

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

**Seventy-Fourth Session
May 2, 2007**

The Subcommittee of the Assembly Committee on Commerce and Labor was called to order by Assemblyman Horne at 5:04 p.m., on Wednesday, May 2, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

SUBCOMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblywoman Francis Allen
Assemblyman William Horne

STAFF MEMBERS PRESENT:

Brenda Erdoes, Committee Counsel
Dave Ziegler, Committee Policy Analyst
Judith Coolbaugh, Committee Secretary
Gillis Colgan, Committee Assistant

OTHERS PRESENT:

Keith L. Lee, representing the Nevada State Contractors' Board
Steve Holloway, representing the Associated General Contractors,
Las Vegas Chapter
James Wadhams, representing the Southern Nevada Home Builders
Association



Assemblyman Horne:

This Subcommittee is called to order. Mr. Anderson will be joining us shortly. We are here today to address some issues concerning Senate Bill 279 (1st Reprint).

Senate Bill 279 (1st Reprint): Makes various changes concerning contractors and the State Contractors' Board. (BDR 54-624)

Keith L. Lee, representing the Nevada State Contractors' Board:

The parties have been talking, but we have agreed to disagree. I have submitted an amendment ([Exhibit C](#)). I presented my amendment to Mr. Holloway and Mr. Wadhams, and they presented their amendment to me. I reviewed their amendment with the Executive Director of the Contractors' Board and the Board's president. We cannot agree to their amendment. It is my understanding that Mr. Holloway and Mr. Wadhams do not accept my amendment. We are at "loggerheads."

Assemblyman Horne:

I have your amendment. Is this the only one that is going to be handed out?

Steve Holloway, representing the Associated General Contractors, Las Vegas Chapter:

We have also submitted an amendment ([Exhibit D](#)). It has the agreement of all the concerned parties in the industry except the State Contractors' Board. There are nine associations in favor of this amendment.

Assemblyman Horne:

We will take Mr. Lee's amendment first.

Keith Lee:

I will walk you through the amendment. After this bill was heard at Monday's hearing, I attempted to determine at what point in time a complaint, which is registered with the Contractors' Board against a licensed contractor, should be made public when a public inquiry is made. That is the issue. In my proposed amendment, I have suggested that a formal complaint could be made public if a complaint has been investigated and a finding of probable violation of law or regulations has occurred. If the complaint presents a risk of harm to the public and grounds for possible disciplinary action or criminal prosecution of the licensee are determined, the complaint could be made public. Those are the two areas that need a determination of the time the complaint should be made public. We have also requested a disclaimer that would state the complaint is alleged. Since at that point in time, no proof has been submitted or a determination made that there has been a violation of law or regulation.

Additionally, a complaint resolved in favor of the contractor shall not be disclosed. A complaint resolved against the contractor shall be disclosed, and the Board shall make available to the public the date, nature, and the disposition of all disciplinary actions and citations.

Our intent with this amendment was to establish a point that was short of a formal complaint being filed, but a determination of possible violation had been made following an investigation. During this initial allegation period, an informal attempt is made to resolve the problem. The Contractors' Board notifies the contractor that a complaint has been filed. Then the contractor contacts the party involved and attempts to work out the difficulty. If they cannot find a solution, a site visit is required.

At that point, an investigator is assigned to the case. He notifies the contractor and the complainant that a site visit will be made to examine the problem. Each party is given an opportunity to establish a time for the site visit. When the investigator conducts his investigation, he can determine there is no violation, or he can suggest the parties get together again and resolve the issue. The investigator can offer to mediate the meeting, or he can issue a formal notice to the contractor to correct the problem. As an alternative, the investigator can issue an administrative citation with the penalty being dependent on the severity of the violation. If the problem remains unresolved, the investigator prepares a file for a senior investigator who will make the determination that there is a probable cause that a violation has occurred. The case is then processed for the filing of the formal complaint.

Assemblywoman Allen:

You indicated a complaint is first handled informally. If that is unsuccessful, there is a due process investigation before the Board determines whether or not the case has been resolved in favor or against the contractor. How long is that time period?

Keith Lee:

I cannot answer that question. There are too many factors involved to place a time period on the process. If it requires a site visit, the contractor and the complainant have to agree to a mutually acceptable time for that visit. If a formal notice to correct is issued to the contractor, it is usually a 15- to 20-day period. The informal resolution would probably take about 15 days. When the investigator enters the case, the time period can be extended to five or six weeks.

Assemblywoman Allen:

In Mr. Lee's amendment, section 2(d) 2, subsections (f) and (g) are fine, but the concerns expressed are about the unspecified time period.

[Chairman Anderson arrived and was updated on the testimony that had already been presented.]

Assemblyman Horne:

Mr. Lee has submitted a new amendment to his proposal. We have not heard Mr. Holloway's and Mr. Wadham's objections to this amendment. They have proposed their own amendments, which we have yet to address. Mr. Holloway, have you had an opportunity to review Mr. Lee's proposed amendment?

Steve Holloway:

Yes, we have seen the amendment, and we are prepared to comment on it.

Assemblyman Horne:

What are your concerns about the proposed amendment?

Steve Holloway:

First, the staff at the Contractors' Board has gone back as far as five years to reopen complaints and publish them. They are currently being sued for this practice. That is part of the problem that we are facing. Second, all the other licensing boards in this State require a peer review before information on a complaint can become public. Although we have not had extensive time to complete our research, the first six boards we queried have the language that is in our proposed amendment. The boards we checked with all have a panel of three on their peer review committee. They review the complaint and make a determination of whether or not there is probable cause to make the complaint formal and subject to public review.

Additionally, paragraph 5 of Mr. Lee's amendment is in conflict with the intent of Senate Bill No. 241 of the 72nd Session. Also, Senate Bill No. 241 asks them to serve as mediators when a consumer brings a complaint before the Contractors' Board to resolve the issue. Mr. Lee's new amendment relieves the Contractors' Board of that obligation.

Assemblyman Horne:

Are there any questions? Mr. Wadhams, do you have any comments on the proposed amendment?

James Wadhams, representing the Southern Nevada Home Builders Association:

Our issue with Mr. Lee's amendment is one of fundamental fairness. In the 72nd Session, Senator Carlton chaired a committee to make major revisions to all the licensing board statutes to ensure that all their actions were handled uniformly. The bill resulting from her committee's work was heard by the Assembly Committee on Commerce and Labor. The bill set up a uniform standard for investigations and disposition of complaints for all the licensing boards. The complaints were to be treated as confidential information if the licensing board or agency determined there was probable cause to file a formal complaint for administrative action. Whether the final resolution was by decision or by settlement would also be made confidential.

In *Nevada Revised Statutes* (NRS) 624.327, which is the existing chapter for the State Contractors' Board, Section 1, subsection 1, says a complaint filed is confidential. However, a complaint filed by the Board after the investigation and the determination of probable cause is public information. I have submitted a copy of that portion of the statute for the record ([Exhibit E](#)). There is a clear delineation in the current statute. Addressing fair handling of the complaints and maintaining consistency with the other boards are the concerns we have with Mr. Lee's amendment, so we oppose the adoption of it.

Assemblyman Horne:

In its entirety?

James Wadhams:

Yes.

Assemblyman Horne:

Are there any questions?

Chairman Anderson:

I want to find some common ground so we can move this bill forward. If a homeowner has a problem and tries to find resolution by working with the contractor, frequently the contractor is told not to admit to or fix the problem because he will lose his insurance. Mr. Holloway, is that why you are concerned that the complaints will be disclosed?

Steve Holloway:

No, that is not our concern. If the problem has been investigated and the Board has indicated the contractor is at fault and should be subject to disciplinary action, our amendment does not prohibit that information being made public. If it is a single homeowner's complaint, most of our contractors will repair the problem if they are at fault. It is the class-action suits that are creating the

particular problem Mr. Anderson described. In these cases the insurance companies tell the contractor they cannot settle the dispute by repairing the problem because it could be construed as an admission of guilt. Our surveys show that if the ten or fewer homeowners have a particular problem, it is generally repaired. Does that answer your question?

[Chairman Anderson did not negate or affirm the answer. Mr. Lee was called to testify. These actions were completed as an aside and were not officially recorded.]

Keith Lee:

It is not our intent in subsection 5 to interfere with or prevent the right to repair as granted by statute, or to negate the Board's role as a mediator in the dispute. Subsection 5 in our amendment is to address the allegation period. We are saying a complaint during this period is not a reportable event. That is the point of having an initial complaint process. The parties are instructed to get together within 15 days and work to resolve the problem. The Board would not be involved in this part of the process at all except to be informed of the outcome. If the problem has not been resolved, then the official investigation begins. We are not trying to abnegate any of the Board's responsibilities or change any of the provisions of bills passed in previous sessions. Our amendment would simply put into writing the process used in the initial, or allegation, time period of the complaint. The content of those complaints is not public information until after formal adjudication.

James Wadhams:

There are two issues. One has to do with the process the Board engages in when it receives an inquiry or a complaint. That in part is addressed in subsection 5. We need to be careful that we do not interfere with the right to repair a problem. The more important question is the fundamental fairness of assuming guilt by innuendo. This Legislature has made an effort in the past to prevent the creation of a public repository of complaints that may or may not be proven. The current law in NRS 624.327 is simple, succinct, and fair. We oppose changing that standard. As it stands, the records that would become public are those records of disciplinary actions filed by the Board. The language in Mr. Lee's proposed amendment says complaints filed with the Board. It is too broad, and leaves open the possibility of guilt by innuendo.

Assemblyman Horne:

Mr. Holloway stated that subsection 5 of Mr. Lee's proposed amendment changes Senate Bill No. 241 of the 72nd Session. Is that correct?

Steve Holloway:

Yes, it does. The proposal would not require the Board to engage in any action when a complaint is filed. In the 72nd Session bill, the Board is required to mediate the complaint.

Assemblyman Horne:

The amendment says, "The board may develop and institute programs to assist in the resolution of disputes...." Later, in the proposed subsection 5 it says, "...shall notify the licensed contractor in an alleged dispute...." It further states, "...the Board shall give the contractor at least fifteen calendar days...." Also, the Board "...shall notify the contractor and the complainant in writing of the resolution within five days."

Steve Holloway:

The existing language in statute says the Board will also investigate the complaint and speak to the homeowner verifying that the problem is, in fact, a construction defect. The Board could also intervene on behalf of the homeowner and ask the contractor to repair the problem. That is what was envisioned with the legislation passed in the 72nd Session. The current language implies that responsibility. The language suggested in Mr. Lee's proposed amendment removes that responsibility.

Assemblyman Horne:

You are referring to the first sentence that I read. Is that correct?

Steve Holloway:

Yes. I do not have the current statutory language with me, but this amendment would change the language by removing a sentence or two.

Chairman Anderson:

If a homeowner is not satisfied with the repair made by the contractor, his next alternative is to go to the Contractors' Board. I was under the impression we are trying to avoid having the homeowner go through the legal process.

Steve Holloway:

The most common scenario is for the contractor to make the repair.

Chairman Anderson:

When the complaint gets to the Board, it attempts to bring resolution to the problem. How does Mr. Lee's proposed amendment prevent that scenario from happening?

Steve Holloway:

The proposed amendment, subsection 5, requires the Board only to inform the contractor of the complaint then leaves it to the contractor to resolve the issue. The Board is not required to mediate the dispute.

Keith Lee:

The intent of subsection 5 was to put into statute the present Board procedures for processing an initial complaint. It is an attempt to get the two sides together to resolve the issue before it ripens into something that will involve an investigation. The Board is not attempting to evade the construction defect problems. Subsection 5 can be removed.

Assemblyman Horne:

We have a proposal to remove subsection 5. We are going to move to the second proposed amendment. It was submitted by Mr. Holloway and Mr. Wadhams.

James Wadhams:

Our primary concern is the finding of guilt by innuendo. The existing law is adequate. If an amendment is required to restate NRS 624.327, we offer the language in our proposed amendment. This amendment will establish that probable cause has to be determined before a complaint can become public. It is this element in Mr. Lee's proposed amendment that is the most troublesome to us.

Assemblyman Horne:

I understand your opposition to the Contractors' Board amendment and why you are opposed to it.

James Wadhams:

The pertinent part of the amendment is in the middle of the page in subsections 1 and 2. This language describes the process an investigating subcommittee of the Contractors' Board will use to review each complaint. It instructs them to conduct an investigation to determine if there is a reasonable basis for the complaint. The subcommittee can have a contractor appear if it determines there is probable cause for the complaint. If a violation has occurred, the subcommittee may file a formal complaint. It is the registry of these formal complaints that can be made public. We are making a distinction between random allegations and those allegations which do have probable cause.

Assemblyman Horne:

Your amendment will supplement and clarify the proposed direction the Contractors' Board should take when processing a complaint. Is that correct?

James Wadhams:

Yes, it is.

Assemblyman Horne:

This bill was sent over from the Senate without the proposed amendment by the Contractors' Board. Is that correct, Mr. Lee?

Keith Lee:

Yes, that is correct. Similar language to our amendment was in the initial bill, and it was removed by a Senate amendment.

Assemblyman Horne:

What would happen if we did nothing except pass this bill out in the form it was sent over to us by the Senate? We would make no recommendations on either of these amendments presented today.

Keith Lee:

We would be back to the way the law is now.

Assemblyman Horne:

When I review your proposed amendment and evaluate the valid concerns of Mr. Holloway and Mr. Wadhams, the issue becomes muddled. I agree with their concern about which complaints will be made public.

Keith Lee:

I would withdraw my amendment if the other amendment was also withdrawn.

James Wadhams:

If Mr. Lee's amendment is withdrawn, we will withdraw ours. The language that exists in the law clearly addresses this issue.

Assemblyman Horne:

Do the other subcommittee members have any thoughts on the proposal?

Chairman Anderson:

You are suggesting that we accept the first reprint of the bill.

Keith Lee:

With the exception of our differences over this particular section, we were in agreement with the rest of the bill.

Steve Holloway:

We would support that proposal and accept the bill as it was sent over from the Senate.

Chairman Anderson:

Since our existing statutes require the various boards and commissions to submit regular reviews to the Legislative Commission showing the number of complaints that are filed, will there be a time conflict in the submission of the claims reported to the Contractors' Board?

Brenda Erdoes, Committee Counsel:

There will not be a conflict. However, without a reporting period designated in this bill, the Legislative Commission will be receiving a lot of reports.

Keith Lee:

If we go forward with the first reprint of the bill, it will be essentially the way the law was. Whatever complaint reports received in the past by the Legislative Commission would continue to be received.

Chairman Anderson:

Currently, the Legislative Commission receives from boards and commissions a regular quarterly report showing the number of complaints filed and the number of license violations. The reports also indicate the disposition of those cases, the date they were initially filed, and the time period to arrive at resolution. The reports do not require the listing of the participants' names. However, that information is often available on the websites of the separate agencies. We all understand that we are not taking away the ability of the boards and commissions to maintain their website information. Is that agreed to by all parties?

Keith Lee:

Yes, we agree.

Steve Holloway:

Yes, we agree.

James Wadhams:

Yes, we agree.

Keith Lee:

I need to draw your attention to another item. On page 4, there are still two \$500 amounts that were changed to \$1,000 on page 3 of the bill. I do not

know if those figures need to be changed to be compatible with the figure on page 3.

Chairman Anderson:

Can you be more specific?

Keith Lee:

The figures are on page 4, lines 2 and 3 are \$500. However, the figure on page 3, line 27 is \$1,000. I do not know if this figure also needs to be changed.

Assemblyman Horne:

Ms. Erdoes, can you comment on that?

Brenda Erdoes:

The figures do not conflict because they are for different items. The figures on page 4 refer to work performed as a part of a larger project.

Keith Lee:

Forget I asked that question.

Assemblyman Horne:

The subcommittee's recommendation should be to drop all proposed amendments.

Chairman Anderson:

The issues are resolved. I have a letter from Ms. Donna Perez who chose not to testify today, but she requested it be made part of the record ([Exhibit F](#)). Our recommendation to the Assembly Commerce and Labor Committee will be all parties agreed that all amendments will be withdrawn, and the bill is recommended for Do Pass.

Assemblyman Horne:

We are adjourned at 5:50 p.m.

RESPECTFULLY SUBMITTED:

Judith Coolbaugh
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: May 2, 2007

Time of Meeting: 5:04 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
SB 279 (R1)	C	Keith Lee, Nevada State Contractors' Board	Proposed Amendment
SB 279 (R1)	D	Steve Holloway, Associated General Contractors, Las Vegas Chapter	Proposed Amendment
SB 279 (R1)	E	James Wadhams, Southern Nevada Home Builders Association	Copy of Partial Statute Language
SB 279 (R1)	F	Donna Perez, Private Citizen, Las Vegas, Nevada	Letter