

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-fourth Session
March 15, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:02 a.m. on Thursday, March 15, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Joseph J. Heck
Senator Michael A. Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Lynn Hendricks, Committee Secretary
Wil Keane, Committee Counsel
Scott Young, Committee Policy Analyst
Lori Johnson, Committee Secretary

OTHERS PRESENT:

Steve Holloway, Executive Vice President, Associated General Contractors,
Las Vegas Chapter
Debra Jacobson, Director, Government and State Regulatory Affairs, Southwest
Gas Corporation
Richard Thomas, Vice President, Gary Day Construction Company
Richard Harris, President, TRC Commercial Framing
Richard L. Peel, Mechanical Contractors Association, Incorporation
Richard Lisle, Executive Director, Mechanical Contractors Association,
Incorporated
Brett McCoy, Business Manager, Plumbers and Pipefitters Local 525

Rudy Manthei, D.O.

SENATE BILL 181: Revises provisions governing certain construction contracts.
(BDR 54-270)

CHAIR TOWNSEND:

We have already decided that S.B. 181 is going to be sent to subcommittee. A number of people have asked to be heard on this bill. We will advise you as soon as the meeting time and place has been set. Most people will want to wait until the subcommittee hearing to put their comments on the record.

STEVE HOLLOWAY (Executive Vice President, Associated General Contractors, Las Vegas Chapter):

We still have some remaining problems with S.B. 181 which we can go over in subcommittee. I just have some general comments to make today. As the largest commercial and industrial construction industry association in Nevada, Associated General Contractors (AGC) often finds itself serving as a forum for the construction industry. We represent owners-developers, general contractors and subcontractors. Senate Bill 181 was initially intended as a clean-up bill for *Nevada Revised Statutes* (NRS) 624.609 through 624.628, which are the basic "stop work for prompt pay" statutes for private works. This bill was intended to do three things. Sections 1 and 4 were intended to clarify when and how retention amounts would be paid. Those sections allow that a retention amount up to 10 percent of contract price to be withheld on any project, but we had not specified how it would then be paid so this is an attempt to do so. In sections 3 through 6 of S.B. 181, we address indemnification provisions within construction contracts. For your information, most states have statutes on indemnification for construction purposes; Nevada is one of the few states that currently do not. Section 5 of S.B. 181 defines options when the owner or contractor has been notified of a change-order request. That was something that had not been addressed in the previous bill.

Our law firm, Snell and Wilmer, put together a treatise ([Exhibit C](#), original is on file in the Research Library) identifying the type of indemnification that each state carries plus case law that provides actual application within the statutory scheme.

All parties involved have basically agreed on the indemnification language. It has been brought to our attention that we need additional language regarding

exemption for insurance endorsements and contracts. If we do not address that issue, contractors may not be able to afford commercial general liability and errors and omission insurance which they must have. We have asked for a work session to work on the insurance exemption and to work with the Nevada Resort Association in regard to the retention language. I also need to go on record to alleviate concerns of public works agencies that NRS 624.622 subsection 4, paragraph (b) reconfirms that this statute does not apply to public works agencies. I hope this puts them at ease.

DEBRA JACOBSON, (Director, Government and State Regulatory Affairs, Southwest Gas Corporation):

I would like to make a general comment that we will work with the subcommittee and we support what bill proponents are trying to do. As a public-works company, we do have a concern if we are affected under indemnification.

RICHARD THOMAS (Vice President, Gary Day Construction Company):

There does need to be a change in the period of time for retention. I actually brought the timeline problems to Steve Holloway and Richard Peel's attention. For example, I have had over \$900,000 held for as long as 9 months. I think we could make better use of that money rather than have it sit in a retention account. We depend on the developers and the general contractors and they depend on us, so we would just like to make it a level playing field.

RICHARD HARRIS (President, TRC Commercial Framing):

As a framing subcontractor in southern Nevada, my business is large commercial high-rise construction. Our retention funds are held from day one of construction. We need a better way to get those funds back to us as soon as the job is complete. For example, I stopped in a coffee store I had finished in August 2006 and I was never notified that the job was complete until I visited the store myself. Only then did I request the release of retention funds. Having a time certain, knowing at what period of construction the funds will be released, makes sense and is needed for all of us. Currently, 30 percent of my accounts receivable are held in retained funds. This amount is fairly consistent with the industry. Of that 30 percent, 23 percent of those funds are completed contracts and 7 percent of those funds are with current projects. This uncertain timetable for release of these substantial funds delays the start of other projects.

RICHARD L. PEEL (Mechanical Contractors Association, Incorporated):

Over the last 10 years, we have passed a number of statutes including the prompt-payment acts for public works, right-to-stop-work statute and the amendment to allow for the mechanics' and materialmen's liens statute. I would like to go on record to say that this effort is working. Over the last 3 years, my litigation practice, as pertains to collections on behalf of my clients, has decreased by 50 percent. That also indicates that people are getting paid for work performed. Industry people tell me the money is flowing, not because the economy is going great, but because the laws are working. If we start to change things, we need to make sure we make corrections in the right way. We do not want to go back to problems like we had with the Venetian and the Aladdin resorts, where numerous contractors and subcontractors that had previously thriving companies, were put out of business. Our goal and our commitment is to work with other industries to make sure the language, if changed, remains fair and continues to get companies paid.

RICHARD LISLE (Executive Director, Mechanical Contractors Association, Incorporated):

I represent unionized mechanical contractors that do mostly high-rise commercial construction in Nevada. We want to avoid projects that went upside down on us, like the debacle that happened when the Venetian was being built. Our whole goal, as an industry, was to keep the cash flowing and cut down on needless litigation. Is this new retention language going to increase the flow of money down the line to the subcontractors and suppliers? Speaking as chairman of the Pipe Trades Pension Fund which is a \$160 million pension fund, I just want to remind everyone that monies for pensions do not get paid if the money stops flowing. Plan participants way down the line depend on this cash flow.

SENATOR HARDY:

I need to disclose that Mr. Peel is an attorney for many members of the Associated Contractors Company that I am associated with.

BRETT MCCOY (Business Manager, Plumbers and Pipefitters Local 525)

I am a representative of Plumbers and Pipefitters Union in Las Vegas and cochairman of the pension committee for our union fund. Everyone downstream relies on that money flowing without any holdups. As long as the subcontractors are being paid in an appropriate fashion so they can fund their own interests and take care of the people working for them, that is all we are

asking for in this bill. All of us have subcontractors waiting to complete their job.

SENATOR TOWNSEND:

I may need to take Senator Heck's place on the upcoming subcommittee for this bill. Senator Heck's time is becoming scarce due to his commitments on other committees. I will close the hearing on S.B. 181. We will set the subcommittee for a later date and time. We will open the hearing on S.B. 227.

SENATE BILL 227: Clarifies provisions relating to the disciplinary powers of the Nevada State Funeral Board. (BDR 54-975)

SENATOR HECK:

Two years ago, the Senate Committee on Human Resources and Education made some changes to S. B. No. 193 of the 73rd Session. One of the changes was to allow a designee from the anatomical dissection committee to receive deceased and unclaimed human bodies for the purpose of medical education. The nonprofit entity called the Medical Education and Research Institute of Nevada (MERIN) was authorized to be that designee in southern Nevada. The MERIN is fast becoming one of the foremost medical and surgical research institutions in the country. Physicians from all over the world will be coming to train here.

As the designee, they are to be informed whenever there is an unclaimed and deceased body ready to be picked up at a funeral home. Unfortunately, the designee has had difficulty gaining compliance from funeral homes to let them know when these bodies are ready. In speaking with the Nevada State Funeral Board, they informed me that they did not have jurisdiction to enforce that notification under their chapter of the NRS. If we want them to enforce this provision and discourage this type of unprofessional conduct, we had to add the provisions of NRS 451.400 to NRS 642 for the purpose of jurisdiction over unprofessional conduct.

RUDY MANTHEI, D.O:

I am the medical director of Nevada Eye and Ear, and past president and board member of the Osteopathic Board of Medical Examiners. Today I am representing the MERIN, which is the southern agent in Nevada for the committee on anatomical dissection. After the passage of NRS 451.400, working directly with funeral homes as well as the coroner's office and other

facilities, we discovered that the committee on anatomical dissection did not have the ability or authority to enforce the legislation.

Historically, the committee met once a year and their only function was to provide access to unclaimed, deceased bodies for the University of Nevada, Reno (UNR), School of Medicine. With the opening of the Touro Medical School in Las Vegas, with the possibility of training 150 medical students each year, physician assistants and other health care professionals who will we hope will stay in our State to practice medicine, there was a need to expand the committee working with the funeral homes. This increased the need for oversight of the supply of deceased, unclaimed bodies which medical personnel need for training and practice. I have personally spoken to Dr. Zoler, who is the chairman of the Committee on Anatomical Dissections and he stated that his unfunded committee is not functional and does not have the ability to regulate or enforce the statute. As Senator Heck pointed out, we are asking for the regulation and enforcement of that specific statute to be placed under the jurisdiction of the Funeral Board.

SENATOR CARLTON:

Just to clarify, in adding this under unprofessional conduct, what is the penalty?

SENATOR HECK:

There is wide latitude of punishment from reprimand to revocation of licensing.

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VICE CHAIR HARDY:

If no one else wishes to testify, we will now close the hearing on S.B. 227. The Senate Committee on Commerce and Labor is now adjourned at 8:28 a.m.

RESPECTFULLY SUBMITTED:

Lori Johnson,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____