

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

**Seventy-Fourth Session  
February 14, 2007**

The Committee on Commerce and Labor was called to order by Chair John Ocegüera at 1:58 p.m., on Wednesday, February 14, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Mr. John Ocegüera, Chair  
Mr. Marcus Conklin, Vice Chair  
Ms. Francis Allen  
Mr. Bernie Anderson  
Mr. Morse Arberry Jr.  
Mr. Chad Christensen  
Mrs. Heidi S. Gansert  
Mr. William Horne  
Mrs. Marilyn Kirkpatrick  
Dr. Garn Mabey, M.D.  
Mr. Mark Manendo  
Mr. David R. Parks  
Mr. James Settelmeyer

**COMMITTEE MEMBERS ABSENT:**

Ms. Barbara E. Buckley (Excused)



**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

James Oscarson, President, Nevada State Board of Podiatry  
Joseph Turco, Public Advocate, American Civil Liberties Union of Nevada (ACLU)  
Wanda Lopshire, Jury Commissioner, Second Judicial District Court, Washoe County  
Kathy A. Hardcastle, Chief Judge, Eighth Judicial District Court, Clark County  
Judith Stokey, representing Nevada Power and Sierra Pacific Power Company  
James Sala, Senior Representative/Political Director, Southwest Regional Council of Carpenters  
Keith L. Lee, Counselor at Law, State Contractors' Board  
Madelyn Shipman, representing the Southern Nevada Homebuilders Association (SNHA)  
Trevor Hayes, Attorney at Law, representing the Molasky Companies and Paradise Developing Company  
Dylan Shaver, Vice President, Government Relations, AMS, representing the Sheet Metal and Air Conditioning Contractors National Association, Mechanical Contractors Association, National Electrical Association, and the Association of Pool and Spa Professionals  
Gary Milliken, Government Relations/Public Affairs, GEM Consulting, representing the Las Vegas Chapter of the Associated General Contractors  
Patrick T. Sanderson, representing Laborers' International Union, Local 872

**Chair Ocegüera:**

[Roll called.] We are opening the hearing on Assembly Bill 41.

**Assembly Bill 41:** Revises provisions governing licenses to practice podiatry.  
(BDR 54-631)

**James Oscarson, President, Nevada State Board of Podiatry:**

I have submitted a proposed amendment to A.B. 41 ([Exhibit C](#)). This bill cleans up some of the original language, and requests an increase in our fees to cover the cost of our testing procedures. We are currently absorbing \$200 in additional costs for each test administered. The fee increase will just cover the actual costs of the testing process.

The other change is the five-year time period. Currently, we require podiatric physicians, coming to Nevada to practice, to take the test, regardless of whether or not they have just completed it in another state. We wish to change the policy to be in line with other states. Their policy states if the test has been taken within the last five years, it does not have to be taken again.

The other purpose of the proposed amendment is to ensure podiatric physicians are reimbursed at the same rate as other professionals. Currently, chiropractic physicians have their rates covered by statute. We took that approved language and applied it to podiatric physicians.

**Assemblyman Horne:**

I have a question about page 3, lines 2 through 4, where it says, "within the 5 years immediately preceding the date of his application for a license to practice podiatry." Is that in all cases?

**Mr. Oscarson:**

Yes, that is correct. The Board is proposing that the exam be valid for five years. If that time has expired, the podiatrists would have to re-take the test to practice in the State of Nevada.

**Assemblyman Horne:**

Is the time period five years on a national level?

**Mr. Oscarson:**

No, I think you are correct in the way you are reading the language. There is no reciprocity in the State of Nevada. We are trying to create a standard. It is a national exam. Some states administer the test every year, some every ten years. There are regulations in many states that limit the amount of time before the test needs to be re-taken. Some states, such as Utah, administer oral examinations. Right now, the burden is on new graduates. For example, if they take the test in Virginia, and then come to Nevada, we require them to take the test again. We are trying to make it more conducive for podiatrists to come here and practice. They have to take the test within a five-year period. Did I answer your question?

**Assemblyman Horne:**

Yes, thank you.

**Assemblyman Settlemeyer:**

How many podiatrists are currently practicing in the State of Nevada? Have you had the opportunity to talk to any of them about the proposed fee increase?

**Mr. Oscarson:**

The Board was requested to seek out the counsel of its peers to determine whether there was any opposition to the fee increase. I want to make it clear that we are not raising the fee to \$1,500. We are increasing the fee to cover the cost of the testing procedure. Because of existing statutes, we have a top limit on the amount of fee we can charge, which leaves us a \$200 shortfall every time the test is administered. I submitted a fiscal note to the budget office. I would like to read one short paragraph from that note.

**Assemblyman Settlemeyer:**

That request is up to the Chair.

**Chair Ocegüera:**

Go ahead.

**Mr. Oscarson:**

All costs to applicants associated with the testing process reflect what the Board is charged and no additional funds are realized by the Board. The Nevada State Board of Podiatry has requested this fee increase to cover the cost of administering testing to qualified applicants. The fee increase will allow the Board the ability to raise fees if the cost for testing increases.

Does that answer your question?

**Assemblyman Settlemeyer:**

Somewhat. How many podiatrists are in the State?

**Mr. Oscarson:**

There are 122 podiatrists in the State.

**Assemblyman Arberry:**

Have you talked to the Governor's office about raising the fees? Do you have a letter or something stating that the Governor will not veto this bill, if we pass it over?

**Mr. Oscarson:**

I do not. I did receive a call early on from the Governor's office requesting an explanation of why we need a fee increase. I spoke with a representative of that office and stated the fee increase was necessary to cover the cost of the testing process. My answer seemed amenable to the representative. I have not heard anything else from them.

**Assemblyman Arberry:**

Can you have them provide a letter, that you can share with us, that says it is okay to raise the fee?

**Mr. Oscarson:**

I would be happy to do that.

**Chair Ocegüera:**

Are there any other questions?

**Assemblyman Mabey:**

I am a physician, and I have passed all three parts of the boards. Having completed that process, I never have to take my board exams again. My question is, if a physician passed the boards ten years ago, and then moves to Nevada to practice podiatry, would he have to re-take the national boards?

**Mr. Oscarson:**

Yes, that is correct. He would have to re-take the tests.

**Assemblyman Mabey:**

Personally, I think that would be onerous to require a physician re-take the boards. Can you tell me why you want him to re-take the boards?

**Mr. Oscarson:**

The Board believes there needs to be a process in place to certify that a physician coming from another state has the ability and meets the criteria to practice in the State of Nevada. The intent of the legislation is to protect the residents of the State, and to ensure physicians are still competent to practice their trade.

**Assemblyman Mabey:**

My concern is that it will make it more difficult for a podiatrist to move his practice to Nevada. Personally, I do not like this provision.

**Mr. Oscarson:**

To this point, we have had no complaints from physicians about re-taking the test. The reason we are requesting a five-year period, instead of a one-year period, is to assist new physicians coming to practice in Nevada. We are trying to streamline the process.

**Chair Ocegüera:**

We have a couple of issues here. Some Committee members have expressed their concerns about the bill, and we need an answer to the question posed by Mr. Arberry.

Also, I am looking at a provision in our Joint Standing Rules, Rule No. 18, under topics for consideration. Your amendment discusses individual, group, and blanket health insurance. Rule No. 18 states there are six items the Committee needs to know regarding this topic. I will briefly paraphrase the information requested. We need to know the level of public demand for treatment; the extent of coverage for treatment and services currently available; the effect the required coverage will have on the cost of obtaining the policy; and many other questions that need to be answered and discussed. At this point, I am going to close the hearing, because we need the answers to those questions. If you will contact my office, or the office of Commerce and Labor, we will provide you with a copy of the Joint Standing Rules. When we have the answers, we can consider the bill again.

**Mr. Oscarson:**

Mr. Arberry wanted a letter from the Governor's office, is that correct?

**Chair Ocegüera:**

Yes, that is correct.

**Mr. Oscarson:**

I will get the information from your office, and I will provide you with the answers to all the questions. Will you then be able to re-schedule me for another appearance before the Committee?

**Chair Ocegüera:**

We may be able to cover the issues in a work session. I am closing the hearing on A.B. 41, and opening the hearing on Assembly Bill 43.

**Assembly Bill 43: Requires public utilities in larger counties to provide a list of customers for use in the selection of jurors. (BDR 58-651)**

**Joseph Turco, Public Advocate, American Civil Liberties Union of Nevada (ACLU):**

I have tried a couple of cases in my career, and it is a laudable goal to do whatever we can to extend the jury pool. This is an example of a situation in which the ACLU sees competing principles. The privacy issues generated by this bill raise a red flag. Before a private utility company releases private information to the government, it needs to establish exactly what that information will be. Also, will the rate payers who pay their bills have access to that information? There are hundreds of examples of private information being given to the government, and then that information is used for a different purpose than what was originally intended. Safeguards have to be established for unauthorized disclosure of that information. Also, have other sources for that information been considered as alternatives? There are significant and more effective ways to extend the jury pool.

**Chair Oceguera:**

Mr. Turco, are you testifying in opposition to the bill?

**Mr. Turco:**

Forgive me.

**Chair Oceguera:**

That is okay. I do not see anyone testifying in favor of the bill, so we will move to the opposition. I just wanted to clarify that you are testifying against the bill.

**Mr. Turco:**

I will continue. Are rate payers notified that their information is being given to the government? Is there any relief to a rate payer if their information is used in an unauthorized way? Is there a periodic review of the program to ensure the information is being used for its original purpose and no other? These are serious questions. Privacy is nearly sacrosanct in America. It is an important civil right. Things can creep along and then something, which initially appeared benign, can intrude upon our individual privacy. That is my concern, and I apologize for "jumping the gun." I will answer any questions. I am fortunate to work for a national organization that has many resources and experts, especially in the area of privacy, and I offer the assistance of the ACLU in refining the language of the bill.

**Chair Oceguela:**

Are there any questions?

**Assemblywoman Allen:**

This morning in the Judiciary Committee we heard, in depth, a bill on juries and jury selection. Should this bill be rereferred to Judiciary, if we hear other matters on jury selection in discussing it?

**Chair Oceguela:**

No. This bill was requested by the Supreme Court. They were confirmed for appearance at this hearing today, so we are checking with them.

**Assemblyman Horne:**

I have a question for the opposition to the bill. Since this bill would not be providing any more information than what jury pools get from other sources—namely, name and address—what is the problem? For example, we give our names and addresses to the Department of Motor Vehicles (DMV). What protections are going to be lost, if we get the same information from the utility companies?

**Mr. Turco:**

The ACLU was 100 percent behind the motor voter bill. As a matter of fact, that is a great alternative to this request. When a private company gives information, even if it is just a name and address, a trend is started that is worrisome to defenders of the Constitution, and privacy. You raise a good point. Maybe the Jury Commissioner should get names and addresses from the DMV. That method would be vastly superior to getting the information from the public utility company. If the goal is to widen the jury pool, the DMV is an alternative that does not involve private transaction information being sent to the government. Does that answer your question?

**Assemblyman Horne:**

Yes, thank you.

**Chair Oceguela:**

For the edification of the committee, we are looking for Judge Hardcastle to testify. While we are waiting, I would like to call upon the Jury Commissioner, who is present, to testify. We are hearing from the opposition first, and then we will hear from those in favor of the bill.



**Wanda Lopshire, Jury Commissioner, Second Judicial District Court, Washoe County:**

I apologize for the confusion. I was not advised that I would be presenting this bill. I came to speak on behalf of the Second and the Eighth Judicial District Courts. As a former member of the Justice Commission on Jury Improvement, I did author the section on the use of multiple jury lists. I would be more than happy to speak on the privacy issues, and how we derive our lists. I can also testify to the importance of having a variety of lists to choose from.

When the Commission was assembled, we studied all aspects of juries. One of our main topics was jury source lists. It is difficult to get jurors and names of prospective jurors. We came across a wide variety of lists that were being used. Welfare rolls are used in New York City. Some small states and counties use the lists from the hunting and fishing license divisions. There are some inventive ways of getting names into your master jury pool. In Washoe County, we use the DMV and the Registrar of Voters. We merge those lists. Clark County does the same thing. At the federal court level, they only use the voter rolls.

Our goal on the Commission was to make sure we were representing a broad spectrum of the population to get a reasonable amount of prospective jurors. American Bar Association (ABA) standards set 80 percent of your population as an achievable goal, and a necessary one, to maintain a wide variety in your master jury pool.

I will speak on the confidentiality issue. We do not give out confidential information. DMV and voter registration rolls only go to our office. Other than name and address, we also need some information for administrative purposes, such as Social Security numbers, which we use to pay jurors for their service. We must have that information, but we do not divulge it. The only information we do divulge is name, address, occupation, and spousal occupation. That is in Washoe County. Clark County does not follow those same guidelines. The lists used throughout the country, ranked in usage order, are: (1) DMV records, (2) voter registration rolls, and (3) utility company customers. I would be happy to answer any questions.

**Chair Ocegüera:**

Are there any questions for the Jury Commissioner? Judge Hardcastle, we have already heard from the opposition to the bill, and now we are going to the proponents' side.

**Kathy A. Hardcastle, Chief Judge, Eighth Judicial District Court, Clark County:**

This bill was submitted on behalf of the Eighth Judicial District Court in Clark County. We are the only county not allowed access to the lists of utility companies' customers to expand our prospective juror list. We are requesting that we be allowed to do this to broaden our master jury pool in Clark County.

At this time, the utility companies' lists are one of the best available sources to enable us to update information, such as current addresses of our jurors. People who move have existing addresses on file with the utility company, because they had to have power. They are not always good about changing their address with the DMV, or changing it on some of our other lists. For this reason, we are asking for support and passage of this bill.

**Chair Ocegueda:**

Are there any questions?

**Assemblyman Mabey:**

How do you determine the person is a citizen? I assume you have to be a citizen to sit on a jury.

**Ms. Hardcastle:**

Once they are summoned for jury duty, they fill out a provided questionnaire. Citizenship is one of the questions they are asked to answer.

**Assemblywoman Allen:**

It was stated earlier that it is important to have multiple lists, and that is why they need to go to the public utility companies for their customer lists. What is the intent of having that list? Is it to obtain correct addresses? We do not know whether or not a power company customer in Clark County is a permanent resident of that county. They could own a second home there.

**Ms. Hardcastle:**

We want to be able to include as many Clark County citizens as possible in our jury pool. Then we would have some assurance that we have a true representation of our population serving on jury duty. We require a jury of peers to determine the outcome of cases that go before the courts. By having multiple lists, we can better accomplish that goal.

**Assemblywoman Allen:**

So the lists are not just for address corrections.

**Ms. Hardcastle:**

No. There are some people who have power, but they do not have driver's licenses.

**Assemblyman Anderson:**

Does this increase the likelihood of a person serving on a jury, because their name would appear on multiple lists?

**Ms. Hardcastle:**

No, it does not increase your service. We do not list the name five times, because we use five different lists. We pull names from the five different lists. The lists are checked to compare names, and the information is merged into one master list. Therefore, prospective jurors appear on the list only once.

**Assemblyman Anderson:**

Do you cross-check to make sure duplication is not taking place? I ask this because there might be slight changes in the first name, such as a nickname, that is used on one list, and a proper name is used on another.

**Ms. Hardcastle:**

Occasionally, we do experience some confusion with the names. Sometimes, a father will report for jury duty, rather than the son, because the son might be a junior or a third, and not identified as such on one of the lists used. To prevent this from happening, we also do a comparison of birth dates.

**Assemblyman Anderson:**

There is a supposition that people do not register to vote, because they are afraid of jury duty. Is that an issue? Do you have any anecdotal information that might support that supposition?

**Ms. Hardcastle:**

I have not heard of that, but, perhaps, the Washoe County Jury Commissioner can respond to that.

**Ms. Lopshire:**

Yes, anecdotally, that has been the case in recent past in Washoe County. When I wanted to expand our jury pool, I spoke to the Registrar of Voters, and he said they have not heard the rumor. It was an urban legend that kept multiplying. He stated he was behind jury service 100 percent, and happy to provide us with the list of registered voters. Personally, I have never heard anyone say, "I am not going to register to vote, because I might get jury duty."

**Assemblyman Conklin:**

I am curious. Drivers' licenses do not get renewed or updated very often, even if people move. The same is true of voter registration rolls. Many of the people on this Committee know that, because we walk our districts every other year or every year. A utility address is relatively accurate. When we originally put the language in this bill saying, "In a county whose population is 400,000 or more," did you see a spike in the number of people available for jury duty? In the past, the notice might have been returned because of a wrong address.

**Ms. Hardcastle:**

We do not have access to the public utility customer lists in Clark County. That is why we are seeking the passage of this bill.

**Assemblyman Conklin:**

So, I am reading this bill in reverse. All the other counties have access to the public utility customer lists. Is that correct?

**Ms. Hardcastle:**

Yes, that is correct. I am not sure what the rationale was behind the prior bill that excluded Clark County.

**Assemblyman Anderson:**

Why are telephone company customer lists not used?

**Ms. Hardcastle:**

Since we have so many telephone companies, you would have to go to all of them to obtain their customer lists. However, everyone in Nevada uses one power company.

**Judith Stokey, representing Nevada Power and Sierra Pacific Power Company:**

We are neutral on this bill. We do have a large customer base, and we do protect customer information. We understand the sensitivity of that information. Also, we understand the need to have a large jury pool. Our concern is that any cost associated with compiling that information would not be borne by our rate payers.

**Chair Ocegueda:**

Do you have a history on why Clark County has been excluded access to the power company customer lists?

**Ms. Stokey:**

I do not know the history, but I can look into it.

**Chair Ocegüera:**

We have people to do that.

**Assemblywoman Allen:**

I have one quick question for Legal. There is no fiscal note on this bill, but expenses might be incurred by the individual power companies. How does the State go about funding this program?

**Brenda Erdoes, Committee Counsel:**

There is nothing in this bill at the present time that says the State will reimburse the costs incurred by the utility companies in complying with this bill. If you want to add that component to the bill, it could be done. At that point, there would be a fiscal note indicating the payment of the costs.

**Chair Ocegüera:**

I am reading in Section 1, subsection 2, the part that says, "The court or jury commissioner who requests the list of customers, shall reimburse the public utility for the reasonable cost of compiling the list."

**Ms. Erdoes:**

You are absolutely right. It looks to me that this bill will require a fiscal note, because I do not see the source of payment mentioned in the bill.

**Ms. Stokey:**

We have looked at the costs of compiling internal lists, and it is not a huge expense.

**Ms. Hardcastle:**

The cost related to jury services is the cost borne by the county. We do pay for these lists, and the county budget provides for payment. Currently, in Washoe County, the DMV list costs \$500, and it is paid by the county.

**Chair Ocegüera:**

Are there any questions?

**Assemblyman Horne:**

We do have the fiscal note in the county information.

**Chair Ocegüera:**

We have the fiscal note issue straightened out. Anyone else wishing to testify? I do not see anyone, so I am closing the hearing on A.B. 43, and opening the hearing on Assembly Bill 56.

**Assembly Bill 56: Provides for the suspension or revocation of a contractor's license for certain offenses. (BDR 54-880)**

**James Sala, Senior Representative/Political Director, Southwest Regional Council of Carpenters:**

We have submitted an amendment to this bill ([Exhibit D](#)). Also, we have included a brief packet of information ([Exhibit E](#)), and an article ([Exhibit F](#)). I would like to briefly review the changes the amendment will make to the bill. In Section 1 of *Nevada Revised Statutes* (NRS) 624.300, it was not our intent in the draft to delete the reference to subsection 3 of NRS 624.3015. In addition to this amendment, we need to include the reference to subsection 6, which is the part of our amendment shown in green at the bottom of the page.

The other parts of our amendment that differ from the bill deal with Section 2 of NRS 624.3015. We met with a lot of interested parties in developing this draft. It was not our intention, but when subsection 3 of the bill came out of drafting, a concern was expressed about people who were bidding outside the scope of their license, or in excess of their license limit, and then having their license suspended. We believe that issue is more appropriately dealt with by the Contractors' Board with administrative fines, and other penalties that they have the authority to levy. Therefore, we moved that portion of the sentence in Section 3 down to the bottom of Section 2, and created a new subsection 6 for it.

The purpose of our new language in blue is fairly simple. Right now, although the Contractors' Board has the authority to take these actions, they rarely exercise their right to invoke suspension or revocation of a license. Therefore, we wanted to specifically deal with the issue of contractors who subcontract to, or independently contract to, persons who do not have a license to contract.

We are recommending a new Section 6 in NRS 624.300 that will spell out the penalties to be imposed by the Board. The first offense would be a six-month suspension; the second offense would be suspension for a year; and, the third offense would be revocation of the license. We left in the language that states the person "knowingly" entered into a contract with a contractor who was not licensed.

Why is this issue important, and why have we brought it before you today? The issue of the "underground economy" or the "cash economy" has become a national epidemic in the construction industry. It includes using 1099 forms, independent contractors, and unlicensed contractors. Every year federal and state government agencies are losing hundreds of millions of dollars to this industry scam. It is not only a construction industry problem, but it also affects

consumers, taxpayers, responsible licensed contractors, workers, and even elected officials.

What is an independent contractor? In the construction industry, it is the illegal practice of a legitimate contractor forcing employees to say they are independent contractors. This means that employees are responsible for their own payroll, business license, workers' compensation, unemployment insurance, federal and Social Security taxes, and in Nevada, a contractor's license. In Nevada, this practice is illegal. You have to be a licensed contractor to do contracting in Nevada.

In many segments of the industry, especially light commercial, tenant improvement, and residential projects, the practice of contracting with independent contractors, or paying cash, is quite prevalent. In an industry study our staff did in 2004, we found almost 50 percent of residential drywall companies violating federal and state laws relating to taxes, unemployment and workers' compensation insurance. There is currently a joint federal and State investigation team prosecuting 21 of these residential drywall companies. Some of them have already gone out of business. These contractors deserve more than just a fine, and we believe this bill is a good start.

This issue has become such a national problem that there is coordination among Attorney Generals in several states. They are moving for criminal prosecutions of the most egregious violators. Our immediate concern is how to make sure that the situation does not become more widespread in Nevada than it already is. We are surrounded by states that have no real licensing, or very lax enforcement of their licensing requirements; we have a growing work force that is ripe for exploitation; and, we have new contractors coming to Nevada who are not aware of our contracting laws.

In the 2006 newspaper article ([Exhibit F](#)), it describes an investigation that Channel 8 did on unlicensed contractors. They reported that 500 people were found to be contracting without a license. Based on our research, and from what we can ascertain, only a handful of those people were penalized by more than a small fine and a "do not do it again" slap on the wrist. In cases we could find, we found that the Contractors' Board prosecuted about 60 cases under NRS 624.3015, which was about 10 percent of the potential violators. Only 20 of those people prosecuted had their licenses suspended or revoked. Most get off with a minimal administrative fine. In the last few years, we have seen 45 administrative fines totaling \$30,000. That is an average of \$700 per violator. This is not going to deter the problem. As a matter of fact, it is quite a bargain. For the amount of work they get and the amount of money saved by not paying their taxes, it is the best gamble in Nevada.

On page 2 of the news article, the two people in the story who were hit by the sting, and who clearly and knowingly violated the law, were penalized as follows. One received a \$226 fine, which indicates the fine would be dismissed if he obtained his license. Why he would be allowed to get a license after that type of violation, I am not sure. The other person received a \$344 fine. This practice of contracting to unlicensed contractors and independent contractors undermines the contractors who are operating legally. Also, it exploits workers and their families. It cheats our State and burdens our taxpayers.

A 2004 Harvard Study, in Massachusetts, concluded that one in every seven workers was misclassified as an independent contractor. This illegal practice cost the State of Massachusetts \$7 million a year in workers' compensation premiums; \$4 million a year in payroll taxes; and, \$4 million a year in unemployment insurance payments.

There is a real value to having licensed and qualified contractors. The workmanship, the safety, the knowledge, and the reliability of the industry help owners, consumers, and homeowners. I do not believe there is any need to repeat the horror stories you have heard in previous sessions from homeowners, when unlicensed contractors work on their homes.

This bill puts the burden on the violating contractors. If they engage in this practice knowingly, their license will be the one in jeopardy. I need to point out that there is a negligible fiscal impact. In fact, we have not been able to determine any, since the Contractors' Board already has the authority to do this, and they have the enforcement personnel in place. In some ways, this bill may actually streamline the process once people find out this is what is going to happen to them if they are caught. There is no "wiggle" room. These contractors are a minority in the overall contracting industry, but it is this minority that takes up a great deal of the Contractors' Board time. They are the engine of this "underground" economy. This bill does not place any undue burden on the contractor.

Some of the people we talked to expressed a concern about whether or not they would be able to find out if someone is a licensed contractor. The Contractors' Board has a very good website. Licensed contractors are listed by principal name, by license number, and by the company name. You can determine what their scope is and their license limitations. Or, you can call the Contractors' Board, and they will tell you.

I urge the Committee to pass this bill, and put some mandatory "teeth" into this statute. Then, this problem may be dealt with. You may hear from people who will be forthcoming with their comments, and we appreciate their concerns.



Some people have indicated they would like to keep the status quo. However, from the numbers you see in those articles, from the studies we have seen, and from our personal knowledge, the status quo is not addressing the problem. Carpenters come into our hall by the hundreds each month, but they cannot prove any work experience, because they do not have any payroll or W-2 records. They were paid cash.

I would like to add that Danny Thompson wanted me to indicate to you that he would be here to testify. He is in full support of the bill with the amendments that we have offered.

**Assemblyman Horne:**

Are there disciplinary provisions for those who violate the suspension of their license? They are on suspension, and then they are caught doing contracting work. To me, it seems like a violation of suspension should be a revocable license offense.

**Mr. Sala:**

I will not disagree with you. There are two things I should point out to the Committee. The first is, if your license is suspended, you are allowed to finish the work that you already had in progress. You are not allowed to bid on new jobs during the suspension period. Secondly, in your example, further disciplinary action would be at the discretion of the Contractors' Board. Sometimes it is a revocable offense; sometimes it is not.

**Chair Ocegüera:**

Are there any other questions? Does anyone else wish to testify in favor of the bill? Not seeing any, we will move to the opposition.

**Keith L. Lee, Counselor at Law, State Contractors' Board:**

We are here in opposition to the proposed amendment to the present law. I have talked with Mr. Sala, and I have shared our concerns with him. We have a proposed amendment that we would like to submit to the Committee ([Exhibit G](#)). We are proposing that the Contractors' Board maintain the discretion it has in determining the punishment to impose on someone who violates the law by entering into a contract with someone who is not a licensed contractor.

In the last three years, the Board has had 63 disciplinary actions against contractors who have violated this provision. Nineteen of those went to a hearing. Eleven had their licenses suspended. Two people voluntarily surrendered their licenses, and the other five were given fines. The balance of the violators received administrative fines totaling \$30,875. We concur with

Mr. Sala that contractors should not contract with unlicensed contractors. There are two issues. First, the Board has to know about the violation. Second, it is important that we maintain the Board's discretion in determining if there are any mitigating or extenuating circumstances in the commission of the offense, and to determine how much the extent of circumstances would affect the penalty imposed.

Anecdotally, I can give an example of a particular contractor. He had an ill wife at home, and had entered into a contract with an unlicensed person to pull some permits on various jobs, and start the work. The Board brought the person in, and he had an administrative hearing. Under the circumstances, a fine was imposed, but his license was not suspended. If the Board had no discretion, and it was required to suspend his license, the person would have been put out of business for the six-month period, which would have made it impossible for him to care for his family.

I will indicate that Mr. Sala correctly answered Assemblyman Horne's question. If a contractor is under suspension, they cannot contract for a new job. However, if a job is in progress, the contractor can and should finish that job. I would be happy to answer any questions.

**Assemblyman Horne:**

In Mr. Sala's response to my question, he stated that sometimes the license is revoked after the violation of a suspension, and sometimes it is not. Can you give me an example that illustrates why, if someone already has a suspended license, their license would not be revoked? Because it is a brand new job?

**Mr. Lee:**

I cannot answer that question, because I do not know if that is the practice of the Board. If a licensee is suspended, I know the Board still has jurisdiction over that licensee because he is still a licensee, although the license is in suspension. In the case you related, I do not know if you were referring to an actual circumstance. Therefore, I do not know if the Board brought a suspended licensee before it for disciplinary proceedings. I do not know if the Board revoked the license or continued the suspension, or otherwise put the person out of business. I can inquire at the Contractors' Board and get that information to you. I do not know if the situation you related is anecdotal, hypothetical, or an actual case.

**Assemblyman Horne:**

In my experience, I have been told that there are contractors on suspension who start other jobs, get caught, and nothing happens. They get a slap on the wrist.

Why is this happening? If you are still operating after a suspension, then the suspension means nothing.

**Mr. Lee:**

I understand, and I will get you an answer.

**Assemblyman Conklin:**

I will preface my statement by saying I am not an attorney. I believe Mr. Lee is, as are several members of this Committee. You gave the example of the gentleman whose license was not revoked by the Board. It brought my attention to some earlier testimony. I have had Research pull up NRS 624.3015, which clearly states that this law applies to those who knowingly violate this statute. Did the person in your example clearly state, "I am going to go and violate the law, and hire someone I should not, to complete this work?" They violated the statute, but clearly there was no intent. If a person violates the statute, and they know full well they are violating it, but they go ahead anyhow, why should they not have their license suspended?

**Mr. Lee:**

My interpretation of the anecdotal situation I related is that in order for a violation of NRS 624.3015 to have occurred, the person would have had to knowingly enter into that contract. The person must have had the intent that "knowingly" implies for him to have done so. The Board looked at the extenuating and mitigating circumstances that existed in this case. They determined that imposing a fine, instead of a suspension or revocation, would be the appropriate penalty.

Mr. Sala is proposing to keep the term "knowingly" in the statute. There still must be the intent that you did the action "knowingly." If you did not do so "knowingly," there is no violation of the statute. If the act was not done "knowingly," there is reason for the Board to determine what penalty, if any, should be imposed, and what violation, if any, should be found.

**Assemblyman Conklin:**

In other words, it is not strictly a liability provision. There has to be the "knowingly" or intentionally entering into a contract. The contractor has to know, or a reasonable person has to know, that the person they are hiring is an unlicensed contractor. It is my understanding that if I violate the law, whether I know it or not, I am guilty. My question is did I intend to violate the law, or did I just not know what the law was? You either knowingly did it, or you did not knowingly do it. If that is the case, then why do we have half the laws we have? Do you understand me?

**Mr. Lee:**

I understand that.

**Assemblyman Conklin:**

I am struggling with this particular issue. On one hand, if someone knowingly, under the common understanding of the word, violates the law, then they are guilty. You knew it; you violated it; then you should pay the consequences. If not, what value is the law to begin with?

**Mr. Lee:**

You are absolutely correct. If you violate the law, or we make a finding that you have violated the law, then the question becomes what penalties are available to be imposed, and what is the range of those penalties. The Board now has the power to revoke or suspend contractors' licenses. As I indicated earlier, in eleven of these violations that went to hearing, the Board suspended the licenses, and in two other cases, the licenses were surrendered. That is the penalty that was imposed. I do not know the individual circumstances of any of those cases.

**Assemblywoman Kirkpatrick:**

I have three questions. My first one is the amendment you submitted includes the language that says, "bidding to a contract" and "entering into a contract." You did not specify on your amendment that you wanted Section 2, subsection 2, omitted. Is that just an oversight, or do you care if it is in there?

**Mr. Lee:**

We do not care if it is in there. We disagree with Mr. Sala that it should be a mandatory suspension or revocation. However, we agree with Mr. Sala on moving the "over limit" provision out of Section 3 and putting in Section 6.

**Assemblywoman Kirkpatrick:**

Can you explain to me, in simple layman terms, what happens when a general contractor goes out and hires a contractor? As a good business practice, should they not investigate to determine whether the contractor is licensed or not?

**Mr. Lee:**

I would hope they would investigate, but as a practical matter, they do not. The violations that are found clearly show that people do not exercise due diligence. Failure to exercise due diligence is not a violation of NRS 624. Clearly, the person should check for licensing. As Mr. Sala indicated, it is easy to find out if someone is an unlicensed contractor in this State. You can find

out 24 hours a day on the Internet who is a licensed contractor and who is not. I cannot speak to why people do not exercise due diligence.

**Assemblywoman Kirkpatrick:**

Then, that would be, in my perception, knowingly not doing what you are supposed to be doing, as opposed to willfully. I am perplexed. How do you encourage people to do the right thing unless there is some kind of penalty? I did follow the cases mentioned because one was in my District. He was dismissed, but at the same time, the landscaping portion of the job became a nightmare for the constituents who were actually involved. While they learned a valuable lesson by not investigating the contractor for licensing, the contractor received no penalty. He just went on to more jobs in other neighborhoods. I am trying to strike a balance. It is okay to educate the constituent, but why are we rewarding people who willfully do what they are not supposed to do?

**Mr. Lee:**

I agree with what you are saying. It is the old saw. No matter what law we pass, or how many loopholes we fill, or how many safety nets we provide, the bad guy is going to figure out a way around it.

**Chair Ocegüera:**

Are there any further questions? I think Mr. Sala is trying to eliminate those exceptions. He is trying to establish a deterrent.

**Mr. Lee:**

I can get that information directly to Mr. Horne, or do you want me to share it with the whole Committee?

**Chair Ocegüera:**

Would anyone else like that information? Just get it to Mr. Horne. Does anyone else wish to testify against the bill? I see a lot of names here of people who wish to testify. Come up in groups of four.

**Madelyn Shipman, representing the Southern Nevada Homebuilders Association (SNHA):**

To my right is Jay Palmer, representing the Northern Nevada Homebuilders Association; and Sean Gamble, who is representing the Western Nevada Homebuilders Association. After listening to the testimony and discussing the matter with Mr. Sala, we certainly believe that non-licensed contractors should be appropriately dealt with by the Contractors' Board. The concern that the Homebuilders Association has is that the penalties being provided in this bill take away the discretion of the Board to consider alternatives in dealing with

appropriate situations. There may be mitigating circumstances, similar to those referred to in Mr. Conklin's discussion with Mr. Lee.

The question is the issue of unintended consequences that may occur. If the Board knows that the only option it has, in each situation, is to suspend or revoke a license, then you get into the issue of what "knowingly" means. Maybe the Board will not find actions taken "knowingly." This is one of the concerns of the Homebuilders Association. With all due respect, we simply believe this bill is not necessary at this point in time. The Contractors' Board should continue to have the discretion to take the appropriate action necessary to make sure the practice ceases.

**Chair Ocegueda:**

Are there any questions?

**Assemblyman Conklin:**

I imagine your clients would not knowingly enter into such a contract. However, you are defending the opportunity for people to do so. What is a "knowingly" reason that you would give to enter into such a contract? In what situation do you think a mandatory suspension should not be imposed?

**Ms. Shipman:**

First of all, I would like to say that none of the Southern Nevada Homebuilders Association members enter into such contracts. With that being said, we are not defending the practice. We are concerned about the removal of discretion currently granted the Contractors' Board. We want the Board to be able to consider all the facts that may surround an issue. The word "knowingly" can potentially be a basis for not imposing that discipline.

**Assemblyman Conklin:**

I am certain that someone on this Committee, possibly Mr. Horne, or our legal counsel, can tell us what exactly the term "knowingly" means. It must have some legal basis.

**Ms. Erdoes:**

I can provide you with case law, which describes the term "knowingly," but basically it means "with knowledge of the action." If you took some action knowingly, like you stepped off a cliff, you knew you were going to do it. There would be evidence, one way or the other, as to whether you had prior knowledge. If you accidentally did something, you would not have done it knowingly. I will get you some cases, because there are some interesting ones that cover what is considered "knowingly" and what is not.

**Assemblyman Conklin:**

Thank you, Ms. Erdoes. I would like that information since you put it in layman's terms for me.

**Assemblyman Anderson:**

Mr. Lee may be able to answer my question. How many cases has the Board heard in which they have not imposed the current statute penalty of six months suspension?

**Ms. Shipman:**

Current law does not mandate any particular penalty or discipline. The action is left to the discretion of the Board.

**Assemblyman Anderson:**

How many times has the Board carried out the law to its fullest extent by imposing the maximum penalty? Is the Board ignoring the law? It goes back to Mrs. Kirkpatrick's concern about homeowners in her District who did not see the unlicensed contractor really disciplined.

**Mr. Lee:**

In the last three years, there have been 63 disciplinary proceedings for violation of NRS 624.3015, which is entering into a contract with an unlicensed contractor. Of those sixty-three cases, there were eleven revocations, and two surrendering of licenses. In the balance of the cases, administrative fines were imposed.

**Chair Oceguera:**

Mr. Hayes, would you like to speak?

**Trevor Hayes, Attorney at Law, representing the Molasky Companies and Paradise Developing Company:**

I wanted to respond to Mr. Anderson's question. The current law does provide for a \$50,000 penalty for each violation. The companies I am representing believe that the current laws and rules in place are sufficient. I was not privy to the amendments that Mr. Sala presented earlier, but some of that language may eliminate some of my companies' concerns. One of our concerns was taking away the discretion of the Board in levying penalties, and replacing it with automatic penalties of six-month and one-year suspensions, followed by revocation. Now, there are several factors the Board can consider including the gravity of the violation, the good faith of the licensee, and the history of violations under NRS 624, before imposing a penalty. We believe it is important for the Board to have this discretion. Other than that, I agree with Ms. Shipman's comments.

**Chair Oceguela:**

Are there any questions?

**Dylan Shaver, Vice President, Government Relations, AMS, representing the Sheet Metal and Air Conditioning Contractors National Association, Mechanical Contractors Association, National Electrical Association, and the Association of Pool and Spa Professionals:**

My clients understand the issues. I do not think anyone here today would deny that there should be penalties for people who engage unlicensed contractors. However, suspending a license on a first offense for six months can seriously affect someone's livelihood and the livelihoods of their employees. Our concern is someone could make a mistake instead of knowingly committing some illegal action. This bill would impose serious repercussions for a mistake. We welcome the opportunity to work with the Committee on correcting what we believe is an error in the bill.

**Assemblyman Horne:**

Your clients are not violating the law, are they?

**Mr. Shaver:**

As far as we know, the answer is no. They are not violating the law.

**Assemblyman Horne:**

If that is the case, they would not knowingly be violating the law, so there is no danger that your clients would have to succumb to these penalties that the bill requests.

**Mr. Shaver:**

I appreciate the sentiment. We are concerned that everyone makes mistakes at some point. For example, I almost ran a stop sign on the way to work this morning.

**Assemblyman Horne:**

Did you do that knowingly?

**Mr. Shaver:**

I have no comment at this time.

**Chair Oceguela:**

Are there any other questions?



**Gary Milliken, Government Relations/Public Affairs, GEM Consulting, representing the Las Vegas Chapter of the Associated General Contractors:**

We met with Mr. Sala on this bill at least three times, and I have also met with Mr. Lee about the bill. We are in support of the bill with the adoption of both amendments.

**Patrick T. Sanderson, representing Laborers' International Union, Local 872:**

We are in support of both amendments. We know the law currently in place is not working, and we would like to improve it for the residents of the State of Nevada.

**Chair Ocegüera:**

Are there any questions? At this point, I think we need to bring A.B. 56 to a work session. We can see that two competing issues are being presented, and hopefully we will be able to resolve the problems. I do not have a date at this point for a work session. I am closing the hearing on A.B. 56.

The meeting was adjourned at 3:19 p.m.

RESPECTFULLY SUBMITTED:

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Judith Coolbaugh  
Committee Secretary

APPROVED BY:

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Assemblyman John Ocegüera, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Commerce and Labor

**Date:** February 14, 2007

**Time of Meeting:** 1:30 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Rosters
AB 41	C	James Oscarson, Nevada State Board of Podiatry	Proposed Conceptual Amendment
AB 56	D	James Sala, Southwest Regional Council of Carpenters	Proposed Amendment
	E	James Sala, Southwest Regional Council of Carpenters	Presentation to the Assembly Committee Commerce and Labor Regarding Unlicensed Contractors
	F	James Sala, Southwest Regional Council of Carpenters	Newspaper Article
AB 56	G	Keith L. Lee, State Contractors' Board	Amendment Proposed by Nevada State Contractors' Board