

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Third Session
March 29, 2005**

The Committee on Government Affairs was called to order at 8:10 a.m., on Tuesday, March 29, 2005. Chairman David Parks presided in Room 3143 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4412 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:

Mr. David Parks, Chairman
Ms. Peggy Pierce, Vice Chairwoman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Jerry D. Claborn
Mr. Pete Goicoechea
Mr. Tom Grady
Mr. Joe Hardy
Mr. Bob McCleary
Mr. Harvey J. Munford
Ms. Bonnie Parnell
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

Mrs. Marilyn Kirkpatrick (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Joseph M. Hogan, Assembly District No. 10, Clark County
Assemblyman Richard D. Perkins, Assembly District No. 23, Clark County

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Nancy Haywood, Committee Attaché

OTHERS PRESENT:

Russell M. Rowe, Legislative Advocate, representing American Council of Engineering Companies—Nevada, Las Vegas, Nevada

James E. Keenan, Purchasing Manager, Douglas County, Nevada, and Representative, Nevada Public Purchasing Study Commission

Madelyn Shipman, Legislative Advocate, representing Nevada District Attorneys Association

Wayne E. Carlson, Executive Director, Nevada Public Agency Insurance Pool and Public Agency Compensation Trust, Carson City, Nevada

Bill Valent, Agent, American Insurance and Investments, Las Vegas, Nevada

Jonathan P. Leleu, Attorney, Kummer Kaempfer Bonner and Renshaw, Las Vegas, Nevada

E. Louis Overstreet, P.E., Executive Director, Urban Chamber of Commerce, Las Vegas, Nevada

Gary Peck, Executive Director, American Civil Liberties Union of Nevada, Las Vegas, Nevada

Richard J. Nelson, P.E., Assistant Director of Operations, Nevada Department of Transportation

James Sala, Director, Organizing Nevada, Southwest Regional Council of Carpenters, Las Vegas, Nevada

Richard Daly, Business Manager, Laborers' International Union of North America Local 169, Reno, Nevada

Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada, Carson City, Nevada

Bobbie Gang, Legislative Advocate, representing Nevada Women's Lobby and the American Association of University Women

Laura Mijanovich, Northern Nevada Coordinator, American Civil Liberties Union of Nevada, Carson City, Nevada

Jack Jeffrey, Legislative Advocate, representing the Southern Nevada Building and Construction Trades Council

John Madole, Executive Director, Associated General Contractors of America, Nevada Chapter, Reno, Nevada

Jeanette K. Belz, Legislative Advocate, representing the Associated General Contractors of America, Nevada Chapter

Gary Milliken, Legislative Advocate, representing the Las Vegas Chapter of General Contractors

John LeMay, President, Diamond Electric, Inc., Reno, Nevada

Derek W. Morse, P.E., Deputy Executive Director, Regional Transportation Commission of Washoe County, Reno, Nevada

John Wagner, Legislative Advocate, representing the Burke Consortium of Carson City

Ted J. Olivas, Director, Government and Community Affairs, City of Las Vegas, Nevada

Bert Ramos, Chairman, Nevada Commission on Minority Affairs, Reno, Nevada

Dr. Dale Carrison, Chairman, Nevada Homeland Security Commission, Department of Public Safety, State of Nevada

Bill Young, Sheriff, Las Vegas Metropolitan Police Department, Las Vegas, Nevada

Lieutenant Stan Olsen, Executive Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department, Las Vegas, Nevada

Michael McClary, Deputy Chief, Las Vegas Metropolitan Police Department, Las Vegas, Nevada

Michelle M. Youngs, Public Information Officer, Washoe County Sheriff's Office, Washoe County, Nevada:

Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation, Sparks, Nevada

Kent Lauer, Executive Director, Nevada Press Association, Inc., Carson City, Nevada

Chairman Parks:

[Meeting called to order and roll called.]

- BDR 23-325—Makes various changes regarding ethics and government. (Assembly Bill 530)

ASSEMBLYMAN ATKINSON MOVED FOR COMMITTEE INTRODUCTION OF BDR 23-325. (ASSEMBLY BILL 530)

ASSEMBLYWOMAN PIERCE SECONDED THE MOTION.

THE MOTION PASSED. (Assemblywoman Kirkpatrick was not present for the vote.)

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- BDR 23-1372—Creates a deferred retirement option plan and benefit actuarially calculated deferred retirement option plan within the public employees' retirement system. (Assembly Bill 529)

ASSEMBLYMAN CLABORN MOVED FOR COMMITTEE INTRODUCTION OF BDR 23-1372. (ASSEMBLY BILL 529)

ASSEMBLYWOMAN PIERCE SECONDED THE MOTION.

THE MOTION PASSED. (Assemblywoman Kirkpatrick was not present for the vote.)

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Assembly Bill 156: Revises provisions governing terms of certain contracts between public bodies and certain design professionals. (BDR 28-858)

Russell M. Rowe, Legislative Advocate, representing American Council of Engineering Companies—Nevada, Las Vegas, Nevada:

I first want to thank the Chairman and the Committee. This hearing was scheduled at an earlier date, and the hearing was postponed so that we could try to work out language with public entities and local governments. I think we have language that works. I had hoped for support of all local governments and public entities, but judging by the sign-in sheet, that's not the case.

I do think that what we are proposing to you is a good piece of legislation. We have submitted amendments to our bill ([Exhibit B](#)) to try and address the concerns of public entities. Let me just walk through the bill and the amendments that we are making, and I will explain each provision to you.

Section 1, under subsection 3 of NRS [*Nevada Revised Statutes*] 338.155, deals with adding a public body as an additional insured on the insurance policy of design professionals. Let me back up and set the stage so that I do not get into the bill and then you do not understand the framework within which we are operating.

Nevada Revised Statutes 338.155 deals with contracts between design professionals and public entities. These are not design-built contracts, just the design professional in the public entity. These provisions in subsection 155 protect the design professional and protect the public entity. I am going to outline some requirements that are needed in these contracts. Subsection 3 of Section 1: if NRS 338.155 permits the public body to be added as an additional insured on the insurance policy of design professionals. As the language currently reads in NRS, it just says "insurance policy." What the engineers and design professionals have been running into are requests, or sometimes demands, by public entities that they be added as an additional insured on the professional liability insurance of the design professional. They cannot do that. The insurance companies do not allow that. It is not something that they can do.

[Russell Rowe, continued.] This is not really a major portion of the bill, but we are proposing to clean that up so we do not have to continually address that issue and readdress it every time a new district attorney is hired at a public entity. What we proposed in our bill is to add the term "general liability" to the insurance policy, to clarify that you can be added as an additional insured to a general liability insurance policy design professional.

In working and speaking with the local governments, a few concerns came up. One is that some local governments liked to be added as an additional insured on the auto policy of the design professional, so we thought we could add auto policies as well. In speaking with the local governments further, we figured that the best way to go about this was to submit new language, rather than naming individual policies. Adding one type at a time would create a potential implication that you could only be added on those policies named in the statutes, and none other.

We are submitting language in our amendment that would just say that you could be added as an additional insured to the insurance policy of a design professional, provided that the addition is permitted by the insurance policy. Therefore, it could be on any policy, if you let the parties work it out. As long as the insurance policy permits that addition, then they can do it. That would prevent us from ever having to come back and mess with this particular portion of NRS again.

The second change that we proposed in our bill is in subsection 5 of NRS 338.155. That particular subsection clarifies that in a contract between the public entity and the design professional, the public entity may add or may require the design professional to defend, indemnify, and hold harmless the public body for damages caused by the design professional. The language covers the public body's employees, officers, and agents. Our original bill struck the word "agents," because it is such a broad term that, at the time the contract is signed, even during the execution of the contract, no one has any idea who the agents are and who potentially could be subject to this policy.

In working with the local governments, they had some concerns about that, and it was suggested to me that, rather than eliminate it, we just define "agents" to be anybody specified in the contract as an agent of the public body. That is exactly what we did. In our amendment that you have in front of you, it has language that says, "For the purpose of this subsection, agents of the public body means any person specified in the contract as being an agent of the public body." As you know, "persons" is a broad term, both in the law and under NRS. We do not even have to name someone individually by their name. Persons can be an entity, or it can be broadly described in job characteristics, et cetera. The

intent of that language is just to provide some scope to the term “agent,” so at the time that the contract is signed, the parties have a better understanding of who these agents are.

[Russell Rowe, continued.] The final change we have made has really been the hangup. There has been a lot of confusion about what this does, and I have tried my best to explain exactly what we are trying to do. Let me try to explain it to you, and hopefully, I can get you to understand what the intent is here.

In the bill, under subsection 5 of NRS 338.155, where it says “the contract may require the design professional to defend, indemnify, and hold harmless the public body,” we struck the word “defend,” for a very specific reason that we are trying to get at. When a public body is added as an additional insured to the insurance policy of the design professional, the insurance company is obligated to defend the public body, but only at the election of the insurance company.

Essentially, when something occurs, and the public body asks that they be defended, the insurance company has three choices:

- To defend.
- To defend with a reservation of rights, which means that the insurance company is going to defend you, but in the course of discovery, if they learn facts that indicate that, perhaps, the public entity has some liability, there is someone else with liability, or there are facts which make it inappropriate for the insurance company to be defending the public body, they can withdraw their defense.
- To not defend at all. They do so at risk, potentially being in bad faith.

Again, in subsection 3 of NRS 338.155, the public body is added as an additional insured on the policy of the design professional for this purpose. Subsection 5 permits the public body to require the design professional to defend. That is different than being added as an additional insured on an insurance policy. We have had situations where the insurance company declines to defend the public body, but the design professional has signed a contract that requires the design professional to defend the public body. Now, the design professional—in most cases these are not large companies; many of them are smaller operations—is in a position where they are contractually required to pay for the defense of the public body without any insurance coverage covering that.

Essentially, what that provision “defend” does in NRS is create a contractual provision that is beyond the scope of the insurance policy. It is a contractual exclusion, and the insurance company does not have to cover the design professional for those costs. I want to make this very clear. The design

professionals are not trying to get out of defending the public body when they are liable for an act or an occurrence and the public body has damages as a result of that.

[Russell Rowe, continued.] What we have done in negotiating with the local governments and coming up with our amended language is create language that covers the design professional in this specific instance—where the insurance company refuses to defend the public body—and the design professional is on the hook now, contractually, to defend them. That puts the design professional at substantial financial risk and potentially puts these companies out of business. Some of these lawsuits are very, very expensive. They can not afford to do this without insurance coverage; that is why they have insurance.

What we have come up with, because no one liked eliminating “defend”—they thought it set a precedent, and we were trying to get out of paying our fair share of our responsibilities—our amendment does not eliminate the word “defend.” All we did is add paragraph (a) to Section 5. This is what it says:

If the insurance company of the design professional elects not to defend the public body, the design professional shall reimburse the public body for reasonable attorney’s fees and costs, awarded by the court, to the public body in proportion to the liability of the design professional as adjudicated by the court.

In this limited instance—where the insurance company does not defend the public body, but we have this contractual provision requiring the design professional defend the public body—the design professional will pay for those attorney’s fees and costs of the public body at the end of the case. They will reimburse the public body, and by making it “as adjudicated by the court,” this puts it under the insurance policy.

If something happens, there is potential liability. The liability is divided between the design professional, county, contractor, and whomever, when a judge or jury reaches a decision and apportions liability. Let’s say that the design professional is 40 percent at fault. The design professional will have to pay the attorney’s fees and costs of the public body up to 40 percent. That is fair. If they are liable up to 40 percent, they will pay 40 percent of the attorney fees and costs to the public body, and by having that language in here, that would be included under the insurance policy. Again, that is under the insurance policy, the key point. Otherwise, the way the language is now, it becomes a contractual exclusion and would not be covered.

[Russell Rowe, continued.] In essence, what this language does to local government, I think, is shift the responsibility of paying those costs until the end of the case. Local government will have to expend their own funds initially, but they will be reimbursed for those costs.

I think that it is a question of public policy. Is it better to have the design professional paying those costs when they are covered by the insurance policy and done so at the end of the case, or requiring them to potentially pay those up front to the public body, putting the design professional and his/her company in substantial financial risk? All we are trying to do with this legislation is to cover this one very limited situation and to do so in a manner that still covers the public body's costs for their attorney's fees, but getting under the insurance policy of the design professional.

Assemblyman Goicoechea:

The public body has to pay for the insurance coverage; that is under existing statute. I guess what concerns me is the fact that the insurance company can, in fact, opt not to defend the public body. It would be like saying that if I have an insurance policy and I have been paying my premiums, in the end, they can say, "Well, we do not want to defend you," and walk away from it. That concerns me.

Russell Rowe:

I understand what you are saying. That is basic insurance law. An insurance company is going to defend based on the facts of the case. If the facts of the case are such that it is not appropriate for the insurance company to defend the public body—and in many instances, the public body will not want the insurance company to defend it—the insurance company is not going to do that.

That is a very good question, because it gets to the heart of the matter. That is the reason we initially proposed to eliminate the word "defend." The design professional is saying, "We are going to contractually defend you," but the insurance company is never going to agree that. When they sign a contract, they are going to defend a public body in any and all circumstances. They just never will. That is why they have those provisions within their policies and have those abilities to defend, or to defend with the reservation of rights, or not to defend.

They do so at risk to themselves, because if they choose not to defend, and then it turns out that there have been liabilities, they potentially are, themselves, subject to bad faith for not fulfilling the terms of their policy. They have to evaluate the cases as they occur and make a judgment: "Do we defend or not defend?" Those are very important decisions; they are not taken lightly.

Assemblyman Goicoechea:

Who will carry the liability then, in the end? The insurance company would, if they were found to be at fault, and the general liability insurance would kick in and cover a portion of it then, I would assume.

Russell Rowe:

As we have proposed under the bill, in our specific situation—this is a limited instance, but it has occurred a few times and put companies at substantial risk—what the language proposes to do is get those costs back under the insurance policy. Essentially, this “defend” language in subsection 5 is taken out of the policy, because it becomes a contractual exclusion to the insurance company. Once they decide not to defend, the design professional who has signed a contract beyond the scope of the insurance policy is saying, “We will defend, regardless.” That is the problem. Our language tries to take care of that and address the public entity’s concerns that we are not deleting the term “defend.”

Assemblyman Christensen:

I heard you mention something to the effect that the insurance company, working with the design professional and based on their contract, will not go into something that is outside of its scope, or that would mean defending someone if the merits of the case are not there. All of these are my words. I am just trying to get my arms around this, because what I heard was something like this: there are built-in checks and balances with the kind of contracts that the design professional, the public body, and the insurance company all operate under. So, it would be difficult for it to be self-serving to any one group, just based on the checks and balances that exist within law, their contract, and how they operate.

Russell Rowe:

If I understand your comment, what you are saying is ultimately correct. Within insurance law, the contractual provisions of the insurance policy, and the interpretations of these policies, there are checks and balances. If the insurance company elects not to defend, and then their client, ultimately, is liable and gets hammered, they are potentially subject to bad faith practices—which could subject them to punitive damages—so they have to be very careful. They have to be very careful about choosing not to defend in certain instances.

Assemblyman Christensen:

Is that because they would then be on the hook if they turn their backs, and they are essentially walking away from the responsibility that they have to the design professional?

Russell Rowe:

They potentially could be on the hook; that is correct. The problem arises when they do say, "We are not going to defend you in this instance," whether it is a disagreement of the facts or something else. The design professional is caught under the language of subsection 5 and, therefore, under the contract that they signed with the public body, is now on the hook for that defense. They can be responsible and forced to pay the fees of the public body for the cost of this case—pay them up front as they go—which is very costly for the design professional.

All we are trying to do with this legislation is to say that when that instance occurs, the public body will be reimbursed for those fees and costs. The public body is going to have to pick up those costs, but they are going to be reimbursed. What you need to decide is whether it's better public policy to have the public body—which is in a much better position—pay those costs up front and be reimbursed, or is it better to put it on a design professional, who is expecting to be covered but, in some instances, ends up not covered. That individual has signed a contract that forces the design professional to cover those costs that, in many instances, the person really cannot afford to do. They have to go into significant debt to cover those costs. It has not happened yet, but our concern is that one of these times, it is going to put one of these companies out of business just because they thought they were covered, but they weren't. The public body isn't protected, because you can't get blood from a turnip; no one is going to come and pay those costs, and the insurance company hasn't covered them.

Assemblyman Christensen:

My question, which you led into: How does, going into the project, the design professional—working with their insurance company or exemplary—contract with the public body? You said that in the last part of 5(a), the public body's liability is in proportion to the liability of the design professional as adjudicated by the court. So, who decides what percentage? You mentioned 40 percent, if the design professional is on the hook. Is that specified going in? Does the design professional know that, based on this project, he or she is carrying about 40 percent of the water here? Or, do they go through all the facts? I'm just trying to figure out who has the final say on what the percentage is.

Russell Rowe:

The court has the final say, whether it is a judge or jury, as they apportion liability. When liabilities are apportioned, the attorneys' fees and costs would be apportioned according to that apportionment of liability. It would be that simple. There are two reasons why we have required this. When it is adjudicated by the court, that adjudication gets it into insurance coverage. If it's not adjudicated by

the court, and a design professional isn't required to pay as outlined under a court order, then it's not covered under the insurance policy either, unless all the parties agree to it and settle. As I've been discussing with some representatives of public bodies, they said 90 to 95 percent of these cases settle, which is fine, because if that's the case, the parties settle and they all agree. The design professional agrees; their insurance company, who is obviously a party to the discussion, agrees. Everyone agrees to what the settlement will be, and then the checks are cut. Then, everyone goes their separate ways. That's not a problem.

[Russell Rowe, continued.] When it gets to a point that insurance companies are not defending and it gets through into litigation, there is a problem. That is when we end up with a design professional being exposed to the substantial risk, and we're just trying to cover that one point.

James E. Keenan, Purchasing Manager, Douglas County, Nevada, and Representative, Nevada Public Purchasing Study Commission:

I should start out by saying that the members of our group are neither attorneys nor risk managers, so we can only approach this bill from the standpoint of purchasing managers. In a few minutes, you will hear from the attorneys and risk managers who have assisted us. We did attempt to work something out with Mr. Rowe, and I regret that we couldn't, because, quite frankly, I enjoyed the process.

Basically, the public purchasing members had a concern with this bill from the very beginning, simply because we have the same obligation in our contracts to defend, indemnify, and hold harmless the design professional and/or the contractor if we are liable. Taking out one of the words or one of the parties in our contracts was, naturally, of concern to us. In polling our neighbors, they were quite adamant that they didn't see any need to change the law at all, and they did not make us aware of any major problems, concerns, or difficulties that the design professionals were having. That doesn't mean they weren't having them; they just didn't make us aware of any. In the process of working on a compromise, we can basically understand that the term "agent," by itself, can be brought. We agree to further restrict that definition, but to require the agents to be named in the contract is almost as vague. Question 1, "Which contract?" and question 2, "Agents change during the course of both the design professional's contract and the subsequent public works contract." That's just another issue—trying to keep up with this inspector, this facility's manager, this engineering consulting firm that we hired is now an agent, and this one is not an agent, and so on.

[James Keenan, continued.] For those reasons, we had difficulty agreeing to the amendment that you have before you that defines "agent," and also, quite frankly, the change having to do with "defend." We are aware of design professional liability contracts, and on a personal note, I have one for myself. It says right in the contract that the insurance company has the duty and the right to defend the design professional against lawsuits. It goes on to list the requirements, which, quite frankly, are not at all restrictive. We know that there are some insurance policies that do call for "defend." In addition, from a non-lawyer or a non-risk manager standpoint, we never thought that the word "defend" had only one meaning. An insurance company, we always thought, could choose to defend the design professional in any way of several ways—furnishing money, furnishing legal staff, or furnishing an outside attorney. It never made any difference to us as long as the public body had its share of the defense.

I can see where it would be good public policy to not have small firms be required to front money or to have local governments front money for the financial benefit of small firms. Certainly, we do need those design professionals. As I pointed out during our discussion, I also do not think it is good public policy for the taxpayer to give up the opportunity to use that money by having to front a potentially expensive litigation process, knowing or assuming the design professional is negligent. We wouldn't consider it good public policy to give up the opportunity to use that money either. That's just an aside that we pointed out.

We need design professionals. We know a number of them are at small firms. For example, in one case where I was involved, we actually paid the premium for the design professional, because we asked for something else in our contract in the way of professional liability. I don't recall the details, but it was either that he had no professional liability or he didn't have the dollar threshold that we wanted. We paid the additional premium to have that covered. We're certainly not opposed to dealing with some of these issues. Again, from the standpoint of purchasing managers, other than to repeat that our organization is really opposed to the whole idea of changing the law, we're not opposed to working out a suitable compromise if we can reach one.

Madelyn Shipman, Legislative Advocate, representing Nevada District Attorneys Association:

The bill, as written, would absolve a design professional from any requirement to defend a local government in a lawsuit based on the negligence of the design professional. Let's be clear. We're not asking that they represent the local government for anything other than the negligence or alleged negligence in a lawsuit against a design professional. The statute doesn't go that far. It

certainly couldn't be implied that the defense would include the defense of other actions of the local government that may have an affirmative negligence on the part of the local government. Clearly, under the statute as it's written, the local government has the responsibility to defend the design professional if the action is based on the local government. All we're asking is that in the statute, the design professional defend or provide for the defense, either directly or through the insurer, depending on actions brought against the local government that are based on the design or allegations of the design professional's negligence.

[Madelyn Shipman, continued.] We have attempted to work with Mr. Rowe. Their alleged concerns, in fact, have resulted in an amendment, but they have rejected it. Also, the amendment that they prepared was ultimately rejected by us late yesterday afternoon. We were not able to come to a conclusion. We're still willing to work on the issue, if we could figure out exactly what it is that we have to do to come to a conclusion. We believe insurance is available. We know that additional insured is not available in a professional liability insurance contract, but we do believe that general liability and other insurance is available to defend a third party, including the government.

We also are very aware that under any circumstance, an insurance company—subject, obviously, to any potential penalty—has the right to refuse to defend, to defend with the reservation of rights, or not to defend at all. However, it is clear that the insurer has that right under any case and under any circumstance, not just in a particular case of the design professional.

I think, more importantly, we have not been able to identify, nor has Mr. Rowe identified, any design professional—by name, or individual, or entity—who has asked, with regard to any specific contract, for the removal of the word "defend," as part of a negotiation in a contract, or who has asked for a more specific limitation on such defense: "What are we actually defending in the contract?" There's been no request for negotiation, nor has there been anyone who would refuse the right to negotiate that language.

We have not had any public entity identified that refused to negotiate the cost of obtaining, and as Mr. Keenan indicated, we know that there are entities that have paid extra for coverage of that insurance. So, I guess what we're really saying is that we don't know what the problem is. We think it's an allegation of the District Attorneys' Association that believes that the law works as it's currently written. No law is perfect. There may be some areas that could be closed, but the changes to the law should not be approved until there's reason to believe that it doesn't work. The bill is based, in our opinion, on possibilities and maybes.

Wayne Carlson, Executive Director, Nevada Public Agency Insurance Pool and Public Agency Compensation Trust, Carson City, Nevada:

Our program covers a lot of the rural entities. We're often presented with contracts from design professionals that shift as much of the risk as possible to the local government entities, and this again shifts more risk to the local government entities by taking out some of the language. But, I want to talk about the bill and separate sections to clarify how this whole insurance game works.

In Section 1, subsection 3 of the bill, where it says that "a public body is to be named the additional insured under the current insurance policy," under the current language, the proposal is a general liability insurance policy. Sometimes it seems important to have, on general liability policies, an additional insured, but it's also important to have additional insured on auto liability policies, based on the kind of work being done. This is all separate from any professional liability or errors and admissions on the part of the design professional. This is the ordinary tort liability kinds of things. We're all aware of it. All the purchasing folks and risk managers are well aware that you can't get an additional "insure and design" policy, and you wouldn't want one, because when we go to the design professional liability policy, the public entity might be a claimant against that design professional for negligent design that harmed the public entity.

If we were additionally insured, we'd be essentially suing ourselves, so to speak, or the insurance company would have to treat us in that kind of fashion. So, we understand there's no need for additional insured on the design professional policy. However, the public entity can be sued because of the design professional's negligence, having nothing to do with the public entity's negligence. From that perspective, the design professional brought us into the case, and they ought to defend us, because it's their negligence—or at least alleged negligence—that caused the case to be filed in the first place. The same thing is true in reverse, because their contracts require us, as entities, to defend them in case of anything that the government entity might do.

So, it is a conundrum, but there are two separate kinds of concepts here working. Certainly, additional insured—in general or automobile liability policy—can be had and is had, and the way that works is that the insurance company is obligated to defend any insured, including the additional insured. I can tell you that there's an inch and a half thick treatise publication that's updated regularly on the old concept of additional insured, because it's a very, very difficult concept, and I wouldn't recommend that you waste any time trying to read that book. Unfortunately, we have to read it sometimes as risk managers.

[Wayne Carlson, continued.] There are a lot of different forms and documents that are put out as additional insured, some of which accomplish the things that we wanted to accomplish. Others don't, and those are controversies in and of themselves. But, essentially, an additional insured is just asking to be defended and indemnified within the course of the coverage within that policy.

Why would an insurance company deny defense? They would deny a defense if there was no cover claim asserted. If you don't have a claim that falls within this scope of coverage, you have no obligation to defend. However, there is an obligation to defend if there's a claim that's reasonably within the possibility of coverage. That defense obligation is much broader than the indemnification obligation.

The insurance company then has to defend the entire case. If they don't want to do that, then they have to provide the additional insured with separate counsel on the coverage issues, because that creates a whole different dynamic. Then, they are in opposition, but they have to defend the entire case, even though they may not indemnify the entire case. Again, that goes to what is covered under the policy and the allegations that are made in the lawsuit.

We have to really look at the four corners of the complaint to decide whether or not there is coverage. If there is potential for coverage, we have to defend, and then we indemnify for those things that are covered. We don't indemnify for those things that are excluded. That's typical of all the liability policies out there that we're talking about in regard to the additional insured. Design professional is a little bit different, in that we're talking strictly about the design professional's errors. Mr. Rowe commented about the concern about proportioning the defense cost. I think if that provision were put in, you would have to decide how much of the defense cost really went to defending the public entity. I don't know of any attorneys that can really bifurcate all their defense costs for each motion that they make on behalf of all the people they're defending. It is difficult, and if you have to defend the entire claim under an insurance policy, and then you apportion the defense, that seems an unfair result to the person who is brought into the claim, solely because of the negligence of the design professional.

The indemnity of a design professional may not be culled as well, because of exclusions. If a policy doesn't cover it, or the design professional has done something that violated condition of the policy, then the insurance company may not be obligated to defend. So, even by putting in the proposed language where the design professional doesn't want it in the contractual portion—they want it tied to the insurance—the insurance isn't necessarily going to defend and indemnify for everything, as there are things a design professional may do

that violate the policy. So, there are an awful lot of things that are falling out of this discussion on the bill, but you really don't need to change the fundamental things in the law in order to have all this stuff flow through in practice.

[Wayne Carlson, continued.] There also may be other issues that arise in the course of a lawsuit that have nothing to do with insurance at all, such as contractual disputes. That's not going to be something that's going to follow the insurance, but certainly, if there is some reason the government entity was also named because of something the design professional did, then the government ought to expect the defense as well for those other issues.

You're getting into an area of contract law, and the statute should be allowed to fully defend and indemnify for those kinds of things that the parties agree to transfer to each other. Otherwise, you would have to go to the public policy choice of saying that no one can defend and indemnify another party, period. I'm not sure that's a good public policy choice, either.

With that, I have one other comment about the agents of the public body being specified in the contract. It may be a pragmatic matter. Not all these contracts are issued at the same time, so you may not know who that agent is at the time that you execute the design professional contract. Again, it's not language that would be very practical to work with from that perspective.

Chairman Parks:

Mr. Rowe, I do have one question. Is a practice like this common in other states? Are your clients aware of this type of practice elsewhere?

Russell Rowe:

I am not aware. I haven't checked other states' statutes. Perhaps John Leleu or Bill Valent could comment, if they had any insight on that.

Bill Valent, Agent, American Insurance and Investments, Las Vegas, Nevada:

I'm not aware of what other states' statutes say regarding the defense provision. However, with respect to the insurance policies, they are unified. The professional liability policies are all the same with respect to their duty to defend. Their duty to defend is to their own client.

Jonathan P. Leleu, Attorney, Kummer Kaempfer Bonner and Renshaw, Las Vegas, Nevada:

My exposure to other states seems to indicate that the state statutes defer more to the insurance policy with regard to the defense. The insurance policy itself tends to control.

Chairman Parks:

Mr. Rowe, would you like to take it back and see if you can't work on it further? Hopefully, you can bring something back. I would appreciate that. We'll go ahead and close the hearing on A.B. 156 and open the hearing on A.B. 210.

Assembly Bill 210: Requires contractor and subcontractor on certain public works to submit monthly report on demographics of persons employed on public work. (BDR 28-872)

Assemblyman Joe Hogan, Assembly District 10, Clark County:

[Read from Exhibit C.]

Today, I'm very proud to present legislation that enables Nevada to make a major leap forward in expanding equal opportunity to all of its citizens. Our fast-growing state is investing huge amounts on construction of buildings, highways, and other public infrastructure. To get maximum benefit on this investment, we must ensure that the thousands of jobs created by this construction activity are shared with women and minority workers, who make up 60 percent of Nevada's workforce.

For more than 30 years, the federal government has tried to open construction employment to minority and female workers with very limited success. The federal government imposed numerical goals and timetables on contractors and on apprenticeship programs.

Despite considerable efforts from those in the industry, very few women, African-Americans, or Asians have been able to establish themselves in the construction trades. The influx of Hispanic workers in recent years has increased their construction numbers, but still it is not quite commensurate with their presence in the overall workforce.

Despite the lack of useful workforce diversity statistics in this state, the data compiled by one State agency, which annually surveys the workforce employed by its contractors, indicate that women, African-Americans, and Asians each represent from .5 percent to, occasionally, 1.5 percent of the construction trades workforce on its projects.

Today, the job opportunities in the Nevada construction industry have never been greater. Only 10 percent of all private employment is in construction. For every increase of 1 percent of Nevada construction jobs we can open to minorities and women, over 1,000 jobs would become available to them.

[Assemblyman Hogan, continued.] If we can find a method to connect the growing numbers of young people not planning to go to college with the great demand for construction workers, we can reduce out-of-state recruitment and train more of our own Nevada workers for construction careers.

Fortunately, there is such a method, and it works. The first use of this method on a large federal construction project was so successful that women's participation rates went from the usual 1 percent to over 8 percent on all the work on that large project. Minority representation increased to approximately each group's percent of the overall workforce. The project became the best integrated federal construction project in history when the U.S. Secretary of Labor's Equal Opportunity Award was given in the year of its completion.

Just as important as the number of jobs obtained was the opening of regular communication and recruitment efforts between the industry and the community organizations that could refer qualified candidates. These new channels led to effective cooperation in recruitment, referral, and community involvement in pre-apprenticeship training and greater availability in construction careers to members of minority communities and women.

Quite surprisingly, this successful method is simple and almost cost-free. Instead of government attempts to enforce imposed goals and timetables, the matter is addressed locally, at the project level, by the contracting agency, the contractors, and the community representatives.

The game plan has just two components—only two moving parts—to worry about: a single monthly meeting and a simple report of each contractor's employment for the prior month. Having personally participated in dozens of these meetings and having reviewed hundreds of the monthly reports, I can assure you that

the meetings are usually over in less than an hour, and the monthly reports can take only a half page or less.

[Assemblyman Hogan, continued.] It is important to avoid unnecessary burdens on the contracting agencies and on contractors. To keep this bill free of such burdens, the following provisions have been incorporated:

- Only Washoe and Clark Counties are affected.
- Only construction contracts over \$20 million are covered.
- No numerical goals are imposed by the bill.
- The required employment data are simple and on hand.

I have discussed this bill with contracting agencies, construction companies, labor leaders, and community leaders. There is a very broad acceptance of the principle of diversity and an appreciation of this cooperative approach. These contacts also generated several suggestions which might be considered as amendments to the bill. Suggestions included the following:

- Not requiring participation by very small contractors doing less than 1 percent of the job
- Calling for a review of the impact of this method after a few years of experience have been gained
- Raising the minimum contract value of \$20 million, perhaps, to a higher amount
- Eliminating the references—which, I guess, are just traditional in construction contracts—to fines and penalties

This approach thrives on cooperation rather than coercion. The fines and penalties have not been needed on previous applications, and I think we can eliminate them presently, if the Committee agrees.

You may hear testimony that achievement of equal opportunity for Nevada's minorities and women is an admirable goal, but not really worth the effort to make a report and attend a monthly meeting. The fact is that these are very light requirements. Compared to the large value of the contracts, this simple employment report at monthly meetings is not significant. However, when this small effort leads to the achievement of long-sought diversity levels, it is an exceptionally good investment.

[Assemblyman Hogan, continued.] Assembly Bill 210 represents an opportunity to open up one of our largest industries to Nevadans who have not been able to participate. It uses a method proven to be not only effective, but also extremely low in costs. The construction contractors will find new sources of applicants in our communities and achieve better diversity levels in their workforces, possibly at a lesser cost than they are now experiencing. Community organizations are strengthened by their participation in government and industry by finding, motivating, training, and placing their people in paid career positions.

The success achieved under this legislation can make Nevada a leader in equal employment opportunity for all its workers and can enable us to move more citizens from public assistance to self-sufficiency. Many of Nevada's needs in public safety, education, and other fields are quite costly. This advance in fair employment is almost cost-free. It is an opportunity we cannot afford to miss.

I would like to read several sentences of a letter I received just yesterday, which was sent from the United States Department of Labor Women's Bureau ([Exhibit D](#)). Their regional office is in San Francisco. In endorsing this bill, the Department of Labor states:

The innovative approach called for in this legislation is the model that has been very successful in the federal arena on large construction projects. We feel it presents a very good opportunity to open up many high wage and nontraditional career options for working women in Nevada.

The oversight meeting model was such a successful tool in assisting contractors with placement of women and minority workers that the federal diversity goals for the projects were widely met, and some contractors greatly surpassed their goals.

The oversight meeting has become a standard operating practice for large federal construction jobs and has been repeated many times in the Bay Area.

Assemblyman Christensen:

This deals with part of your professional experience, and you bring some know-how to this bill. I was just hoping that you could address two quick points. From a high level, I'm always sensitive to what I perceive to be

over-regulation. Part of my purpose here is to make it easier for business to happen, for people to start up a company, and then, as that company matures and grows, ensuring that government doesn't get in the way. Now, government, I believe, has a responsibility to make sure that good things happen and things don't get out of line, because they certainly can and sometimes do. I wanted to read a quick line out of the Legislative Digest [of A.B. 210] and then I'll leave the question with you.

[Assemblyman Christensen, continued.] On line 22, starting on line 21, this bill makes it mandatory for the contract for such a public works project to include a clause that provides that the contract becomes void if a contractor does not provide for the provisions of the law concerning the keeping of the demographic report. In addition, the bill prohibits payment for a public works project unless the contractor complies with these requirements. I know that there's a lot of money that goes into these bids for the contractors to even get a bid. I know there's a lot of investment time and research that they have to go through. So, if they don't comply with everything in the bill, they can stand, according to the bill, in breach of contract. They basically have to walk away from what they put a lot of work into, which makes me nervous on the level that I spoke of earlier.

Maybe people are just not talking to me in this regard, but I don't sense and I haven't heard—and I mean this genuinely—that there is a big problem out there with this. With every bill that comes before the Committee, especially something like this—because I think that's pretty harsh that the contract could become void—why, specifically, is the bill necessary?

Assemblyman Hogan:

My background goes back to the 1960s, working for the Department of Labor and other federal agencies, in trying to bring about the change, which was very much needed in those days. The divisions were very clear. There were very few women in many fields, including construction, and relatively few minorities. It was an area that needed to get better, and it has to a considerable extent. My testimony and the statistics I mentioned were to establish that, while there has been progress—and I commend those who have contributed to it—there hasn't been enough progress yet.

I had the opportunity to create the community coalition that developed this process in the Bay Area some years ago, and it was and continues to be quite successful. This language, which fortunately is only in the Digest, is language I would like to take out. I think we do this by cooperation, not by penalties or threats of penalties and voiding contracts. I agree entirely with your concern; that's not the tone that's intended. It needs to be required for the companies to develop this tiny little report, which occupies a third of the page, so it needs to

be required to do those things. I also think it's heavy-handed to threaten voiding the contract. It's in the Digest. I don't believe it actually got drafted into the law, per se. I'll certainly make sure that's not included.

[Assemblyman Hogan, continued.] I would want to stress it's a problem we've been addressing for a very long time. It's been getting better. I think, frankly, most other American industries have been able to make more progress than has construction. Construction is so important in Nevada, and we have 10 percent of our workers in this industry. In California, it's only about 5 percent. It's really important to us. In talking to people in the industry and in the trades, they're very supportive in the concept, and they're very willing to work to make this a smooth, low-burden way of making progress—progress we've been trying to make for a long time.

Assemblyman Christensen:

That helps. Assemblyman Hogan, just so I don't take too much time during the Committee, maybe we could talk after this, because I do have more questions and would like to know. I'm glad that we agree it's excessive. Your contract could be void, so we can talk a little bit about this.

Assemblyman Grady:

Could you walk us through this? We have the monthly meeting, and the report says, "We don't meet the criteria for minority hiring, such as for Asians and Pacific Islanders. We would then go to the union hall and say, "We need more forklift drivers." Do the people who have the jobs get laid off? If the union hall says, "We don't have more forklift operators," how do you balance that?

Assemblyman Hogan:

This is a type of situation that has come up in the meetings that I attended on early projects that use this process. One of the key things is the makeup of the committee that meets; it must include representatives from community organizations. If, in one of the two counties—this will affect just two counties—that question were to arise, and the contractor has no Asian and Pacific Islander employees, it's probably not going to cause a problem. If the community representatives know of Asian and Pacific Islander individuals who have the necessary skills, they would be able to make them aware of that. If it's a union project, and the person's not currently in the union, they could be either reinstated or examined into a possible union entry by apprenticeship. It's a problem-solving arena. If no one knows of an Asian person, because there's no goal imposed by this and there are no penalties, that's acceptable. We can't do the impossible. If the company also had no African-American workers, no female workers, and no Hispanic workers, representatives of those communities in either of these two counties could probably help in finding some qualified

people to take the job. In no case would anyone be laid off for hiring a person with another ethnic background. That would be illegal and would be very counterproductive.

[Assemblyman Hogan, continued.] The answer to your question is that this is a problem-solving committee, with community people working with labor people, with the construction industry, and with the agency whose project it is. The idea is to work out the best solutions they can. Sometimes there won't be a solution for a given skill or in a given minority community, and we move on and solve the problems we can.

Assemblyman Munford:

I commend Mr. Hogan for taking on this project, because anytime you get down to job competition, that's pretty tough. I know it's a great challenge for you to want to push something like this. I just want to know the labor unions' reaction to this. Labor unions, in my experience, are very, very active in wanting to create jobs and make jobs available for their workers and looking out for benefits. They're very cognizant of what is right and what is wrong. Sometimes, there is a little nepotism that goes on; relatives are considered in job hiring practices sometimes, as are friends.

This is almost like an affirmative action concept. Many people, when they're forced to hire certain people, rear up a little bit. Affirmative action scares a lot of employers. I just want to know what the reaction of the labor people is.

Assemblyman Hogan:

I did speak with several representatives of the building trades. They were certainly in support of diversity, and they would not have a problem with this legislation. One of the particular unions that is involved in the construction industry will speak in favor of the legislation. I was very pleased with the acceptance, and I think we know that on one social issue after another, labor is a reliable voice for workers, whether it's health care or education. They also have been consistently in favor of diversity in the workforce and making opportunities available. I was very pleased with the reaction I got, and I think you'll hear testimony from at least one element of labor actively supporting the bill. I did not receive any response from any segment of labor in opposition to the bill. I'm pleased.

Assemblyman Claborn:

Assemblyman Hogan, I've been in the labor movement for almost 50 years. I was a business representative for 24 years for the Operating Engineers and also sat on the junior partnership council for the Operating Engineers' apprenticeship program. We already heard all the rules that you're talking about. We've all

heard agreements already established with greater Las Vegas plans for minority plans—anything that has federal money in it, such as NDOT [Nevada Department of Transportation] projects. We've heard all those before. There are rules and regulations for minorities, and I really don't know where this is coming from. I'm going to sit here and listen to some more testimony, but as far as I'm concerned, the Operating Engineers and most organized trades are already doing this. I just don't understand.

Chairman Parks:

I appreciate your observation, Mr. Claborn, and I agree that labor has been actively pursuing diversity for a very long time. It's a pretty hard pursuit. It's not easy. It doesn't happen quickly. I had the opportunity for the last 4 years—since the Legislature passed an Assembly Joint Resolution calling for a task force among several Nevada agencies—to look into diversity in highway construction. One of the very constructive members of that task force, whom I found very supportive, happened to be the fellow who coordinates the apprenticeship program for the operating engineers. He frequently said that they were doing anything that anyone suggested to them. They brought in some women, they brought in some minorities, and they got them into the apprenticeship programs, but not as many as they would like to have, and not nearly as many as the federal goals for apprenticeship would call for.

This bill—and I think the reason it received the endorsements from the Women's Bureau is that it's worked so well—sets up a new forum where these things can be worked out, particularly the presence of representatives from the community, women's organizations, and minority organizations. Those representatives in that monthly meeting are looking at actual data and talking to contractors who will be hiring more people in the near term. That creates this cooperative effort where, for example, the frustration of the representatives of the operating engineers is often that they weren't getting much help from the school counselors. Students were told by everybody, "You have to go to college, and if you do not, you're not a success."

I think this organizational plan, with the community involved and with the access the community might have to the education establishment, might be a better way to resolve some of the barriers that have slowed the progress of diversity. To me, that's the new element. That's why it's worked so well in California, and I think that's why it can make a tremendous difference here and make the efforts of labor and companies much more effective in putting us on a much faster path to achieving diversity.

Assemblyman Claborn:

When I was sitting on the Junior Apprenticeship Training Committee (JATC) board of the Operating Engineers, we took in apprentices every year. Our applications were well over 500. We took the top 100, we interviewed them, and when we did start in 1977, we did have quotas for minorities, and we had to adhere to them. Yes, there's a need for more people and qualified people. That's what the unions have offered these minorities and workers. They don't just offer them a job; they offer them a career. I'd like to see this expanded into what the operating engineer was just saying. We're really not sure that they are minorities or whatever when they're applying, since you've got 500 or 600 applying for 20, 30, or 50 jobs. We try to do the best we can.

Assemblyman Sibley:

My concern is similar to that of my colleague from Assembly District 13. We mandate a program on a contractor, forcing the contractor to hire additional people to monitor the program and to make sure that they're compliant with these standards. In the end, the building costs will escalate, which, with these public works projects, has the taxpayers footing the bill to go out and try to find people to fit into these categories. With construction, I think it's just finding skilled people to do the jobs. I'm actually a contractor, a California contractor, and my company is located in San Francisco. I can tell you the difference between building in San Francisco and here. The cost to comply with a lot of these things is substantial. I just wanted to voice my concern about that.

Assemblyman Hogan:

That is the concern, very clearly expressed, that I've been hearing. That's exactly the reason why I made every effort, in the course of drafting the bill and working with the bill, to eliminate or reduce whatever burdens there might be. The specific burdens imposed by this bill include a one-third page report. Whoever prepares the weekly report on the workforce can pretty much lift those numbers out in a matter of minutes. Construction projects succeed, because when problems come up, people get together; they meet, they communicate, and they resolve them. This, to me, is a short meeting, usually about an hour, that would provide an opportunity for solving the problems in a more effective way, since the community is there to help with referrals and needs. I've certainly tried to address the problem. It is a concern. I think it is well under control in this bill. I hope we covered it.

Assemblywoman Pierce:

Assemblyman Hogan, I just wanted to be clear. I think you just made that clear. The only way that a contractor could run afoul of the process that Assemblyman Christensen cited would be if you didn't fill out this piece of

paper, and somebody in your company did not go to one single meeting in a month. Is that correct?

Assemblyman Hogan:

Actually, I think the concern that Assemblyman Christensen pointed out was language in the description of the bill rather than in the text of the bill. I don't think there's any expectation of opting out, but it's possible that an employer would choose not to participate adequately. There's really no coercion in this. I think there's a small possibility here and there that the contractor may try to opt out. I think it's better for us to focus on the fact that, in all the applications that I've accrued out of this method, everybody gets involved, goes along, and in fact, generally takes a great deal of pride in the progress that they've made in their own workforce, such as finding new sources of qualified people. We're going in with a lack of penalties that some may be concerned about, rather than overly heavy arrays of penalties.

Assemblywoman Pierce:

In terms of just wanting to hire someone, it would be odd to me if a staff person had to be hired to fill out one piece of paper and go to one meeting a month. Getting together at the monthly meeting to bring community people and everyone in a room together, I think you said, did facilitate creating a more diversified workforce on projects.

I also heard something on the radio the other morning about thousands and thousands of linemen who are to retire in the next 10 years. We don't begin to have anyone to replace the linemen. In 10 years—these are jobs that pay \$100,000 a year—if we don't suddenly get a whole lot of young people interested in being linemen, we can all expect to give up our phones. That's not going to work. I think that, just in terms of national policy, we need to let people know that there are all kinds of jobs from which people are retiring, and a lot of them don't require a college education. We need to look ahead and expand everyone's horizons in terms of job choices, because we need our phones. There are all kinds of other jobs that we may not be able to fill. I think this looks in that direction, also.

Assemblywoman Parnell:

That answered my question, too. I don't think any of us want punitive action. I don't think that's the intent of the bill. I think there's a broader issue that you need to be complemented on, and it hasn't been mentioned. When you watch the nightly news—Lou Dobbs, in particular—we're inundated with information on the outsourcing of jobs. I compliment you that you're bringing a bill before us that really concentrates on getting Nevadans employed and keeping jobs here.

**E. Louis Overstreet, P.E., Executive Director, Urban Chamber of Commerce,
Las Vegas, Nevada:**

[Read from [Exhibit E.](#)]

The Urban Chamber is in full support of the spirit and intent of A.B. 210. When this bill is hopefully passed by the Assembly and the Senate, as well as signed into law by the Governor, it will provide needed baseline data on which to make future public policy decisions. In this regard, we feel the bill can be strengthened in three directions, based on our direct experience in promoting minority employment and economic development.

- The reporting should also list if the person is a Nevada resident or nonresident. One only needs to drive by any major highway construction project to notice a number of California license plates on the pickup trucks parked at the worksite. It is our position that Nevada residents need to be trained and employed on these high-paying jobs.
- We feel the threshold level for reporting needs to be revisited. Again, with the exception of a few building and highway projects, no state-funded projects are in the \$20 million range. We recommend the Legislature research this issue and determine what the average dollar reward for large capital projects is.
- Include a reference that the data will also be shared with the Nevada Commission on Minority Affairs and with the Regional Business Advisory Council, which were established by statute in the 2003 Legislative Session.

I would like very quickly to respond to Assemblymen Christensen, Claborn, and Sibley on their concerns. First, the scope of the problem is clear. I refer Assemblyman Christensen to the Equal Employment Opportunity request prepared by the Department of Transportation on a monthly basis. This would identify the scope of the problem that exists in Las Vegas, in terms of relative minorities and females on highway construction. That data is available through NDOT [Nevada Department of Transportation]. Mr. Rudy Malfabon [Deputy Director for Southern Nevada, NDOT], with whom we will begin to work very closely with on a number of issues, can supply this report that allows you to determine the nature of the problem that we're all trying to address in a constructive and positive manner.

[E. Louis Overstreet, continued.] Second, look at existing jobs versus job creation. As Assemblyman Hogan indicated, there are thousands of jobs coming into the state solely based on the federal Department of Transportation providing over \$1.5 billion over the next ten years to Nevada. Here again, we're not trying to replace jobs. We want training to prepare people that will be created as a result of this increased spending. Hopefully, that addresses Mr. Claborn's problem.

Mr. Sibley, the contractors are currently required to provide certified payrolls. It would only be a small check in the corner for additional information regarding gender, race, and ethnicity. So, there will not be any increased cost to monitor these groups. I take exception to the idea that this adds costs to construction projects. The contractor is always required to provide to the Department of Labor certified payroll in terms of people being paid at the prevailing wage rate. Hopefully, that addresses those three areas of concern.

Gary Peck, Executive Director, American Civil Liberties Union (ACLU) of Nevada, Las Vegas, Nevada:

Like Mr. Overstreet, I want to commend Assemblyman Hogan and the other cosponsors of this bill. We agree wholeheartedly with the spirit and intent of the proposed legislation. We actually begin with a perspective that needs to be plainly articulated. When you are talking about public works projects, obviously you are talking about the expenditure of public monies, taxpayer dollars. As such, we believe this bill is actually not ambitious enough. We agree with Mr. Overstreet that the threshold should be significantly lower than \$20 million. We also have some questions and concerns about why it would only apply in counties with 100,000 or more residents. A public works project is, after all, a public works project.

We are getting the sense that the Committee and Mr. Hogan don't have an appetite for stiffer penalties, but I think that the penalties that are included in this bill are inadequate for creating the kinds of incentives and disincentives that we need to ensure that companies are compliant with the rules. As long as they are, there are no added costs. They simply have to play by the rules.

Finally, and this has not been discussed at all, and I try not to be too terribly emotional here, but this Legislature was adjourned, at one point, in honor of Tom Stoneburner, who was the head of the Alliance for Workers' Rights. The ACLU worked with Tom in the last years of his life to ensure that, just as the State requires that when there are redevelopment projects, contractors who benefit from the expenditure of public dollars include employment plans when they contract with the government, setting forth in detail how they are going to

reach out to those segments of the community that have been historically excluded.

[Gary Peck, continued.] Here, we are not just talking about racial minorities; we are not just talking about women. We are talking about the disabled, the economically disadvantaged, and veterans that those contractors need to include in an employment plan and some reporting vehicle that has worked just fine in the context of redevelopment contracts. It's a state law.

In Las Vegas, the city and the county require that such employment plans be part of the contracting process at the Premium Outlet Mall and at the Furniture Mart. Contractors have had no problem complying, and they certainly aren't going broke. There is absolutely no reason not to do this. Tom Stoneburner was right, and the ACLU was right. When you are talking about substantial sums of taxpayer dollars, it is important that there be some effort to reach out to all segments in the community so that everyone benefits in an equitable fashion. We are not talking about quotas, and we are not talking about preferential hiring. We are talking about what everyone agrees is a model kind of affirmative action program. Heaven forbid I should use that word. The program does not including preferences; it just includes a serious effort to reach out to all segments of the community.

Richard J. Nelson, P.E., Assistant Director of Operations, Nevada Department of Transportation:

In looking at the bill, there may be some fiscal impact to our budget that hasn't been included in our budget, but until we determine how it may be implemented, we really don't know what kind of impact it may have to our agency. As an agency, we are committed to supporting minority and disadvantaged business enterprises and encouraging minorities to enter the construction workplace. For example, we're funding a multiyear project with the Urban Chamber of Commerce in Las Vegas to prepare workers to enter the construction workplace. We believe this legislation would continue the review of the success of programs such as this.

James Sala, Director, Organizing Nevada, Southwest Regional Council of Carpenters, Las Vegas, Nevada:

The Carpenters Union supports Assemblyman Hogan's bill to begin utilizing prevailing wage projects in Clark and Washoe County to raise awareness and to reach out to minority workers in our community. I agree with Assemblyman Claborn regarding many of the trade organizations, but I think that we can always do more to attract viable candidates to a career path that, as has been stated, pays good wages, benefits, health care, and pension benefits that we fight for on a regular basis.

[James Sala, continued.] We believe that the workforce in construction should represent and reflect diversity in the community, but I don't think this is about quotas, and I don't think it's about numbers. I think it's about leadership. Hopefully, this Committee will show leadership, and I commend Assemblyman Hogan for showing his. I'll use our organization as an example. Assemblyman Munford mentioned that in the past, sometimes the building trades haven't always been looked at as the most progressive organizations, in regard to women and minorities, but I think that has changed. From our standpoint, we reach out to schools, local organizations, and community organizations—some of which are speaking here today—to recruit minority, female, and disadvantaged workers.

I want to put the emphasis on retention, because it's easy to run them through; it's harder to keep them. We're working on that as well. Forty percent of my staff is bilingual. Fifty percent of our support staff in the apprenticeship and the Carpenters Union is bilingual. I have women and minorities on my staff. Those are the kinds of things that we're trying to do. Our executive boards in our local unions now have Latino members and women members that you wouldn't have seen eight short years ago. We have English as a Second Language classes for members and their families, which are free at our training centers, to encourage those skills to keep people in our organization and to keep them employed. We've even purchased translation equipment that we use in our meeting halls in order to do simultaneous translations and to encourage people to participate in the organization. It's not just about getting people to the job. It's about encouraging them to participate.

It is very important to realize that Assemblyman Hogan's bill is really about that type of communication among public bodies, community organizations, contractors, and labor to create that participation. I'll give you a few numbers to give you an idea of how this kind of communication in the community has helped us reach some of these goals. In 1996, about 8 percent of our membership of 3,400 members was minority. Last year, we had 35 percent to 40 percent minority membership, which represented about 3,000 out of our 8,000 members. Our apprenticeship program, which gives you an idea where we're heading, has 1,300 apprentices in the carpenter's program. Five percent of them are female, and 50 percent of them are minorities. So, that's where we have been going with regard to this.

This bill encourages people to go in that direction. It's really not about the quotas or about fines. Actually, most contractors would be willing to pay the fine of \$100 not to go to the meeting. But, I think this bill is important to encourage people to add to the dialogue and to make sure that dialogue is healthy and encouraging. If nothing else, it will encourage people to do what I

had to do to come to testify today, which was to actually find out what the numbers are. I think most people probably don't know. We are in support of the bill, and we would work with Assemblyman Hogan to make a few minor changes. I want to thank him for his leadership in bringing this forward and to thank you for allowing us to testify today.

Assemblyman Christensen:

I have a lot of friends who are members of your union. You mentioned a trend. Years ago, it was 8 percent out of 3,400. Now, it's 35 to 40 percent out of 8,000. You're seeing the numbers move in the direction where there really is more—much more, apparently—of an equal representation out there, which encourages me. I think that's great. I've heard that before, which is why I directed this to Assemblyman Hogan the way that I did. Anytime we're changing or modifying law, especially as it relates to private practice or private industry, a flag goes up where I'm just more sensitive. With the encouraging numbers that you see, I think this question is appropriate.

A week or two ago, we heard a bill on raising the firefighter emergency fund from \$250,000 to \$1,000,000. There was an exact need, as there was something in the past that happened here in the capital area. This is a specific need and an issue that the Legislature needed to address. We moved it forward with a lot of consensus. Can you tell me, specifically, with the numbers that you've already given, why we should pass the bill?

James Sala:

Obviously, it was Assemblyman Hogan's bill. Not every trade is the same. I will tell you that the gentleman who took over the Carpenters Union 8 years ago, Marc Fuhrman, the Administrative Assistant, and our Secretary-Treasurer, Mike McCarron, found this was not an easy process. While I didn't want to get into the details of it, I think there is a need for this bill for a couple of reasons.

Not every hiring hall, including ours, is a strict hiring hall. The Carpenters Union has 8,000 members, and we refer 800 people to jobs a month. What we have is an open solicitation hall, which is where the workers know the names of the 400 employers that are signatories with us. They go and do what we call "hustling our own job." So, they don't come to see Jim or Rick, who might give them the dispatch; they go and hustle their own job, then they come back to the hall and get dispatched out to that project. When those contractors are looking at those bodies that walk onto that job, they are looking at skilled craftsmen. But, sometimes, employers are also looking at friends, nepotism, and who's the foreman on the job. I'm just being very bluntly honest here.

[James Sala, continued.] We encourage those people to stay in the union and try to keep them employed. We can bring them in, we can train them, and we can encourage them, but the community groups—the public entities that hire these contractors—in that meeting, must be encouraged to participate and to find out that these workers are valuable to this community and to their projects. I think we'll continue to move people in that direction.

The initial reaction from our members about the Latino workforce and the women's workforce was not great. We had some very lively meetings in our organization about moving in this direction. I think you need to have those lively meetings on these projects to encourage and continue to encourage that kind of leadership, because like I said, it's not about quotas. It's really about leadership. I think, though, without those meetings and without this bill, it would be difficult to have that leadership, because there are many other things on a construction project that take up your time, such as getting it done on time and under budget without people suing you.

**Richard Daly, Business Manager, Laborers' International Union of North America
Local 169, Reno, Nevada:**

We're in support of Mr. Hogan's bill. Based on what he is trying to do, what I see with the bill is an effort to create a scheme; not where you have penalties, but you have cooperation; not where you have coercion or quotas, but you have communication. The Junior Apprenticeship Training Committee and the apprenticeship programs through the unions have a connection. We have to send out communications to the various groups that we have minority availability to encourage them to apply in the apprenticeship programs. I bet every contractor is a singulatory contractor. There is some lack of communication between the employers and those organizations, and between those organizations and the awarding bodies. This will promote the communication, the dialogue, and the self-examination, so that they'll learn.

Maybe I don't have as many minorities as I could have, and I don't know where to go, and now I'll learn where to go, or they could possibly learn where to go. I think that's the importance of the bill. Thus, instead of a quota, it creates communication, opportunities, and self-examination to promote change. In our apprenticeship program, 80 percent of our apprentices are minorities—primarily Hispanic—and that's a good thing. That's a growing sector of the construction industry; that's a growing sector of our local union, as well as in the Carpenters Union and others. But, there are not as many Asians, African-Americans, Native Americans, and others. The communications between these groups have to be improved. You can't just look it over and say, "Here we are. We've met our quota. I have them all in one diversity group."

[Richard Daly, continued.] Women in the industry, in the Laborers' Union, are better than most. We'll go from there. On the question that Mr. Grady asked about what would happen if the goals were not met, we say, "Hey, we could do better." I've never seen anyone get laid off. It's always a prospective hire. Now that I have more information, can I give a minority or a disadvantaged person an opportunity in the industry? Our hiring provisions in the local union include that question. A contractor can call up and ask for a specific need. They can request a person that's a pipe layer, who is a minority or female, and we would go to our list and make that qualification. We can go to those individuals and give them that opportunity when the contractor has that need. I've never seen anyone get laid off to meet a demand like that. It's always a prospective hire. I think the communication/self-examination prospect is the important part of this bill.

As far as the threshold, I think \$20 million is a good number. We are neutral on the need to remove penalties on the amendments. We should look at the 1 percent or higher subcontractors as is being proposed.

Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada, Carson City, Nevada:

We support this bill. We are a statewide organization of 43 member groups. One population that wasn't discussed here was recipients of Temporary Assistance for Needy Families (TANF); that is the welfare population. Federal legislation is going to make it more and more difficult for our TANF population, because they're going to require 70 percent of the population to be working. This is a wonderful opportunity to get more women in the construction trades. I think, possibly, the Welfare Division may want to have representation on the committee to assist with matching women who have the need and interest in doing construction trades and getting them involved. This is a sunshine bill that enhances what's already happening.

Bobbie Gang, Legislative Advocate, representing Nevada Women's Lobby and the American Association of University Women:

We support A.B. 210, because it encourages the employment of women and minorities in the construction industry. Women are underrepresented in the building trades industry. Those jobs generally pay well and can move families of women and minorities from dependency to self-sufficiency.

Diversification in the workforce is always a challenge. Encouraging and providing nontraditional jobs to women and minorities requires organizational change. Organizational change takes time, and the Nevada Women's Lobby believes that A.B. 210 is an important step in this process. The

U.S. Department of Labor defines a nontraditional occupation for women as one in which less than 25 percent of those employed in the field are women.

[Bobbie Gang, continued.] According to the publication titled "Nontraditional Jobs: Educating Young Women for Trades, Technologies, and Science Careers," about half of young women aged 16 years to 24 years work in jobs that pay an average wage of \$338 per week. Sixty percent of young men work in jobs that pay an average wage of \$448 per week. This \$110 per week wage differential is linked to the different occupations in which women and men are employed. Women employed in nontraditional jobs earn higher wages than women employed in traditionally female occupations.

Assembly Bill 210 will provide an avenue for industry, labor, the public, and groups that promote the interests of women and minorities to discuss the realities of employment opportunities. This will heighten awareness of the lack of employment of women and minorities in the construction industry and will foster the changes needed to overcome barriers to employment.

I've attached to my testimony ([Exhibit F](#)), an article I've found very interesting. It's called "Nontraditional-Myths and Realities," and I will not refer to it at this point. I would like, however, to emphasize something that's in the U.S. Department of Labor Women's Bureau letter to the Committee ([Exhibit G](#)). It defines why these oversight meetings were so important:

The oversight meetings were open public forums and were well attended by many community-based groups that were actively training women and minorities for construction jobs. Discussions about the future workforce needs of the contractors enabled community-based organizations to alert their members about the specific types of trade workers that would be needed, such as carpenters or electricians, as well as understand the need for apprentices . . . The oversight meeting model was such a successful tool in assisting contractors with placement of women and minority workers that the federal diversity goals for these projects were widely met, and some contractors greatly surpassed the goals.

The oversight meeting has become a standard operating practice for large federal construction jobs and has been repeated many times in the Bay Area [of California] Contrary to those who feel this practice may place a burden on the contractors, our experience shows that the public forums are an excellent communication and

management tool where problems are easily identified, aired and resolved.

[Bobbie Gang, continued.] A reminder: This is from the United States Department of Labor's Women's Bureau, which really has taken on the issue of promoting nontraditional jobs for women as a means to self-sufficiency. You were also distributed three letters ([Exhibit H](#)) from the American Association of University Women, which also is in support of this bill.

Laura Mijanovich, Northern Nevada Coordinator, American Civil Liberties Union (ACLU) of Nevada, Carson City, Nevada:

I want speak very briefly, just to bring up one little point—not only as a member of the ACLU, but also as a member of a minority group. This is a very important bill. It's a necessary step in the right direction. We support this bill, and we just wanted to point out the need for incentives. It was suggested that maybe the penalties should be dropped, but the bill requires some kind of way to promote compliance and accountability, and therefore, any kind of measure, whether in penalties or some other measure—such as withdrawal of benefits from those who do not comply or do not operate with this—would be helpful in promoting the purpose, which is to open up this process to allow for equal opportunity for unrepresented groups to be recognized as part of the community.

Jack Jeffrey, Legislative Advocate, representing the Southern Nevada Building and Construction Trades Council:

We're in favor of the bill.

James E. Keenan, Purchasing Manager, Douglas County, Nevada, and Representative, Nevada Public Purchasing Study Commission:

The first point that I would like to make is that when we signed in this morning, in so-called opposition to this bill, it was before we heard the testimony concerning possible amendments, changes, and modifications. I can tell you that, based on what we heard, our so-called opposition to this bill will decline in proportion to the comments that we heard. Our primary concern about this bill—and, in fact, about many other bills—is, as Assemblyman Hogan said, that we are contracting agencies. Our first responsibility is to solicit, evaluate, award, and administer public works contracts along with other kinds of contracts. Any administrative burden, workload, or anything that comes secondary to that, naturally, we have to take a look at. That doesn't say that we disagree with it. In fact, I could assure everyone that the Nevada Public Purchasing Study Commission supports diversity and the hiring and retention of minorities and disadvantaged persons just as well as anyone in this room. Our concern is with our primary duty, as contracting agencies and purchasing managers.

[James Keenan, continued.] Secondly, we have a specific duty, as purchasing managers, to do our best to ensure that we have as many potential bidders as we can acquire for every bid or project that we send out. Here again, I'm not about to speak for the contractors; they can speak for themselves. In our case, anything that hampers or affects the ability or willingness of a bidder to bid on a project is of concern to us as purchasing managers. Quite frankly, right now, we are in a period of critical shortage of bidders of any kind. A few years ago, we had a critical shortage of good bidders. Now, we have a critical shortage of all bidders on public works projects. We frequently send 25 to 30 bids out and get no bids back.

While I'm on the subject, I would like to confirm Assemblyman Christensen's instincts. We have a wealth of anecdotal data as to the shortage of these bidders, and we are attempting to quantify that data. From that perspective, and that perspective only, we have to look at and question anything that may cause contractors or bidders to decline to bid with us. We have been told anecdotally that they won't come out with many specifics, that they don't want to burn bridges, but we have been told that it's too hard, that it's too difficult, that they don't have the time, that we want too much in our bid, and so forth. So, on the basis of those general concerns, we've had to take a close look at this bill.

I would like to reiterate, though, that based on the testimony that we heard this morning, certainly our opposition has declined significantly. There was a discussion of doing away with the penalty, which we felt would probably drive certain bidders away, and talking about certain thresholds. One of our concerns is that, within the two counties named, we have much smaller municipalities who generally follow the rules established for that county. There may be some smaller municipalities that may not be able to do what the county itself can do, but that's a small administrative issue.

John Madole, Executive Director, Associated General Contractors of America, Nevada Chapter, Reno, Nevada:

Although I also signed up to oppose the bill, the same comments apply. Some amendments ([Exhibit I](#)) have been passed out to the Committee. If these amendments were adopted, we think would make the bill more workable. I would like to compliment Assemblyman Hogan. We've had several meetings with him in order to work this out, so we wouldn't have to take a lot of your time here. A number of our members came down and met with Assemblyman Hogan, who's been very willing to work with us and to try to make this thing workable.

[John Madole, continued.] Just to give you an overview: the amendments ([Exhibit I](#)) would raise the threshold to \$40 million, would allow subcontractors—as Assemblyman Hogan suggested—over 1 percent to be covered, and they would take out the penalties. We're also suggesting that, perhaps, we can combine this information on a report that is already being submitted, so we wouldn't have to create a new report. It's not addressed in the bill, but I think you should give some thought to exactly who's responsible for these meetings. It's a little bit fuzzy when you look at the bill. I think, perhaps, that needs to be looked at as an assigned responsibility.

Jeanette K. Belz, Legislative Advocate, representing the Associated General Contractors of America, Nevada Chapter:

One of the things that we talked to Assemblyman Hogan about was that we wanted to make sure that the contractor would get paid if one doesn't submit the paperwork, and that they each be dealt with independently, because it would be irresponsible for someone that you don't have any control over to hold up payment for the whole project. Also, we don't have an objection to an impact review. We have actually talked about a sunset that would impact review, as suggested by Assemblyman Hogan, and it is fine with us as well.

Gary Milliken, Legislative Advocate, representing the Las Vegas Chapter of General Contractors:

I would like to commend Mr. Hogan for bringing this forward. We've had some very good discussions on this with him. We are in support of Mr. Madole's amendment to the bill ([Exhibit I](#)).

John LeMay, President, Diamond Electric, Inc., Reno, Nevada:

The bulk of our business is public works. Our business has been around since 1958. We have great experience in these areas. I'm opposed to the bill. I feel that Mr. Sala of the Carpenters' Union did a great job in proving the point that this bill attempts to solve a problem that does not exist. I think it goes in the direction of being adversarial. From a contractor's point of view, it is going to require us to provide information that I think, in the long run, will be used against contractors and will go in the direction of creating a quota system again.

I don't think the bill provides a solution to that in any manner, shape, or form. I see that the costs of meetings will increase the costs of construction. From the perspective of a bureaucrat or person working in a State agency, they always view the work that we have to perform as minimal. From the task of the contractor, by the time you get through all of these meetings and accumulating and deriving information, I think we can go to probably 40 hours of meetings and work a month. That could be expensive. I don't think this bill, in this form, should pass. I think the direction should be taken that educational opportunities

and career counseling would go more in the direction of bringing students and individuals into the construction trades from the beginning, and at that point, you might find people that will make a lifelong career out of this, instead of taking individuals to a court-type format.

[John LeMay, continued.] Along those lines, I think the other problem with this bill is it takes us in the direction that California is trying to dig themselves out of at this point. It creates an unfriendly business environment.

Derek W. Morse, P.E., Deputy Executive Director, Regional Transportation Commission of Washoe County (RTC), Reno, Nevada:

I did sign in opposition to this bill, not because the RTC opposes the concept of where people want to take this bill, but simply because what we had heard about—where this bill might go—alarmed us. If it were moving in the direction of quotas and this type of thing, the burden that we already have with the federal process is so great that we did not want that extended within the state. What we have heard from Assemblyman Hogan and the various amendments that have been proposed hearten us greatly. We think it is moving in the right direction. It's in everyone's interest to involve all the qualified workers we can get in the process. It's going to help the public in terms of competition and prices.

The only thing we would suggest, in addition to the amendments you have before you, is considering a sunset on this bill, simply from this standpoint: If we come out of this in 4 or 5 years, and we see this process is not particularly effective, why carry it on? Why not put our energies into other processes that might prove more effective? If it is effective, let's keep doing it. If it's not, let's look for a better horse to ride at that time. With that being said and with the amendments that were discussed this morning, we think that it's a good bill at this point.

John Wagner, Legislative Advocate, Representing the Burke Consortium of Carson City:

We like the intent of the bill, to get more minorities hired and more people into jobs. We think that's good, but we do not like the idea of everything being race-based. I think there are laws on the books now that say that if a person has been discriminated against, they have agencies they can go to and file complaints. I think that's a better way to do things. Also, what constitutes a quota of a race? For example, I work for a company that has holdings in Fresno. In Fresno, they had to count Armenians because they were a minority group. I told them that I'm one-quarter Armenian, and was told, "Oh! We missed you." I have two grandchildren. Their father came from India. It was suggested that my granddaughter apply for a scholarship because of her ethnic background.

She would not have anything to do with it. She said, "I am an American. I am not ethnic. My heritage is there, but I'm not an Indian. I don't qualify. I don't believe in that."

[John Wagner, continued.] Assembly Bill 428 is coming up in the Education Committee, sponsored by Assemblyman Holcomb. I think that's a great idea that has to do with careers. I think this is a way that we can promote jobs and training. I worked in the training department for a major company, and we had a lot of people come through there with different backgrounds, unfortunately, very few were women. Those who did went on to bigger and better things. The other thing that I don't like is that you have to prove your innocence all the time. You're not guilty, but you're proving your innocence all the time. I think that's the reverse of how our justice system is supposed to work.

Ted J. Olivas, Director, Government and Community Affairs, City of Las Vegas, Nevada:

I have some comments that I believe have been distributed to the Committee ([Exhibit J](#)). I'll keep my comments very brief. First of all, I'd like to thank Assemblyman Hogan for keying me into the discussion on this bill.

I'm here today in support of the spirit of this bill, but we're taking a neutral position because of some of the provisions of the bill. The City of Las Vegas is a strong proponent of diversity, including in contracting. I have not seen the amendments, so I cannot testify relative to what's been presented prior. I just wanted to cover some of the things that have been discussed previously. I believe there was a comment by Assemblyman Christensen about a study that's been done. I want to let you know, for the record, that I know of no study or data to suggest that there's a problem with the demographics of the workers employed by the general contractors and subcontractors on our public works projects. With that said, there's always room for improvement, and I think you'll potentially find that we've been doing very well.

Second, there was some mention about the fiscal impact. There is a small fiscal impact for the local governments. There was also discussion and a question from Assemblyman Christensen in the Legislative Counsel's Digest, lines 21 through 25, on page 2. I read this bill 20 times, and those provisions are not included in this bill, so that shouldn't be a problem for you.

I would like to make a few recommendations, and I know there's been discussion about the threshold. You may consider adjusting the threshold by the Consumer Price Index or something like that. On page 3, lines 18 through 19, you may consider clarifying that the committee will consist of a representative of the public body contractor who is currently engaged on the project. You may

also want to clarify that the representatives of the community groups are appointed by both the contractor and the public body. The public body knows who those are. The contractor may not know. So, I think, collectively, you need to determine who those groups should be. On page 3, lines 20 through 24, you may consider that the committee should meet at least quarterly. It says you may meet monthly; you may want to meet once a quarter at least. The penalties have been discussed, and in my opinion, they appear to be a little low for the size of the project that's being proposed here. There wouldn't be much incentive for the contractor to submit these reports. That, of course, is for you to decide.

[Ted Olivas, continued.] In Sections 2 through 8, you may consider the need to advertise this program in the newspaper. I believe the information would typically be included in the bid document and really adds no value to the contracting committee. It's just more stuff to advertise. Additionally, during the 2003 Legislative Session, there was a group that was put together, called the Regional Business Development Advisory Council; it has been meeting over the last two years. This may be something that they've reviewed. I don't know if they've reviewed it, but that may be something to consider.

I just wanted to make sure that we had on record that I hope this legislation doesn't lead to any unintended consequences—specifically, trying to compare the data by contractors, by entity, or by project—to criticize the findings of the parties involved. I believe the intent of this bill is to promote dialogue, communication, and good-faith efforts among the interested parties.

Bert Ramos, Chairman, Nevada Commission on Minority Affairs, Reno, Nevada:

I've come here to support Assemblyman Hogan's bill. I do believe that a lot of the contractors and the construction people I have personally spoken to throughout the state do not have a problem with minority hiring, subcontracting, et cetera. I think it's more a matter of access, knowledge, and information dissemination. My only comment here is that Mr. [Louis] Overstreet, with the Regional Council, and I chair each agency. I believe that through us, we could offer possible solutions for everybody involved here, because I represent the entire state for all of the minorities. Mr. Overstreet handles everything up to and including assisting the Commission on Minority Affairs, because he has a lot of the construction information in Las Vegas. My only comment here was that I'd like to offer up a solution that would be for consideration by all involved.

There are two agencies in this state, as expressed in A.B. 7: the Council, which Mr. Overstreet so well handles, and the Nevada Commission on Minority Affairs, which I chair. I'm just here to offer a solution, because I hear a lot of

different opinions on how to solve this problem. I believe it's just through communication and, possibly, having access to all of the minorities.

Chairman Parks:

You make sure you talk to Assemblyman Hogan about offering your services.

We'll go ahead and close the hearing on A. B. 210. We do have one more bill draft for Committee introduction. It is on behalf of Washoe County. BDR 42-456—Authorizes County fire protection districts to annex fire protection districts receiving federal aid. (Assembly Bill 535)

ASSEMBLYWOMAN PARNELL MOVED FOR COMMITTEE INTRODUCTION OF BDR 42-456. (ASSEMBLY BILL 535)

ASSEMBLYMAN ATKINSON SECONDED THE MOTION.

THE MOTION PASSED. (Assemblywoman Kirkpatrick and Assemblyman Munford were not present for the vote.)

Chairman Parks:

We will now reopen the hearing on Assembly Bill 233.

Assembly Bill 233: Revises provisions relating to Nevada Commission on Homeland Security. (BDR 19-1200)

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

Before I start, Mr. Chairman, I recognize that there are some flaws in the bill, and I'll leave the cleanup to those who are participating in the Homeland Security debates on a daily basis, participating commissions and others. I know they have many constructive thoughts that would make the bill a better bill.

During the 2003 Legislative Session, with terrorism on the forefront of everybody's mind, I brought forth A.B. 441 of the 72nd Legislative Session. This legislation came in recognition of the need to include key elements of state security and emergency response. Assembly Bill 441 of the 72nd Legislative Session established a framework to ensure the security of this state and its citizens. A large part of A.B. 441 of the 72nd Legislative Session was to create and implement the Nevada Homeland Security Commission. The Commission oversees critical state infrastructures, allocates homeland security funds, and

coordinates communications and security operations between state agencies. Assembly Bill 441 of the 72nd Legislative Session provided the groundwork for Nevada's homeland security. Yet, there is more work to be done.

[Assemblyman Perkins, continued.] Assembly Bill 233, which I'm here to present to you today, expands on the work we did last session. In essence, it's a cleanup bill after two years of experience. Assembly Bill 233 makes revisions to the Homeland Security Commission. These revisions, I believe, allow the Commission to operate more efficiently and more effectively, which will help guarantee the safety and security of people all over the state.

The first thing that I'd like to point out to the Committee is that the bill reduces the size of the Homeland Security Commission. That will be a point of some debate for you today. There are those that probably would not support that change. But my view is that, after the Commission worked over the course of the last several months, a smaller, more efficient commission will be more effective in soothing the needs of Nevada.

There are also concerns that I know will be raised on Section 12—having to do with criteria that restricted documents may be inspected—and that will be raised regarding the request in the bill requiring a background check for those that inspect those documents. I think that the background check may be a bit onerous. The previous system may be the better system, but I'll leave that to the judgment of this Committee. We have a number of documents throughout the state that, although we need to make them available for public inspection, we must also make sure that there's some sort of security involved with that. Whether it is building plans for critical infrastructure or other types of structures, it's important, I think, to protect these areas and not have a blueprint to create terror and destruction in our state.

The measure also gives the Commission authority to conduct closed meetings under certain circumstances. I'm a huge proponent of the Open Meeting Law. I think it's important that we conduct a great deal of our discussions out in the open. Can you imagine, in the effort to keep our public safe and creating statewide strategies amongst first responders and others, having some of that discussion completely out in the open, where those who would want to commit those heinous crimes in our state figure out how to defeat them by simply listening to them? That's the Commission simply doing that. Yes, I know you have law enforcement folks and others that sit on the Commission. I can tell you, back in my own agency, the Henderson Police Department, when we sit and have a staff strategy meeting on how we're going to combat crime, we don't do that in front of the criminals that are trying to commit that crime.

There's a reason for that. I would just submit to you, that is the purpose for opposing some of these open meetings.

[Assemblyman Perkins, continued.] I believe these important revisions will not only help the Commission work more effectively, but it will better protect our quality of life here in Nevada. We must work together to make this happen. This state must take all necessary precautions so that we can rest easy that Nevada is doing everything it can to ensure the safety of its children and families. I know that there are those who are here and who participate on the Commission currently. We'll gladly supply the input that you'll be looking for. I know there's another concern that's been raised, in that the bill changes the granting process and makes it a bit more unwieldy. I don't believe that was our initial intent. So, I'll just indicate that to you, and I think you'll have others speak to that as well.

**Dr. Dale Carrison, Chairman, Nevada Homeland Security Commission,
Department of Public Safety, State of Nevada:**

With regard to A.B. 233, I appreciate Speaker's Perkins remarks. We've had the opportunity to review this bill and, in addition, to review what is now S.B. 380. I think it's absolutely necessary that we have coordination among and between these two committees and among members of the committees. There is a necessity for the efficient working of Nevada Homeland Security to have areas of correction in some of the specific problems or opportunities that were mentioned by Speaker Perkins.

I had asked Frank Siracusa, Director of the Division of Emergency Management (DEM), to prepare a summary on some of the changes ([Exhibit K](#)). I've also spoken with Stan Olsen with regard to Las Vegas Metropolitan Police Department's changes. I would like everybody to be available to present. There is a document prepared by the Division of Emergency Management (DEM). It's a summary, and I would like that presented, if Mr. Siracusa could make that available to members of the Committee. I don't think we need to go over everything that's in that now, but it certainly needs to be reviewed. There's a summary of the changes in the bill and some suggestions with regard to that. I know that the Las Vegas Metropolitan Police Department has also done similarly, and I would leave that up to them to advise the Committee of that.

The one issue I wanted to speak to directly was the limiting of the Commission to 10 members. I'm not for large government or large commissions. The Commission and its reorganization did have a significant reduction in members—we're down now to a leaner and meaner Commission of 16 members. That may seem like a lot, but on the other hand, I believe, since the reorganization of the Commission, we've operated in a very efficient manner. We now have a collective knowledge by the members of the Commission, which has helped the

Commission operate in a more efficient manner. It also provides better service to the citizens of Nevada regarding the allocation of Department of Homeland Security (DHS) monies that are available through the grant programs that are administered by DEM. In addition, we need to remember that there are certain requirements of the federal government for the grant allocation program so that we can apply for these DHS monies and obtain them. Part of that was mandated by the federal government.

[Dale Carrison, continued.] We were also able to add ex officio nonmembers—nonvoting members—to the Commission to keep the Commission efficient and still meet the grant application requirements, which were of obvious importance to the State of Nevada.

I believe it would be very efficient to have a working group assembled to go over S.B. 380 and A.B. 233. I suggest we have this working group get together, work out the language, make their recommendations, and then make a subsequent presentation to the Committee for introduction of these bills. The changes may help them pass for the betterment of the citizens of Nevada and to make this Commission a more efficient commission.

Assemblyman Goicoechea:

I'm wondering a little bit about the makeup of the Commission presently. Is there a representative from the Department of Agriculture or the State Veterinarian? I continue to be concerned about, as we move into the federal identification program, animals and the ability to protect those resources.

Dale Carrison:

No, there is not, in fact, a member. Previously, we did not have a member. We had a committee, which was a committee on agriculture. It specifically addressed the food and animal problems of the state of Nevada. We actually gained a great deal of knowledge from that committee about food distribution, food availability, and what's going on in the agricultural world as it relates to Nevada. That is extremely important. I think we can accomplish what you want by having a committee or a task force to present its recommendations to the Commission, and then the Commission acts on their expertise and recommendations. That seems to have been effective in the past.

Chairman Parks:

Dr. Carrison, for the record, so that you're aware, we do have the proposed changes that have been submitted to us, a multi-page document ([Exhibit K](#)), and we will take those under advisement.

**Bill Young, Sheriff, Las Vegas Metropolitan Police Department (Metro),
Las Vegas, Nevada:**

I certainly agree with the Speaker on most of the points he made. However, like Dr. Carrison, I strongly recommend that we put this bill in the hands of the working group. There are several things—from a language standpoint and a practical matter—that I believe do not serve the best interest of law enforcement.

As many of you know, my agency is a rather large police agency and has tremendous responsibility as it relates to the prevention of terrorism in the largest county in this state. We've had quite a bit of experience the last few years in dealing with this issue. There are just some things in here—and if you would like me to go into some of those, they are rather lengthy—that I do think we need to rethink and revisit.

A couple things that occurred to me in the proposed changes include the following:

- Requiring the Commission to have every plan or program approved by the Commission before an individual submits before the agency is impractical. The way that the grant processes work is that the timing is sudden, and the timelines just wouldn't work out. I'm afraid we'd lose a lot of federal funding if this were to pass as written.
- I do have concerns about the open meeting requirement. I am a proponent of the Open Meeting Law. I do not believe, however, that we need to close the Homeland Security Commission sessions from the public or the media. The intent of this Commission was as an advisory panel, not as a tactical working group to lay out first responder plans. That's done by the working men and women of law enforcement, of the fire departments, of the first responders, of all the entities that have a role in this. The Commissioners are simply to be advisors to the Governor. If we're going to turn this Commission into the tactical planning group for the entire Homeland Security mission of the State of Nevada, I think we are going way off base. I don't believe that the members of the Commission are qualified to be doing that, by and large, nor was that ever the intent of the Homeland Security Commission. It was an advisory to the Governor and to have financial overview of the strategies and the Homeland Security Departments. I'm very concerned about how this is written.

Like Dr. Carrison, I strongly urge the Committee to send this to a work group so that some of the folks that are involved with this on a daily basis. People like

Deputy Chief [Michael] McClary, our fire departments, our emergency medical folks, or gentlemen from the Department of Agriculture can get together and work on some of those language bugs.

**Lieutenant Stan Olsen, Executive Director, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department, Las Vegas, Nevada:**

I'd like to state that the Sheriffs' and Chiefs' Association and the Metropolitan Police Department are ready to work with any subcommittee that you will put together.

**Michael McClary, Deputy Chief, Las Vegas Metropolitan Police Department,
Las Vegas, Nevada:**

Based on the recommendations made by both Dr. Carrison and Sheriff Young, I think, without belaboring the point, the proposal to go to a working group is, by far, the best. I would withhold any comments, unless you have something for me, and head that direction.

Stan Olsen:

For the record, Chief [Michael] Mayberry from the Henderson Metropolitan Police Department wanted to be here, but he is sick today and was unable to be present. He also stands with the comments that have been made from Las Vegas.

**Michelle M. Youngs, Public Information Officer, Washoe County Sheriff's Office,
Washoe County, Nevada:**

For the record, on behalf of Dennis Balaam, who could not be here today, we would echo the same sentiments regarding the working group. He would be more than happy to do that. He is a member of the Commission as it is now.

**Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation,
Sparks, Nevada:**

Because of the importance of bio-security and the overall needs of homeland security, we believe that agricultural interests should be included in the representation on the Nevada Homeland Security Commission. By their nature, agricultural practices involve very unique nuances that may not be well understood by those not directly involved in agricultural production. Including an agricultural representative on the Commission will not only connect the food and fiber production industry to the network of homeland security, it will also allow the Homeland Security Commission to use the representative in communications with the agricultural sector of our state. We would look forward to working with the group in trying to figure out a way to do that.

Kent Lauer, Executive Director, Nevada Press Association, Inc., Carson City, Nevada:

We strongly oppose Section 12 of the bill, as the Speaker indicated. He thought it was onerous, and we think it is overkill, too. I just wanted to go on record by saying that we oppose the amendments made in Section 12 of the bill.

Chairman Parks:

The sentiment I hear is for a working group.

Gary Peck, Executive Director, American Civil Liberties Union of Nevada, Las Vegas, Nevada:

We really just have a very focused and particular concern about the openness of the Commission, and I very much appreciate Sheriff Young's comments regarding that issue. We completely concur with him that those meetings should be open to the public. It's not a tactical group; it's an advisory group. If anything, I think you would enhance support for the anti-terrorist activities of law enforcement by sunshining those meetings.

Dale Carrison:

I appreciate Mr. Busselman's concern with regard to agriculture, and just so the Committee is aware, I don't have a week go by that I don't have at least one or two people that are requesting to be on the Commission. If you noted Speaker Perkins' concern, it is the need to reduce the size of the Commission. I would just like to assure everyone that wants to participate in the Commission.

We are certainly utilizing the expertise of numerous members of our communities in the state of Nevada to assist the Nevada Homeland Security Commission in its deliberations and making its decisions, with regard to grant application monies and those areas of concern within the state that need to be addressed for the betterment and the safety of the citizens of Nevada.

It is an open meeting. We are open to people who want to participate and those individuals who have expertise in specific areas, and I think agriculture is an excellent example. I want everyone to know that, as chairman of the Commission, and speaking on behalf of the Commission, all the members want that expertise. But, to have every single entity involved that is vital to our state does, in fact, make the Commission unwieldy and would make the Commission's work impossible. By having working groups share their expertise and come back to the Commission with their recommendations and their specific areas of expertise, I believe we can operate efficiently and do the best job that we can for the state of Nevada.

Chairman Parks:

I appreciate all the work that you've done relative to the Homeland Security effort. If there's no one else who wishes to speak, we'll go ahead and close the hearing on A.B. 233. I don't believe there is anything further to come before the Committee at this time. We will adjourn [at 10:55 a.m.].

RESPECTFULLY SUBMITTED:

Paul Partida
Transcribing Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 29, 2005

Time of Meeting: 8:10 a.m.

Bill	Exhibit	Witness / Agency	Description
	A	*****	Agenda
<u>A.B. 156</u>	B	Russell M. Rowe / American Council of Engineering Companies	Amendments to A.B. 156, 2 pages
<u>A.B. 210</u>	C	Assemblyman Hogan	Testimony, 5 pages
<u>A.B. 210</u>	D	Assemblyman Hogan	U.S. Department of Labor letter to Chairman Parks, March 28, 2005, from Jenny Erwin. 2 pages
<u>A.B. 210</u>	E	E. Louis Overstreet / Urban Chamber of Commerce	Testimony, 2 pages
<u>A.B. 210</u>	F	Bobbie Gang / Nevada Women's Lobby and American Association of University Women	3 pages
<u>A.B. 210</u>	G	Bobbie Gang / Nevada Women's Lobby and American Association of University Women	U.S. Department of Labor, Women's Bureau, letter, 2 pages
<u>A.B. 210</u>	H	Bobbie Gang / Nevada Women's Lobby and American Association of University Women	American Association of University Women, 3 letters, 3 pages
<u>A.B. 210</u>	I	John Madole / Associated General Contractors of America, Inc	Proposed amendments, 2 pages
<u>A.B. 210</u>	J	Ted Olivas, City of Las Vegas, Nevada	Comments, one page
<u>A.B. 233</u>	K	Dr. Dale Carrison, Nevada Homeland Security Commission	Comments and Suggestions, Frank Siracusa, Director, Division of Emergency Management, 5 pages