The developments that were brought up, which would clarify that their appointments would be representatives of NCED as opposed to the State of Nevada, are very critical to us. On occasion, when an overzealous rep starts saying they are the representative of Nevada, it creates a lot of overseas confusion.

The only other thing I would ask you to look at and consider in the way of a possible amendment would be where they say in this legislation that they can represent tourism in counties of under 50,000 people. Every country we are in has counties that are large and small. That would create an immense amount of confusion if NCED was acting as the Nevada Commission on Tourism in the same countries. So I would really appreciate that consideration. I am only trying to avoid confusion.

Assemblywoman Giunchigliani:

Are you just talking about in Section 1, the current language on line 8?

Bruce Bommarito:

Section 2, lines 9 and 10, Section 6, lines 19 and 20, where it says in counties of under 50,000 people, NCED would represent tourism.

Assemblywoman Giunchigliani:

That's current state law. I'm not quite sure what you want it to say.

Bruce Bommarito:

I would like it to not say NCED. When we have offices in those countries, we represent all the counties as the Nevada Commission on Tourism. If the rep for NCED was saying they represented tourism, then we have to spend time clarifying our position on what we are trying to do.

Chairwoman Buckley:

You are talking about page 1, Section 1, line 8? [Mr. Bommarito responded in the affirmative.] You are on the bill and we are working off the proposed mockup amendment, so that's probably why.

Alan DiStefano:

The language that Mr. Bommarito referred to is the language that has been in statute for many years. The counties that are referred to are Nevada counties, not in foreign countries. This has been law for many years. We had no intention of changing that.

Assemblywoman Giunchigliani:

That's fine.

Assemblyman Conklin:

Just a point of clarification. We are talking about NCOT, and this is economic development. These are the same thing?

Bruce Bommarito:

We are separate entities, and we operate sometimes in the same country but with separate missions. Our mission is to bring tourists to Nevada and to export tourism. NCED's mission is more on the lines of jobs and exporting products. It is really quite different.

Chairwoman Buckley:

Certain members of the Legislature in a different committee have sometimes suggested that we look at combining them, but we are not going to be discussing that today. That's not within the province of this Committee. I will close the public hearing on A.B. 492.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 492.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblyman Parks was not present for the vote.)

Chairwoman Buckley:

We will open the hearing on A.B. 193. Assemblywoman Kirkpatrick is the sponsor.

Assembly Bill 193: Revises provisions relating to contractors. (BDR 54-920)

Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1, Clark County:

Assembly Bill 193, as revised in the proposed amendment ([Exhibit G](#)), addresses ambiguity in the contractors' statutes regarding whether a master developer must obtain a contractor's license for development of a master planned community, also called planned unit developments. This bill clarifies that the owner of a planned unit development is not required to obtain a contractor's license when they enter into one or more contracts with a contractor or construction manager for the development of a planned unit development.

Mark Fiorentino, Legislative Advocate, representing Focus Property Group:

[Submitted [Exhibit H](#).] This is a very simple issue. The question is whether companies like Focus Property Group that own land can enter into a contract directly with a licensed contractor. This bill would say in those situations, the owner itself does not need a contractor's license. It is very simple, we think.

The amendment ([Exhibit H](#)) is a result of discussion we had with parties who expressed an interest in working with us on this bill, including the Associated General Contractors, the Association of Building Contractors, and the Southern Nevada Home Builders Association. We believe we have consensus among that group. The language in the amendment addresses this issue in a much cleaner, clearer, and better fashion. So we would ask you, if it is your pleasure to work on the bill this afternoon, to consider the amendment, as opposed to the original bill.

Assemblywoman Giunchigliani:

The amendment in Section 5?

Mark Fiorentino:

Yes. You should have an amendment ([Exhibit G](#)) that's labeled "Offered on behalf of the Focus Property Group."

Assemblywoman Giunchigliani:

It deletes master developer, not including the owner of a planned unit development. Is that the same thing as a master planned community? Is that terminology used when you have various developers developing on a piece?

Mark Fiorentino:

It is not exactly the same thing.

Assemblywoman Giunchigliani:

Close? [Mr. Fiorentino answered in the affirmative.] Would this allow the master planned developer to not have a general contractor's license?

Mark Fiorentino:

That's right. It is no different than if you own your house and hire a licensed contractor to come in and put in a pool. You, the owner, don't need a contractor's license.

Assemblywoman Giunchigliani:

This clarifies it in other circumstances. As long as you have a licensed contractor on, it doesn't have to be the owner.

Mark Fiorentino:

That's correct.

Vice Chairman Oceguela:

We will move to opposition.

Richard Peel, Legislative Advocate, representing National Electrical Contractors Association of Southern Nevada and Mechanical Contractors Association of Nevada:

[Submitted [Exhibit I](#).] My law firm represents a number of the subcontractors in this state, specifically a number of the trade organizations that are in opposition to this particular bill, including the Mechanical Contractors Association, the National Electrical Contractors Association, and the Plumbing Mechanical Contractors. We are opposed to A.B. 193 because it will negatively impact the ability of contractors and subcontractors to get paid in this state. I will explain why we believe that to be true.

[Richard Peel, continued.] Back in 2001, I authored, and the Legislature passed, the right-to-stop-work statute. The right-to-stop-work statute is set forth in NRS [*Nevada Revised Statutes*] 624.606 through 624.630. The right-to-stop-work statute allows contractors and subcontractors to stop work if they are not paid. It was enacted as a result of projects like the Venetian, Aladdin, and other developments where contractors and subcontractors, by way of their contracts, were required to move forward and perform work even though payments were not being made.

In the case of the Venetian, many of the subcontractors on that job have yet to be paid for work and materials that they furnished over six years ago. That particular case is still in litigation. There are a number of judgments that have been obtained, yet no payments have been made on those judgments. Many contractors have gone out of business because of that. If the right-to-stop-work statute had been in effect in 1999 when the Venetian opened or in 2000 when the Aladdin opened, many contractors and subcontractors would have been paid for the work and materials they furnished. At this time, all private project owners, with the exception of a person who contracts with a contractor for work on their own home, are subject to the Contractors Board statute. In fact, the Contractors Board has jurisdiction over those contractors. Now, this would include an owner of a planned unit development.

If A.B. 193 is enacted, even as it is amended, we believe that where a developer owns an area of land that is to be developed for any industry commission or commercial use, they will be exempted from the statute. In other words, the contractors will lose jurisdiction over that type of owner. Because the term "planned unit development" is very broad, the Venetian, Aladdin, the Wynn project, any residential development, or any commercial or industrial development would then be exempted from the statute. If a development qualifies as a planned unit development, the right-to-stop-work statute that is helping contractors today to be paid would be gutted to a significant degree.

I can also speak of my experience with the Contractors Board. The Contractors Board has helped trade contractors get paid by utilizing the rules and regulations that are in place. It is very important that we don't gut our right-to-stop-work statute. We are asking that it be made clear that an owner of a planned unit development is still obligated to comply with the requirements of the right-to-stop-work statute as set forth in NRS 624.606 through 624.630.

Vice Chairman Oceguela:

Mr. Peel, do you have some amendments that are in writing, or is that just verbally what you think should be changed?

Richard Peel:

I am verbally telling you what I think should be changed.

Assemblywoman Giunchigliani:

So, you are suggesting that because there is no definition for the planned unit, it could be interpreted that the right-to-stop-work might not apply any longer?

Richard Peel:

That is correct. The way it's currently drafted, it appears that if you exempt an owner of a planned unit development, they may not be obligated to pay a contractor pursuant to the time period set forth in NRS 624.609 and 624.610.

Margi Grein, Executive Officer, Nevada State Contractors Board:

The Board is in opposition to this bill, as well as the amendment. I have handouts ([Exhibit J](#)) reflecting our position. This question has arisen several times in the past, and the Board has consistently supported the fact that developers, master developers, and subcontractors need to have a license. California stated that they have had some severe problems because they have an exemption in their law for developers. They stated that the exemption in the state of California has limited their authority to investigate consumer complaints. Action can only be brought against the contractor who constructed the home if it is determined that the work does not meet the minimum standard of the industry. Since the consumer's purchase agreement or contract is with the developer, the licensee cannot be charged with departure from plans or disregard of plans, specs, and other contract-related issues.

The Board has said that it has limited the consumer's ability to involve the builder in any litigation, which is not a lot of our concern, but the licensing is. I have yet to hear the reason why they want the exemption. We are asking that you please consider the possible impact it may have on the public.

Mark Fiorentino:

With respect to Mr. Peel's concerns, that was the concern expressed by the Associated General Contractors (AGC) and why we propose the amendment. They were satisfied that with the amendment, we were not affecting their right to get paid or their right to stop work. However, having said that, if it is the Committee's pleasure to work the bill and to pass it with the amendments, we will certainly work with Mr. Peel if it needs additional language as the bill progresses to make sure that that is the case. That's the reason we proposed the amendment in discussions with the Associated General Contractor members and their lobbyists.

Assemblywoman Giunchigliani:

Have you looked at the amendments that were presented to us from the Contractors Board?

Mark Fiorentino:

I didn't know they presented any amendments. It is my understanding their position was that you should just not pass the bill.

Assemblywoman Giunchigliani:

It appears that they leave "contractor" synonymous with "builder."

Robert Crowell, Legislative Advocate, representing the Nevada Trial Lawyers Association:

I looked at the amendment, and I didn't see that it would have any adverse impact on construction defect litigation or the ability to sue the master developer for construction defect. It is still my understanding that's the case. I would like the proponents of the bill to clarify that on the record. By virtue of this bill or the amendment, we are not affecting any of the homeowner's rights to proceed as they have normally in the past, with respect to getting their property repaired or compensated for.

Assemblywoman Giunchigliani:

Is there a different statute on the construction defect?

Richard Peel:

The statute on construct defect is Chapter 40 of *Nevada Revised Statutes*. I haven't looked to see if there is a way that you could bring Chapter 40 into here as well. I would be happy to try to do that quickly.

Assemblywoman Giunchigliani:

It is either that or we process and add something. The sponsors have indicated they are not trying to be subject to that. That's not the intent of the bill.

Richard Peel:

The answer is that the right-to-stop-work statute is more than just NRS 624.609; it is also 624.606 to 624.630. The answer is to make certain that owners who are exempted and constructing a planned unit development are still subject to the right-to-stop-work statute; that would satisfy my concerns.

Vice Chairman Oceguela:

You guys all get together out there in the hall. We will do a work session for a while and see if you come up with something. We are going to close the hearing

on A.B. 193. We will go into work session now. We are going to look at A.B. 236.

Assembly Bill 236: Makes various changes relating to energy systems that use certain types of renewable energy. (BDR 58-248)

Diane Thornton, Committee Policy Analyst:

[Submitted [Exhibit K](#).] This bill was sponsored by Assemblyman Hardy and was heard on March 30. The original bill authorizes a customer to use a net metering system that has a generating capacity of not more than 150 kilowatts. In addition, the owner may not be prohibited or unreasonably restricted from using a wind energy system on his property. The bill also requires local government to amend its building codes to permit a person to use solar energy systems and wind energy systems to reduce the energy cost to a structure to the extent the local climate allows. There are two amendments proposed to this bill behind Tab A ([Exhibit L](#)) and Tab B ([Exhibit M](#)).

Behind Tab A ([Exhibit L](#)) you will find a mockup from Assemblyman Hardy with the changes to the bill. These changes include some of the original amendments that he brought forward to the Committee and some additional ones.

In Section 1, subsection 6, it reads that the total of all net metering systems shall not exceed 1 percent of the peak load. This puts a cap on the total. On page 2 of your mockup in paragraph b, it removes the language "or energy from a qualified energy recovery process as defined in NRS 704." This deletion removes energy that is created in a qualified energy recovery process as a primary source.

The next amendment changes the two acres from the last session to one acre. Section 6 clarifies that a local governing board has the authority of zoning. The amendment in Section 7 concerns net metering systems with a generating capacity of 30 kilowatts or smaller. Section 7 concerns systems greater than 30 kilowatts; in paragraph (a), the meter measures both the input and the output. Paragraph (b) specifies that the customer is charged the same rate if they do not use a net metering system. In addition, the customer is also responsible for general fees.

In subsection 3(c), a utility is not required to pay a credit to the customer. Section 8 of the mockup changes "may" to "shall." The input shall be in kilowatt hours. Section 8, subsection 2(b) refers to the monthly billing. Section 8, line 12 of the amendment specifies that if the customer's

consumption of electricity is lower than what is generated, it is treated as a credit for the next billing cycle. In addition, this is a credit that moves forward also applied with time of use. The excess electricity is forfeited if there is no longer a net metering system, the system is no longer connected to the utility, the customer no longer takes electric service at the premise, or the customer signs the net metering system over to someone else.

[Diane Thornton, continued.] Assemblyman Hardy has incorporated the amendment from Karen Dennison on behalf of Lake at Las Vegas Joint Venture ([Exhibit M](#)) into his mockup. That language requires that the owner obtain written consent from property owners within 300 feet of each boundary of the unit.

Assemblyman Conklin:

One of my concerns with the bill was that a person who had a piece of property could put this anywhere. While it may be on their property, it may only be 50 feet away from somebody else's home. All night long you have to hear this big swoosh, swoosh. I just want to make sure we have ample protection in here for somebody who lives next to the land that this is going on and that we are not interfering with their quality of life. Maybe we need a statement that it be at least 100 feet from a property line or something like that.

Vice Chairman Ocegüera:

I agree. I think Mr. Hettrick and Mr. Hardy have the same concern.

Assemblyman Joe Hardy, Assembly District No. 20, Clark County:

I think we have tried to take everybody's concerns into consideration, and this indeed has been a group effort with Lake Las Vegas, the Las Vegas Country Club, Clark County, the City of Las Vegas, Summerlin, Sierra Pacific, and anybody else who wanted to have input in it.

I think the key to this particular bill is to read Section 6 before you read Section 5. Section 6 allows for the zoning that will allow the local entity to do all of the things to address the concerns of the neighbor. Section 5 precludes you to do anything to stop a wind energy system. You have to put Section 6 after Section 5, but Section 6 really is the local zoning that trumps Section 5.

Assemblyman Conklin:

Have you seen the proposed amendments to Section 4, by Ms. Dennison ([Exhibit M](#))?

Assemblyman Hardy:

Yes, I have, and I appreciate them coming forward and agree with them.

Assemblyman Conklin:

On the second page where it talks about the 300-foot boundary, you are okay with that?

Assemblyman Hardy:

Yes, I'm aware and concur.

Assemblyman Hettrick:

I wonder, on page 1 of the mockup, how that comports with the requirement. What impact is this going to have if we do this? Is this simply the 1 percent on units of not more than 150 kilowatts?

Assemblyman Hardy:

I do have an expert who can address that, but that is from the Sierra Pacific Power Company and that is their inclusion in that. They are just anxious not to have wind take over the whole world.

Judy Stokey, Legislative Advocate, representing Sierra Pacific Power Company and Nevada Power Company:

The 1 percent is just on the peak. This actually will help us adhere to the renewable energy portfolio.

Assemblywoman Giunchigliani:

It benefits the small commercial and agriculture even more so by doing that. That's the part of the group that we wanted to get started on the wind side, if my understanding is correct.

Assemblyman Hardy:

That is correct. We are interested in the small community-based wind projects.

ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 236.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairwoman Buckley:

Let's consider A.B. 320.

Assembly Bill 320: Proposes to authorize Legislature to prescribe temporary exemptions from sales and use taxes to provide for sales tax holidays. (BDR 32-1201)

Diane Thornton, Committee Policy Analyst:

[Submitted [Exhibit N](#).] Assembly Bill 320 was sponsored by Assemblyman Perkins and heard on April 13. The original bill provides for a question to appear on the ballot in the November 7, 2006, general election. The ballot question will ask voters if the Sales and Use Tax Act of 1955 should be amended to provide for a sales tax holiday. Behind Tab C ([Exhibit O](#)) is the proposed amendment from Assemblyman Perkins. This proposed amendment deletes all the current provisions of A.B. 320 pertaining to the amendment of the Sales and Use Tax Act of 1955. Upon adoption of the amendment, A.B. 320 would provide for the amendment of the local school support tax to provide for a sales tax holiday during a three-day period from August 26 to August 28 of this year for sales including computer equipment, articles of clothing sold for \$1,000 or less, and school supplies.

By amending Chapter 375 of NRS, all the other components of the Sales and Use Tax Act are effectively amended as well, except for the basic 2 percent sales and use tax imposed by the State. Therefore, the sales tax holiday would effectively exempt all but 2 percent of the sales and use tax on computer equipment, articles of clothing sold for \$1,000 or less, and school supplies, if those items were purchased from a retailer in Nevada on August 26, 27, and 28, 2005. This proposed amendment also causes the provisions of the bill to expire by limitation upon the expiration of the sales tax holiday.

Assemblyman Richard Perkins, Assembly District No. 23, Clark County:

You probably remember the original proposition in A.B. 320 that provided for a ballot question to address the 2 percent portions of the state sales tax. If we were going to be able to accomplish anything this year, that would not be possible because we wouldn't be able to get to the ballot quickly enough to do what's normal in these types of holidays; that's to have the holiday just before back-to-school. The amendment exempts everything except the 2 percent state portion and is crafted in the same fashion as most of the states that have a sales tax holiday.

It defines those items that you are able to have a holiday on. The reason for the expiration by limitation upon the completion of the holiday is so that the State remains in compliance with the Streamlined Sales Tax Agreements throughout the state.

[Assemblyman Perkins, continued.] In any event, if the Committee chooses to support the bill, it will have to go to Ways and Means.

Assemblyman Seale:

Can it be any computer?

Assemblyman Perkins:

That would be the case. The reasoning behind that is those folks that are most in need of computers at that period of time are generally those that are involved in their education. It doesn't preclude somebody else from buying a computer; however, it would boost the retail sales of that particular item.

Assemblyman Seale:

I can appreciate that. I just wonder if somebody wouldn't take advantage of that particular loophole and maybe there should be a top end limit on it.

Assemblyman Perkins:

I hope they take advantage of it.

Assemblyman Anderson:

Is a Blackberry a computer or a cell phone?

Chairwoman Buckley:

The more technologically savvy members of the Committee are indicating on page 1 of the proposed amendment to the bill, Section 9, subsection 2(b) (5) that they would be covered.

Assemblyman Anderson:

On 5, it says "except cellular phones"; that's what prompted my question. I think it fits there.

Chairwoman Buckley:

Does the Committee want to modify that language? It is going to the Committee on Ways and Means, so I will accept a motion to amend and do pass. I think sales tax holidays are a great way to potentially deal with our surplus, to give a short period of time to boost retail sales, and is a good idea.

ASSEMBLYMAN HETTRICK MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 320.

ASSEMBLYMAN PERKINS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairwoman Buckley:

Let's consider A.B. 340.

Assembly Bill 340: Revises provisions relating to certain short-term, high interest loans. (BDR 52-126)

Diane Thornton, Committee Policy Analyst:

Assembly Bill 340 was sponsored by Assemblywoman Giunchigliani and heard on April 6. It revises the provisions relating to tax cashing services, deferred deposit services, and payday loan services. The measure limits the interest and fees on certain types of services and the amount of certain loans made to each borrower. The bill requires an investigation of the loan history of certain borrowers through an electronic database regulated by the Commissioner of Financial Institutions. Local governing bodies are required to adopt zoning regulations restricting the location of these businesses. In addition, the bill requires persons who provide loans secured by tax refunds to provide certain notices regarding fees.

Behind Tab D of your Work Session Document ([Exhibit P](#)) is a mockup of the proposed amendment ([Exhibit Q](#)) by Assemblywoman Giunchigliani. It is my understanding that she has made some recent changes and would like to go through the mockup herself.

Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County:

I tried to eliminate anything that conflicted with the bill. In Section 3, that first blue section would go away. If you go to the top of page 2, you would strike subsection 1, where it says, "...explain in plain language," because that already occurs, and just start with a header "a registrant shall post," and keeping number 2, a "toll-free telephone number to the Office of Commissions." We would only keep subsection 2; everything else is deleted. Everything is the same on page 3, page 4, and page 5. On page 6, you would delete Section 12 and the two paragraphs there on lines 39 to 44, as well as Section 13. On page 7, you would just start with the same heading. It would include only subsection 2 and eliminate subsection 3. It deletes all of subsections 14, 15, 16, 17, and 18.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 340.

ASSEMBLYWOMAN McCLAIN SECONDED THE MOTION.

Assemblyman Seale:

This doesn't conflict?

Assemblywoman Giunchigliani:

No. I removed the rollovers, the database requirement that is now contained in the other bill, but we could not agree on that, so I took that language out.

Chairwoman Buckley:

We can certainly have the amendment come back for us. I am also going to have the amendment on the other one come back just because we've been continuing to do technical changes. We will have both of them come back.

THE MOTION CARRIED UNANIMOUSLY.

Chairwoman Buckley:

Let's consider A.B. 360.

Assembly Bill 360: Provides for regulation and licensing of permanent cosmetics technicians. (BDR 54-925)

Diane Thornton, Committee Policy Analyst:

[Submitted [Exhibit R](#).] This bill was sponsored by Assemblywoman Weber and was heard on April 9. This bill requires that the Health Division of the Department of Human Resources adopt regulations to provide for the licensing, training, and scope of practice for permanent cosmetics technicians. The bill defines permanent cosmetics and makes it unlawful for a person to engage in that practice unless they are licensed. Assemblywoman Weber has revised the amendment from the work session that was provided to you previously. The revised amendment ([Exhibit S](#)) is behind Tab E. This amendment allows for a grandfathering period. Any person currently practicing permanent cosmetics must attain licensure by July 1, 2006. It also adds the American Association of Micropigmentation to the list of recognized national certifying organizations.

Chairwoman Buckley:

We heard this bill some time ago. Members had additional questions, and so I think Ms. Weber gathered answers to a number of those questions to put in this

book. We have an expert, I believe, from one of the groups that gives the exam available to answer any questions. The hearing has passed, and I'll only allow them to come up if a member has a specific question.

[Chairwoman Buckley, continued.] I think the Committee has supported the intent of making sure that we have folks adequately trained all along. There may be some discomfort because it is such a new area that the Committee hadn't considered before or what the proper mechanism to ensure safety without unduly infringing on someone's right to carry on their business and compatibility with tattooing issues. I think it has been a little difficult bill.

Assemblyman Hettrick:

I think the question that came up in the bill as we originally saw it was whether or not it was going to force people who do this to join some organization that they didn't want to join. I believe we have all received letters now indicating that that is not the case. There is no requirement to join any organization in order to take the certifying test. There are a couple of them from different national organizations. This language would allow a person to take the test from anyone they choose, anywhere they choose.

The grandfathering allows people who are out there now to have well over a year to get it done. My wife has had a procedure done like this. The disclaimers that she signed were significant. There is obvious risk if this were performed by someone who didn't know what they were doing, and I believe requesting certification that they at least can meet the minimum standard of the national certifying test is reasonable. I would be happy to make a motion.

Chairwoman Buckley:

I don't know where I stand on the bill. I go back and forth on the bill. I think it is a test and maybe it will help qualifications. If it is done wrong, it certainly has consequences. I feel the health districts or the counties should do that since they currently have the regulation. I don't have a strong feeling one way or the other.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 360.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

Assemblyman Seale:

I guess one of my concerns is, does this in any way interfere with the tattoo artists that are already out there? Does this impinge their ability to perform what they are performing?

Chairwoman Buckley:

It is my understanding from the amendment that it only covers permanent cosmetics tattooing, which is defined in paragraph 1. Let's ask Brenda for clarification.

Brenda Erdoes, Legislative Counsel:

I believe this definition makes it pretty clear, and we will refine that if we need to. It will be clear in the amended bill that it doesn't apply to tattoo artists and other kinds of tattoos that are not permanent cosmetics.

Assemblywoman Giunchigliani:

That's what gave me comfort because the local governments already regulate them, but no one is doing the area of the permanent cosmetics, and it is something that I think we should at least have some training or qualification for.

Assemblyman Conklin:

I'm going to support the bill because it has value, and to move it along. I have a couple of concerns. Are we getting involved in something that sets up barriers to entry? Anytime I hear those words as a business person, I just have some doubts. I want to make sure we are giving everyone who is talented the right to open their own business. It is not that I don't think it should be regulated, because I do. I just want to make sure we regulate it in the right way that's fair to everyone involved who should be practicing. I'm going to vote yes because I think it deserves the right to move on, but I reserve my right to change.

Chairwoman Buckley:

Same with Assemblywoman Allen, so we have two reservations of votes.

THE MOTION CARRIED UNANIMOUSLY.

Chairwoman Buckley:

I'll reserve my right as well. May we now consider A.B. 496.

Assembly Bill 496: Revises certain provisions governing licensing and regulation of cosmetology. (BDR 54-1182)

Diane Thornton, Committee Policy Analyst:

[Submitted [Exhibit T](#).] Assembly Bill 496 was heard on April 11. The original bill requires the State Board of Cosmetology to issue a license as a cosmetologist and a massage therapist and an aesthetician to a person who meets certain requirements. The Board may issue a license to a cosmetologist who wishes to work on a temporary basis of not more than 7 calendar days in a resort hotel. There is one proposed amendment ([Exhibit T](#)) from Assemblywoman Buckley. This amendment deletes Section 2 of the bill and amends the bill by requiring the Board of Cosmetology to adopt regulations to streamline and prevent duplication of licensing process to qualified persons who wish to obtain a license by the Board and the local entity that licenses massage therapists.

ASSEMBLYWOMAN McCLAIN MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 496.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

Assemblyman Perkins:

My staff has tried to alleviate some concerns from the Board of Cosmetology relating to the temporary basis described in subsection 3. We weren't really able to do much, but I still have a great deal of comfort in the fact that it's very, very temporary and the resort hotel industry is regulated fairly significantly by the Gaming Control Board anyway, so they are not in a position to want to bring any discredit upon the industry. That gives me that level of comfort.

THE MOTION CARRIED UNANIMOUSLY.

Chairwoman Buckley:

I would like to bring back A.B. 338. This was the Insurance Commissioner's omnibus bill. After the hearing, it was noted that in Section 33 of the amendment there was a sentence in there that said, "Notice of proposed insurance or any application endorsement or rider shall be issued or used until the expiration of 60 days after it had been so filed." The original language said 30 days; it was supposed to be 60. I authorized the change, but I just wanted to bring it up if anyone has any concerns after they see the full language.

We will bring up A.B. 193.

Assembly Bill 193: Revises provisions relating to contractors. (BDR 54-920)

Mark Fiorentino, Legislative Advocate, representing Focus Property Group:

As I said earlier, we did not in any way intend to affect people's existing rights to get paid or to stop work; we thought our original language accomplished that. We are passing out an amendment ([Exhibit U](#)) that we worked out that we would like to ask you to consider. All of the changes were made to the mockup ([Exhibit G](#)) we distributed at the beginning of the hearing and all of the changes are on page 2; they all start at line 40.

The first change we made was to the new subsection 5, to make clear that it had to be a general contractor that we were entering into the contract with. Change number 2 was to add a new section to ensure nothing we are doing in here affects people's rights under the construction defect statute.

Section 3 is Mr. Peel's language to ensure that nothing we're doing in this bill affects people's right to get paid or to stop work. We would ask you to approve the bill as amended. We also did make a commitment to the parties that there may be more cleanup that we need to do with a couple of the definitions in here, and that we would work with them to make sure it was perfect.

Assemblywoman Giunchigliani:

I think that captured it.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 193.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

Assemblyman Anderson:

I want to make sure that I understand. We are not preventing the Contractors Board from doing their responsible tasks for a master developer to oversee.

Margi Grein, Executive Officer, Nevada State Contractors Board:

We agreed that this may not address all concerns, but that we would work with Mr. Fiorentino to make sure that nothing prohibits us from taking action against a licensed contractor who deals with a homeowner. That was the problem we had—the homeowner that enters into the contract with the developer who is selling the land—and they indicated they did not do that.

Chairwoman Buckley:

I think it is the intent of the group that if it is purely an owner who does nothing else but own, it doesn't make sense for them to have a license. But if they are actually doing work, then we want to make sure it's clear they don't have to have a license. We also want to ensure that the consumers are protected and are able to sue all responsible parties, and that everybody gets paid and has all the rights that we worked so hard to create. We want to make sure that we will include on the Floor statement that we are not changing those things.

THE MOTION CARRIED UNANIMOUSLY.

Chairwoman Buckley:

Seeing no other business to come before the Committee, we are adjourned [at 2:48 p.m.].

RESPECTFULLY SUBMITTED:

James S. Cassimus
Transcribing Attaché

APPROVED BY:

Assemblywoman Barbara Buckley, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 15, 2005

Time of Meeting: 12:54 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
A.B. 540	B	Research Division, LCB	Proposed Amendment to A.B. 540
A.B. 540	C	Bert Tolbert, Southern Nevada Operating Engineers Journeyman & Apprentice Training Committee	Letter in support of A.B. 540
A.B. 495	D	Assemblywoman Barbara Buckley	Proposed amendment to A.B. 495
A.B. 492	E	Assemblywoman Chris Giunchigliani	Proposed amendment to A.B. 492
A.B. 492	F	Alan DiStefano, Nevada Commission on Economic Development	Proposed amendments to Section 1 of A.B. 492
A.B. 193	G	Mark Fiorentino, Focus Property Group	Mockup with proposed amendment to A.B. 193
A.B. 193	H	Mark Fiorentino, Focus Property Group	Proposed amendments to A.B. 193
A.B. 193	I	Richard Peel, National Electrical Contractors Association of Southern Nevada and Mechanical Contractors Association of Nevada	Arguments against A.B. 193
A.B. 193	J	Margi Grein, Nevada State Contractors Board	Survey and comments
A.B. 236	K	Diane Thornton, Research Division	Work Session Document
A.B. 236	L	Diane Thornton, Research Division	Proposed Amendment to A.B. 236
A.B. 236	M	Karen Dennison, Lake at Las Vegas Joint Venture	Proposed amendment to Section 4 of A.B. 236
A.B. 320	N	Diane Thornton, Research Division	Work Session Document

A.B. 320	O	Diane Thornton, Research Division	Proposed amendment to A.B. 320 Work Session
A.B. 340	P	Diane Thornton, Research Division	Work Session Document
A.B. 340	Q	Diane Thornton, Research Division	Proposed Amendment to A.B. 340 Work Session
A.B. 360	R	Diane Thornton, Research Division	Work Session Document
A.B. 360	S	Diane Thornton, Research Division	Proposed Amendment to A.B. 360 Work Session
A.B. 496	T	Diane Thornton, Research Division	Work Session Document
A.B. 193	U	Mark Fiorentino, Focus Property Group	Final proposed amendment of A.B. 193