

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

**Seventy-Fourth Session  
May 3, 2007**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:03 a.m., on Thursday, May 3, 2007, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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:**

Assemblywoman Marilyn Kirkpatrick, Chair  
Assemblywoman Peggy Pierce, Vice Chair  
Assemblyman Kelvin Atkinson  
Assemblyman Bob Beers  
Assemblyman David Bobzien  
Assemblyman Chad Christensen  
Assemblyman Jerry D. Claborn  
Assemblyman Pete Goicoechea  
Assemblyman Ruben Kihuen  
Assemblyman Harvey J. Munford  
Assemblywoman Bonnie Parnell  
Assemblyman James Settelmeyer  
Assemblyman Lynn D. Stewart  
Assemblywoman RoseMary Womack



**STAFF MEMBERS PRESENT:**

Amber Joiner, Committee Policy Analyst  
Scott McKenna, Committee Counsel  
Rachelle Myrick, Committee Secretary

**OTHERS PRESENT:**

Mike Alastuey, representing Clark County  
Richard Daly, Business Manager, Laborers Hod Carriers, Cement Workers, and Miners Local Union 169  
Dylan Shaver, representing Nevada Electrical Contractors Association  
Berlyn Miller, representing the Nevada Contractor's Association  
Steve Holloway, Executive Vice President, Associated General Contractors:  
Ted Olivas, representing the City of Las Vegas  
Sabra Smith-Newby, Director, Intergovernmental Relations, Clark County  
James Keenan, representing the Nevada Public Purchasing Study Commission  
James Sala, Southwest Regional Council of Carpenters  
Patrick Sanderson, representing Laborers International Union Local 872  
Scott Adams, Director, Office of Business Development, City of Las Vegas and Chief Operations Officer, City of Las Vegas Redevelopment Agency  
Jack Jeffrey, representing Southern Nevada Building and Construction Trades Council  
Danny Thompson, Executive Secretary-Treasurer, American Federation of Labor-Congress of Industrial Organizations  
Gary Milliken, representing Las Vegas Chapter of the Association of General Contractors  
Peter Krueger, representing Union Subcontractors

[Meeting called to order at 9:03 a.m.]

**Chair Kirkpatrick:**

We will start with Senate Bill 199 (1st Reprint).

**Senate Bill 199 (1st Reprint):** Makes various changes to requirements for a public work involving the construction of a traffic-control signal. (BDR 28-348)

**Mike Alastuey, representing Clark County:**

Senate Bill 199 (R1) is intended to address a particular situation that from time to time requires expeditious action in order to serve the public good.

The placement of traffic signals on an expeditious basis is sometimes found necessary in relatively short order, given the fact development takes place quickly. Significant traffic patterns can develop that pose a hazard to the public.

The original bill would have provided that if a public body found urgent need for a traffic signal the public body could make a determination and install the traffic signal itself.

We worked with representatives of contractors and came up with a compromise amendment on this bill that preserves public bidding.

This bill would allow the division of the job into various segments. Installation of traffic signals could involve underground work, foundation and subsurface concrete work, installation of poles, and electrical work.

Many times developers are required to put in certain infrastructures in preparation for installation of traffic signals, but that is not always the case, so the jobs can vary from one to the other.

There is a provision in the bill for contractors to give us the prices for materials and those prices would remain good for up to a year. Contractors would bid on the installation of traffic signals for a short turn around time depending on whatever the industry will bear and the Public Works Department might need. This will provide a biddable project that does not take work away from the private sector.

The public body would perform the work itself only if they advertised for such bids and no bids were received or the public body entered into a contract with a contractor who had agreed to install traffic signals and backed out.

**Chair Kirkpatrick:**

Who becomes responsible for each portion of the work if you divide the jobs?

**Mike Alastuey:**

If it was found that a signal of a certain standard was needed, if the public body had certain supplies on hand, and the availability of those parts was an option that could expedite the job, then the public body could contract out the underground wiring and the above ground construction either as one job or in

parts. The legal counsel for both the contractors and the public body would have to have contract provisions that would clarify that.

**Chair Kirkpatrick:**

If a contractor signs a one year contract but is not available when the job comes up, would you not have to have a new contract because the liability would change, depending on the material that was not available or the scope of the work?

**Mike Alastuey:**

You could have a contractor say they will do the entire job and the Public Works Department would configure any subcontracting of that job so there is a high likelihood of fast completion. The Public Works Department would not cut the job into so many segments that it might become an unwieldy management problem.

**Chair Kirkpatrick:**

Sometimes the cost depends on the availability of the contractors. How do you offset that?

**Mike Alastuey:**

The Public Works Department and contractors who bid on public projects would have to take that into account.

You do not have to bid every job from the ground up. There is the ability to break it down and keep the jobs biddable.

**Assemblyman Goicoechea:**

What if the contractor thinks he is available for the job in the one year contract period, but when the job comes up he is not available?

**Mike Alastuey:**

In areas where contractors are in high demand, we want to give them the opportunity to bid because they are available for the job, and the price for the project.

We need to give the contractors the option to stand down and still remain qualified for the one year period.

**Assemblyman Goicoechea:**

What would be the process if the Public Works Department does not have the ability to do the job themselves? Would you re-bid that?

**Mike Alastuey:**

You could have a backup contractor that qualifies under the bidding process.

**Assemblyman Goicoechea:**

It sounds like you would take the bids from the contractors and prioritize them in order of low to high.

**Mike Alastuey:**

I am not saying that is or is not so. It would allow the opportunity and possibility that a contractor would be available.

**Assemblyman Goicoechea:**

That concerns me.

**Mike Alastuey:**

We just wanted the option.

**Chair Kirkpatrick:**

Is there anyone who would like to speak in support of this bill? [There were none.]

Is there anyone who is neutral on this bill? [There were none.]

Is there anyone opposed to this bill?

**Richard Daly, Business Manager, Laborers Hod Carriers, Cement Workers, and Miners Local Union 169:**

We are opposed to dividing any Public Works project.

Thresholds for dividing a project have not been addressed in this bill.

There are other ways to address the issue. They can buy the material, have it on hand, and bid out the labor portion.

I have seen a lot of abuses regarding the year long contract. The contractor makes his bid, and the awarding body gives him ten times more work than what was bid, under change orders, et cetera. Therefore, there is a lot of incentive for a contractor to underbid and then abusively change order the public body. I do not see safeguards for that in this bill.

We are opposed to public entities competing with private enterprise.

We do agree that traffic signals need to be constructed in a short amount of time.

**Dylan Shaver, representing Nevada Electrical Contractors Association:**

We agree with Mr. Daly.

A year long contract is going to end up costing the county more if we do it that way. What we are going to see is people charging more, knowing the price is going to go up at the end of the year on the materials due to inflation.

**Berlyn Miller, representing the Nevada Contractor's Association:**

You do not have to complete every stage of a project at one time, therefore, there is no reason to divide the work.

Clark County has solved the problem of not getting bids on projects. It was not a contractor problem, it was a Clark County Public Works Department problem.

We passed legislation setting the requirements that each entity in southern Nevada has to comply with. Every entity in southern Nevada complied, with the exception of Clark County.

We are concerned with the fact the bill leaves the door open for the county to do the work themselves. They cannot do it more expeditiously or less costly than private contractors can.

There is nothing concerning the county today which cannot be solved.

**Assemblyman Goicoechea:**

Is it against the law for the county to put a stop light in themselves?

**Berlyn Miller:**

No.

**Assemblyman Goicoechea:**

Do they have the ability to install their own traffic signals?

**Berlyn Miller:**

The City of Las Vegas does this more than any other entity in southern Nevada. They do not need legislation to do that.

We do not support the entities doing that work. We think private enterprise can do it much better and less expensively than the government can.

**Mike Alastuey:**

What I heard in the opposing testimony are factors that are not included in this bill, not addressed in this bill, and not germane to this bill. We never said this was about contractors not performing. We never said this had anything to do with contractors requiring nine months to put in a signal.

The nine months includes the bidding process, design, and the study process required to certify traffic signals are needed. We never said it took nine months to put a traffic signal in.

The possibility of division of work in this bill has nothing to do with avoidance of bid requirements.

We only intend to address the time normally required for a normal advertising and bid cycle. Should we continue to handcuff ourselves and require a total bid cycle on every occasion, or could we create an option to allow the contractor community to bid on the possibility of an annual contract for a certain price, and to be delivered within a certain time? That is all this bill does.

**Chair Kirkpatrick:**

Can you give me an example of other states that have the one year annual contracts on traffic signals?

**Mike Alastuey:**

I will get that information to you.

**Chair Kirkpatrick:**

I will close the public hearing on S.B. 199 (1st Reprint).

I will open the public hearing on Senate Bill 201 (1st Reprint).

**Senate Bill 201 (1st Reprint): Revises provisions governing public works.  
(BDR 28-526)**

**Steve Holloway, Executive Vice President, Associated General Contractors:**

I support S.B. 201 (R1) and am here to present it.

Senate Bill 201 (R1) addresses NRS Chapter 338. Chapter 338 applies to all subdivisions of the State. It currently describes two methods of contracting for the construction of a public work.

One is the traditional competitive bidding method in which you select the lowest responsible and responsive bidder. The second one is the design-build method.

This bill does three things stemming from the Clark County Justice Facility fiasco.

In Sections 2 through 12, it provides a third alternative method of contracting for the construction of a public works job. We call this method the construction manager-at-risk method. We are one of only six states that do not allow this method of contracting on public works.

Design-build bid is the traditional method of contracting. The public works owner hires an architect or engineer to design the project and develop the specifications. Then they take the design and specifications and put it out for bids. The contractors review them and bid on the project. The lowest bidder is chosen. The bidder then constructs the public work.

The design-build method is one in which requests for proposals are put out from design-build teams. The design-build teams are usually led by a general contractor, and include an architect or engineer. This method works well on very large projects.

The intent of design-build was to get the people who construct a building involved in its design as well.

The construction manager-at-risk method is where the public works owner would hire both the architect or engineer and the contractor at the same time. There would be a competitive bidding process to hire that contractor, known in this method as the construction manager. We would then have the owner of the public works, the architect or engineer, and the contractor involved at the start of the design of the project.

The construction manager assumes the risk for the project. He is involved in the design of the project for a fee that is negotiated after he is selected through the competitive bidding process.

When the project is approximately 80 percent designed, the owner and construction manager will sit down and negotiate a guaranteed maximum price for the construction of that facility. If they cannot arrive at a price then the construction manager collects his fee and the project would be bid competitively under the design-build method by other contractors.

Sections 2 through 12 describe the process for selecting a construction manager-at-risk. It describes the responsibilities the construction manager-at-risk is going to have during the design phase. It describes the process for negotiating a guaranteed maximum price for the construction of the



project, and then allows the construction manager to construct the project for the agreed upon price.

One of the objections was the original bill did not call for subcontractors to competitively bid once the projects had been left to the construction manager. It had allowed the construction manager to pick any subcontractor who represented 5 percent or more of the cost of the project based on criteria other than being the lowest bidder and the most responsible. We amended that.

Section 12 now says subcontractors will be selected by the construction manager based on the process of competitive bidding.

Competitive bidding is described in Chapter 338 as selecting the contractor on the basis of the lowest responsible bid.

Section 14 discusses something called a constructability review. This requires that you conduct a constructability review on a new project which is over three stories high. It also describes what a constructability review is.

It requires that a licensed architect, licensed engineer, or a licensed contractor do the constructability review. It does not require a competitive bidding process.

Sections 13 through 21 authorize a public body to employ a construction manager-as-agent. A construction manager-at-risk is one who assumes the risk for the construction of a project. A construction manager-as-agent is an owner's representative that does administrative duties during construction. A construction manager-as-agent must be licensed in this State as architect, engineer, or a general contractor.

**Assemblyman Stewart:**

Can you give an example of how successful this has been in other states?

**Steve Holloway:**

Approximately 70 percent of the public works jobs in Arizona are being done by construction manager-at-risk. That is the best sign that it has been successful.

**Assemblyman Stewart:**

Would it be a problem if we had one of these successful companies from Arizona come in and build a public works project, but were not licensed in Nevada?

**Steve Holloway:**

Yes it would. They would need to be licensed in Nevada.

Construction manager-at-risk is already used extensively on private works in Nevada.

**Chair Kirkpatrick:**

How does Section 10, subsection 5, help when we are indemnifying the construction manager?

In Section 11, line 22, it says that "not less than 25 percent" as described in subsection 2.

**Steve Holloway:**

There is a friendly amendment that Clark County will present which takes that language out of Section 11. It allows the owner and the construction manager-at-risk to negotiate the language they will put in the contract.

Regarding the 25 percent, we are talking about general engineering contractors. We put that in the bill because we were having a problem under design build where we were getting out-of-state engineering companies coming in and getting the big projects, but were not self performing any of the work.

Almost all of our local engineering companies self perform some of their own work.

How much the construction manager self performs would be negotiated between the owner and the construction manager.

**Chair Kirkpatrick:**

Is there anyone in support of S.B. 201 (R1)?

**Berlyn Miller, representing the Nevada Contractor's Association:**

We are here in support of S.B. 201 (R1).

This bill in combination with design-build will help us in the future.

**Ted Olivas, representing the City of Las Vegas:**

The City of Las Vegas is in support of this bill as amended by the amendment Clark County will submit.

**Sabra Smith-Newby, Director, Intergovernmental Relations, Clark County:**

We support this bill.

There are amendments representing language agreed upon with various public works and purchasing agencies that met with the Associated General Contractor's Association (AGC) and was submitted on the Senate side, but due to time did not make it in ([Exhibit C](#)).

Amendments 2 and 6 need to be taken out of the document. They were put in inadvertently.

**Chair Kirkpatrick:**

Is this an amendment that the Senate got to see or is this the first time anyone is seeing it?

**Sabra Smith-Newby:**

These amendments were included in a work session document on the Senate side.

**James Keenan, representing the Nevada Public Purchasing Study Commission:**

Construction manager-at-risk and construction manager-as-agent are well accepted methods of procuring construction services and our association supports the concept.

The term in the amendments we are concerned about is the phrase "by a trier of fact." A trier of fact is first and foremost a judge, which means court, a courtroom, and a court case. It often means arbitrators and mediators but not in all cases.

This phrase takes away any determination by the purchasing manager and/or his governing body, which is their authority to make the determination that a contract was breached.

We make a determination as to whether a contract has been performed or not. We are duty bound and legally bound to make those determinations, which does not mean any of them cannot be appealed.

Our purchasing group does object to the phrase in two places in this amendment and recommend they be deleted.

We agree with the rest of the amendments.

**Chair Kirkpatrick:**

Is there anyone that is neutral on this bill?

**James Sala, Southwest Regional Council of Carpenters:**

We are neutral on S.B. 201 (R1).

We are concerned that between lease-purchase, design-build, and construction manager-at-risk, we may be risking the issue of completely doing away with the competitive bid process. We are trying to work with the sponsor to make sure some of those issues are taken care of.

On page 7, Section 12, subsection 1 and 2, Mr. Holloway added some language and we will try to work with him regarding how that competitive bidding process will work since it is not referenced back to Chapter 338.

In Section 14, line 30 of the bill, Clark County's amendment takes that out and goes back to three stories in height. We like the \$10 million. This construction manager-at-risk can lend itself to larger projects and the \$10 million for projects in general would be appropriate.

**Richard Daly, Business Manager, Laborers Hod Carriers, Cement Workers, and Miners Local Union 169:**

We are neutral on the bill and can work on any concerns in future Legislative Sessions.

**Patrick Sanderson, Representing Laborers International Union Local 872:**

We are neutral on this bill.

**Steve Holloway:**

There are some quirks in this bill and we will work them out in the next two years.

**Assemblywoman Pierce:**

Can you tell how this would have changed the situation at the Clark County Justice Facility?

**Steve Holloway:**

This would have involved the individuals who were doing the construction at the outset of the design phase. They would have been involved in the design and specifications for that building.

It would have put more emphasis on preordering some of the materials.

It would have insured there was a guaranteed maximum price for the construction of that building. The contractor would have been involved in the design of the building. He would have been involved in setting the guaranteed

maximum price so there would have been no question on overages, et cetera.

**Chair Kirkpatrick:**

I will close the hearing on S.B. 201 (R1).

I will open the hearing on S.B. 234 (1st Reprint).

**Senate Bill 234 (1st Reprint): Provides exception to competitive bidding procedures for certain contracts relating to redevelopment areas. (BDR 28-490)**

**Ted Olivas, representing the City of Las Vegas:**

We are in support of S.B. 234 (R1).

This bill is intended to resolve a development issue inside the boundaries of our redevelopment area.

In the case of downtown Las Vegas the developers are responsible for curbs, gutters, sidewalks, and other improvements. The existing off-site improvements are often damaged during construction or incompatible with the developer's project.

Somewhere down the road we arrive at matching those improvements on the other side of the street. This requires us to contract with an architectural or engineering firm in accordance with the local government purchasing act to develop the plans and specifications to match the improvements on the opposite side of the road. Then we are required to advertise the bid and award the construction contract in accordance with the Public Works statute.

This bill will eliminate those two steps. Instead the local government will have the developer, through their architect or engineer and general contractor, design and construct the improvements all at once.

The additional work is clearly a public work and is subject to prevailing wage laws in *Nevada Revised Statutes* (NRS) 338. The local government would then reimburse the developer for the additional cost they incur for the architect and engineer, for the contractor, and additional administrative costs for managing the project on our behalf.

The bill includes a public hearing requirement in Section 3, subsection 1(b) to maintain transparency to this process. We will have a public hearing before the

City Council and talk about what we are doing and why we are doing it this way.

I have handed out a copy of the amendments made on the Senate side ([Exhibit D](#)). Originally this bill was modeled after NRS 338.0115, which allows private developers to construct water and sewer line extensions on our behalf. In that statute the work is clearly a public work and the prevailing wage requirements apply.

We found that was not the appropriate way to do it and we needed to tighten things up. In working with the construction industry one of the concerns was the payment of prevailing wages for the additional work.

We thought our bill was clear in our intent to pay the prevailing wage for that portion of the work beyond the requirements of the normal development agreement.

We agreed to clearly communicate that in our testimony on the Senate side as well as clarify the language, which we did in Section 3, subsection 2 of the amendment.

There were additional concerns that the bill did not define what type of developer project this could be used on, and the type of work that was intended to be performed on our behalf. These were addressed in the amendment to this bill. Section 3, subsection 1a states it is for private development consisting of one or more buildings, for which the cost is estimated at \$20 million or more.

A definition of the type of work to be performed was added in Section 3. We wanted to be very clear on the type of work we would like the developer to perform on our behalf.

We enhanced the public hearing requirement to ensure an open and transparent process for community involvement.

This bill expedites the development of these improvements by eliminating a redundant and costly process that the local government is required to perform. It increases efficiency in the improvement, design, and construction by doing them in one step. It minimizes construction disruptions for the community, and in the end saves taxpayer's dollars. It will also keep the private developer, designer, contractor, and the construction worker working together as a team.

**Scott Adams, Director, Office of Business Development, City of Las Vegas and  
Chief Operations Officer, City of Las Vegas Redevelopment Agency:**

We passed out a small aerial photo which presents a situation that is in existence today ([Exhibit E](#)).

This generally occurs in dense urban core areas where you have an existing street network, an existing layer of infrastructure, and you have a large scale development occurring. When that development occurs it invariably rips up curbs, gutters, and streets. Then it has to be replaced and is replaced to a condition which is consistent with what they are building.

We are explicit in the bill of including prevailing wage. We simply transfer that obligation to build it with prevailing wage to the developer.

**Assemblywoman Parnell:**

Could someone give me an example for which the developer will receive a monetary contribution or refund from a public body? That language disturbs me.

**Ted Olivas:**

This wording comes from NRS 338.0115 and is intended to say we are going to pay the developer back for the portion of work that is a public work. We just mimicked the statute as it already exists.

**Assemblywoman Parnell:**

That would be the word "refund". It is the word "contribution" that bothers me.

**Ted Olivas:**

I will look into that.

**Chair Kirkpatrick:**

Is there anyone who is opposed to S.B. 234 (R1)?

**Richard Daly, Business Manager, Laborers Hod Carriers, Cement Workers, and  
Miners Local Union 169:**

We are in opposition to this bill.

**Jack Jeffrey, representing Southern Nevada Building and Construction Trades  
Council:**

I have a problem with language on lines 31 and 32 on page 2. That is the language the Labor Commissioner hung his hat on to say if it is not a public building, prevailing wage does not apply. That only adds confusion to this bill.

Page 3 at the top explains what is intended to be done.

**Danny Thompson, Executive Secretary-Treasurer, American Federation of Labor-Congress of Industrial Organizations:**

We are concerned about the redevelopment issues because of all the new funding mechanisms that are being used.

We are opposed to this bill.

**Gary Milliken, representing Las Vegas Chapter of the Association of General Contractors:**

We are opposed to this bill.

**Peter Krueger, representing Union Subcontractors:**

We are opposed to this bill.

**James Sala, Southwest Regional Council of Carpenters:**

We are opposed to this bill.

**Patrick Sanderson, representing Laborers International Union Local 872:**

We are opposed to this bill.

**Chair Kirkpatrick:**

Is there anyone else who is opposed to this bill? [There were none.]

Is there anyone who is neutral on this bill? [There were none.]

Is there anyone who is in support of this bill? [There were none.]

**Ted Olivas:**

We worked fairly close with the construction industry in crafting this bill. It has the appropriate safeguards and no one gets hurt by this bill. It is good public policy and is something that will save taxpayer dollars.



**Chair Kirkpatrick:**

I will close the public hearing on S.B. 234 (R1).

[Meeting adjourned at 10:46 a.m.]

RESPECTFULLY SUBMITTED:

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Rachelle Myrick  
Committee Secretary

APPROVED BY:

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Assemblywoman Marilyn K. Kirkpatrick, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** May 3, 2007

**Time of Meeting:** 9:00 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance roster
S.B. 201 (R1)	C	Sabra Smity-Newby, representing Clark County	Proposed amendments
S.B. 234 (R1)	D	Ted Olivas, representing the City of Las Vegas	Proposed amendments
S.B. 234 (R1)	E	Scott Adams, Director, Office of Business Development, City of Las Vegas and Chief Operations Officer, City of Las Vegas Redevelopment Agency	Map