

**MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-fourth Session
March 12, 2007**

The Senate Committee on Government Affairs was called to order by Chair Warren B. Hardy II at 1:41 p.m. on Monday, March 12, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 Warren B. Hardy II, Chair
Senator Bob Beers, Vice Chair
Senator William J. Raggio
Senator Randolph J. Townsend
Senator Dina Titus
Senator Terry Care

COMMITTEE MEMBERS ABSENT:

Senator John J. Lee (Excused)

STAFF MEMBERS PRESENT:

Olivia Lodato, Committee Secretary
Eileen O'Grady, Committee Counsel
Michael J. Stewart, Committee Policy Analyst
Erin Miller, Committee Secretary

OTHERS PRESENT:

Gustavo Nunez, Interim Manager, State Public Works Board, Department of Administration
Daniel J. Klaich, Executive Vice Chancellor and Chief Operating Officer, System Administration Office, Nevada System of Higher Education
James Richardson, Nevada Faculty Alliance
Ted J. Olivas, City of Las Vegas

Senate Committee on Government Affairs
March 12, 2007
Page 2

Richard Daly, Laborers International Union of North America Local 169
James E. Sala, Southwest Regional Council of Carpenters
Michael R. Alastuey, Clark County
Auro Majumdar, Department of Public Works, Clark County
Jeffrey A. Fontaine, Nevada Association of Counties
John E. Jeffrey, Southern Nevada Building and Construction Trades
Gary E. Milliken, Associated General Contractors Las Vegas Chapter
Steve Holloway, Associated General Contractors Las Vegas Chapter
John Slaughter, Washoe County
Daniel St. John, Department of Public Works, Washoe County
Rose E. McKinney-James, Clark County School District
Shaun E. Jillions, City of Henderson
Shweta Bhatnagar, Las Vegas Valley Water District; Southern Nevada Water Authority
Richard L. Peel, Mechanical Contractors Association, Incorporated; National Electrical Contractors Association of Southern Nevada; Plumbing, Heating, Cooling Contractors; Southern Nevada Air Conditioning Refrigeration Service Contractors Association
Jim Morris, Construction Management Association of America
Darren Schulz, Harris and Associates
Larry J. Macias, Larry J. Macias, AIA Limited
David Alexander, CM Works; Poggemeyer Design Group Company

CHAIR HARDY:

We will open the hearing on Senate Bill (S.B.) 163.

SENATE BILL 163: Revises provisions governing improvements constructed, altered, repaired or remodeled pursuant to lease-purchase or installment-purchase agreement. (BDR 31-430)

SENATOR WARREN B. HARDY II (Clark County Senatorial District No. 12):

This bill is a recommendation of the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities. The State Public Works Board of the Department of Administration is the building official for construction but silent on improvements: altered, repaired and remodeled. The Committee felt it was important somebody be designated as the building official in those cases and nominated the State Public Works Board.

Senate Committee on Government Affairs
March 12, 2007
Page 3

GUSTAVO NUNEZ (Interim Manager, State Public Works Board, Department of Administration):

This bill only applies to projects built on state property; *Nevada Revised Statute* (NRS) 341 designated the Public Works Board as the building official for projects, construction, alterations or additions on state lands.

SENATOR CARE:

What is the practical effect if we do nothing?

MR. NUNEZ:

Local building departments do not have jurisdiction on state lands. When you exempt state projects on state lands from NRS 341, there is no building official designated. This bill clarifies what the state has been doing on lease-purchase projects. We have been contracting with the agency to do the function of the building official. This formalizes and establishes who is the building official.

SENATOR BEERS:

You are now contracting with local county building officials. With this bill, you will not do that anymore?

MR. NUNEZ:

The Public Works Board is contracting with the agency doing the lease-purchase to provide those services. This bill clarifies the Public Works Board will be the building official on projects where lands are exempt from NRS 341. The state has done some lease-purchase projects recently; since the law was silent, we contracted with the Public Works Board and agency that was to operate that project for the state.

CHAIR HARDY:

Nothing prevents that from occurring, but it will not be necessary. It is closing a loophole the Interim committee discovered. We will close the hearing on S.B. 163 and open the hearing on S.B. 198.

SENATE BILL 198: Authorizes various governmental entities to enter into lease-purchase agreements. (BDR 31-231)

CHAIR HARDY:

This bill is also the product of the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities which

I chaired. The exercise we went through as a committee was to develop a process for lease-purchase that was effective, efficient and sound. The lease-purchase concept put into law a few years ago was designed as a trial to determine whether the process works. Prior to last session, only the Nevada System of Higher Education had a limit on the number of lease-purchase projects. The committee felt there was no sense in having a limitation on the System of Higher Education.

The City of Las Vegas testified they were not sure of their status. Their City Charter was silent on the issue. Senate Bill 198 eliminates the lease-purchase limitation for the System of Higher Education and specifically authorizes the City of Las Vegas to enter into lease-purchase agreements.

DANIEL J. KLAICH (Executive Vice Chancellor and Chief Operating Officer, System Administration Office, Nevada System of Higher Education):
We support the provisions of S.B. 198.

JAMES RICHARDSON (Nevada Faculty Alliance):
We are in support of this bill. We think the lease-purchase agreement process works and would appreciate moving forward with these arrangements. It takes pressure off the state if we can get these projects going through a lease-purchase arrangement.

TED J. OLIVAS (City of Las Vegas):
We are in support of this bill. We were allowed to participate in the Interim Study and found the counties and state have clear statutory authority to do lease-purchase agreements in NRS 353.590 and NRS 244.286. The wording you see in the bill mirrors that for the counties, which is NRS 244.286.

SENATOR CARE:
Are we talking about lease-purchase on property owned by the System of Higher Education, the City or another person?

MR. KLAICH:
We are talking about state property owned by the Board for the benefit of the System.

CHAIR HARDY:

There are a variety of different applications for this; the committee tried to find some uniformity so the public would have opportunity to bid on projects where appropriate.

RICHARD DALY (Laborers International Union of North America Local 169):

I am not opposed to the City of Las Vegas or anyone else using this bill, but it does eliminate the requirement for competitive bidding. When the bill puts the authority for lease-purchase in the Las Vegas Charter, there is no reference to NRS 353 or other safeguards for the state to enter into these agreements. I would assume that will happen, but it is not in the bill.

SENATOR RAGGIO:

This bill will give the City of Las Vegas and the System of Higher Education the same authority as all other state agencies. The City of Las Vegas is a charter city rather than one organized under corporation law. That is why it has to be addressed in their Charter.

CHAIR HARDY:

That is correct. They will be required to do the bidding. We have other legislation which contains the bid process. The primary concern of the committee was notice of the bid process to the public. Recommendations in legislation coming in are going to address your concerns.

MR. DALY:

A couple other bills coming may address some of my concerns. I would like to look at them all together in one package.

CHAIR HARDY:

There is wisdom in processing them at the same time. When the Interim committee felt we had fixed the issues relating to design-build, the committee voted for these bills. We will not process them until we have them in hand and have heard them all.

MR. DALY:

I do not have issue with the language for the System of Higher Education portion of the bill. That language is straightforward.

Senate Committee on Government Affairs
March 12, 2007
Page 6

SENATOR CARE:

Would the building or facility contemplated house functions related to the University system or the City of Las Vegas?

CHAIR HARDY:

The presumption is if the University is constructing a building, it is for their use.

JAMES E. SALA (Southwest Regional Council of Carpenters):

We understand the major components of the bill, but we have concern regarding one of the new sections. We are concerned about section 2 where it talks about the "Powers of City Council: Lease or lease-purchase agreement for construction or remodeling of building or facility; conveyance of property ... " and the applicability of those provisions.

Section 2, subsection 3 contains provisions of prevailing wage. A recent circumstance with the Federal Bureau of Investigation building and conveyance of land concerns whether the project was covered by prevailing wage. Subsection 3 does not reference the first part of section 2.

CHAIR HARDY:

I thought these were cleanup bills, but there are rightful concerns that will likely be addressed in future bills. One bill has a legislative declaration and is not to be used to circumvent prevailing wage laws and such. We will wait to process this until we have the rest of the bills in hand. We will close the hearing on S.B. 198 and open the hearing on S.B. 199.

SENATE BILL 199: Makes various changes to requirements for a public work involving the construction of a traffic-control signal. (BDR 28-348)

MICHAEL R. ALASTUEY (Clark County):

We are attempting to fix the problem of traffic signals and road safety to keep up with growth. As roads mature and intersections come to full usage, there is need to complete the traffic signals at that intersection. Right now, statutes place restrictions on dividing a particular Public Works project into segments. That prohibition was founded on the notion there should not be a division of a public work into segments so small it would pass under the radar as far as selection of bidding requirements. This particular situation causes problems for our Department of Public Works in putting together these intersections because

of emergency instances where the pace of development is underestimated with the placement of traffic signals necessary in a very short order.

We would place several requirements on this to permit division of a public work into segments: some provided by the private sector and some by public employees. The public body would conduct a study of a traffic control signal at a specific location and find the need warranted. The study would have to find public safety served if the signal is constructed in an expeditious and cost-effective manner. The portion of the work remaining that would be provided by the private sector would be advertised for bid.

In receiving an analysis from the Public Works Department, the kinds of functions typically contracted out are structural in nature including trenching and placement of structures for support of traffic signals. We understand concerns about the bill and feel those concerns can be addressed. We have provided an amendment ([Exhibit C](#)) intended to reflect the outcome of discussions with construction providers. The proposed amendment clarifies the portion of work provided by the Public Works Department would not exceed \$100,000 for the construction of a particular signal. Work contracted out would be subject to prevailing wage.

AURO MAJUMDAR (Department of Public Works, Clark County):

Our purpose for this bill is to address traffic safety, especially at intersections where developers have put in most of the traffic signal infrastructure and we need to take care of one corner. We could probably do this in a much shorter time frame than going through a bidding process. It is not our intention to build new traffic signals, just those we can do in a short time frame where minimal work is required. It will be better for traffic safety.

SENATOR CARE:

Give me an example of a project that might exceed \$100,000.

MR. MAJUMDAR:

Costs for traffic signals are well over \$500,000. We had one bid over \$700,000. In the last year, the average was close to \$500,000.

JEFFREY A. FONTAINE (Nevada Association of Counties):

We would like to lend support to S.B. 199. It would help counties respond better to traffic safety concerns by potentially lessening time to install a signal

and perhaps reduce the cost. Costs are going up, and signals take months to complete. In addition to a study, you must meet warrants. Once the warrants are met, you have to design and prepare a bid package, bid it out, award the bid and wait for delivery of materials. Another factor that impacts the time it takes to install a traffic signal is availability of steel; the cost of steel and other materials is escalating rapidly. In certain cases, S.B. 199 gives counties and other public entities ability to do some advanced work while waiting for delivery of materials or take advantage of private developers or contract work in the area. There are examples where emergency signals are needed, and this bill provides the flexibility to put them in place. Once the signal is identified, it should not take six-plus months to install—which is probably what it is taking. If we can cut that time, it is good business.

CHAIR HARDY:

How many contractors would bid for this work if it were a start-to-finish project for the construction of a traffic signal? Is this a specialized practice?

MR. MAJUMDAR:

It is a specialized practice. There has to be an electrical contractor with certified technicians on board. We had bids from one to six contractors.

CHAIR HARDY:

When you contract from beginning to end, would one person do the underground, one do the metal or is it all one contractor?

MR. MAJUMDAR:

One contractor, but typically the contractor will have subcontractors. Depending on which contractor gets the bid, there may be more than two subcontractors.

CHAIR HARDY:

You want to have the underground work done with the rest of the underground work and the concrete work done with the rest of the concrete work. Is that the reason for the division?

MR. MAJUMDAR:

Yes. When the other work is being done or has been completed, we can hire a subcontractor to do the concrete work, and our in-house crews can finish the signal. That is the situation.

JOHN E. JEFFREY (Southern Nevada Building and Construction Trades):

I have two problems with this bill. The amount of work that would be lost to various affiliates in the building trades concerns me. I am not sure this bill will accomplish a lot concerning time. If it takes nine months to a year to get a traffic signal in place, we need to look at what it takes to get a signal in place and find the fix. If you are going to bid for the foundation, what is the difference between bidding that out and the entire project? Once the contract is underway, the prime contractor in charge of the entire project cannot be in charge of county forces. I do not think the county should be in competition with private sector contractors on this project. If there are only two or three contractors that bid on these contracts in Las Vegas, it would be simple to come up with an expedited procedure to take care of the time issue.

SENATOR CARE:

Where did you hear the figure of nine months?

MR. JEFFREY:

I heard that figure from Clark County Public Works. I agree it is too much time when only two or three people bid.

SENATOR CARE:

When it comes to traffic signals, the delay is not in the construction, it is getting the accountable entity to realize there is a problem in the first place and they need to install the signal.

MR. JEFFREY:

I was on the City Council in Henderson a long time ago. In my experience with getting traffic signals, once the approval was there, it did not take long to install them.

SENATOR BEERS:

You alluded to other things that might be causing excessive construction times on these projects.

MR. JEFFREY:

I am not an expert in this area. I hear it takes six to nine months to begin construction on a signal. The construction time is not the big issue. The scheduling this bill requires would be a bigger issue in the long run.

CHAIR HARDY:

Bringing a contractor on the jobsite to do a portion of the work is not uncommon in the industry. I am not sure what is preventing that from happening. Mr. Jeffrey makes a valid point. The general contractor in charge has some control over individuals on the jobsite. We might find further delays occur if they do not have that control. We will do more work on this bill.

MR. DALY:

We are opposed to dividing up jobs on principle and to public entities competing with the private sector. If you are doing a new construction project, the traffic signal is a matter of subcontractor coordination. Putting in a signal after the fact is where you have delays. The major delay is getting components and parts ordered and out after you bid.

GARY E. MILLIKEN (Associated General Contractors Las Vegas Chapter):

We are opposed to S.B. 199 and the amendment for the reasons already mentioned. If you divide the work between the private and the public with no one in charge, we will only be doing it parts at a time. Part of the delay is in regulation: getting to the point where you can put up the light. A client I had waited almost a year before they could get a bid to work on the light. If we are looking at speeding up the process, we need to look at areas other than the construction of the light.

CHAIR HARDY:

If it is not covered in other areas and there are genuine emergencies, then it is worth our time to consider. I would like to see the industry get together with the City and discuss what is holding up the bill. It is not unusual in the construction industry to have different subcontractors on and off jobsites at various times. If there is something unique about this construction project that does not apply, I would be interested to see those issues.

SENATOR RAGGIO:

The situations with traffic control signals usually occur after some horrific accident or event. I am not convinced either side has addressed this issue. There has to be a way to expedite this process. When there is public demand to do something about a serious traffic situation, you cannot wait around. As I understand the bill, this is only in cases where there is a finding. It should not take that long to get a finding that this is a serious situation and requires intervention. I do not agree that the public agency should never do any of the

work when you have able people on the payroll. I would ask them to come back in a few weeks and tell us how to get the time cut down and address this situation. I would like suggestions to cut through the red tape and a specific recommendation to cut this process down.

CHAIR HARDY:

I would like the sponsors and representatives of the industry to consider that a formal request by the Committee. In addition, I would like you to address where deficiencies might lie in current law with regard to emergencies. If you would report back, we will schedule this bill for work session in a few weeks. We will close the hearing on S.B. 199 and open the hearing on S.B. 201.

SENATE BILL 201: Revises provisions governing public works. (BDR 28-526)

STEVE HOLLOWAY (Associated General Contractors Las Vegas Chapter):

Senate Bill 201 is an outgrowth of discussions held during the last session. It is brought forward after two years of discussion with the industry and Public Works agencies. It was requested by the Chairs of the Committee on Government Affairs in the Senate and Assembly. There are two methods for contracting for public work allowed in the State of Nevada. The design-bid-build process is the method that requires competitive bidding with the lowest responsible bidder selected. The second process is the design-build method where you contract with both the architect or engineer and the general contractor as a team to do the design and construction of the project. It is the opposite in the design-bid-build method.

Another method is called construction manager at risk (CMAR). This method has some of the better aspects of design-build, but allows the public more control. Construction manager at risk is distinguished from other methods in that the owner contracts with both the architect and contractor, called the CMAR, at the same time. They work as a team on the design. When the design is 80-percent complete, the architect and CMAR negotiate a guaranteed maximum price for project construction. If they cannot negotiate a price, the owner goes with the design-bid-build method and puts it out for bid. This method is utilized in all but six states, Nevada being one of those states.

This bill is broken down into three parts. Sections 2 through 12 of the bill authorize public bodies to enter into this type of contract and provide for a method of selecting a CMAR. It is a two-step process. In most states where a

CMAR has been successful, it is a two-step process; we rejected the idea of condensing it into a one-step process. The one-step process is unfair to contractors who are bidding because of the expense involved to assemble the bid and request for proposals. In a two-step process, you narrow down the field of contractors before they put together the bids.

Section 14 of the bill calls for a constructability review. This is a by-product of problems encountered in construction where you have the design calling for a commode being built over a load-bearing beam. In those instances where you have a new building over three stories, section 14 requires you to have a general contractor review the design and specifications before you put them out for bid. They make sure you can construct the design. Several agencies do that now such as the Clark County School District and Clark County Sanitation District. The dispute over section 14 is whether architects and engineers be allowed to do constructability reviews. The work by an architect and engineer is reviewed by another architect or engineer who might not be critical of that work whereas a contractor, who would have to take those plans and build them, might be.

Sections 13 through 21 authorize a public body to employ a construction manager as agent. It defines what a construction manager as agent is as opposed to a CMAR. It requires the construction manager as agent to be a licensed architect, engineer or general contractor in the State of Nevada. Since S.B. 201 came out, we had meetings with Public Works agencies and representatives throughout the construction industry and prepared a consensus amendment to S.B. 201 ([Exhibit D](#)) to clear up language in various sections throughout the bill.

SENATOR RAGGIO:

The bill would have provisions in section 14 apply in the instance of a local government doing a Public Works project that has estimated costs in excess of \$10 million. It was changed in the amendment to apply only to a building three stories high. Do I understand this?

MR. HOLLOWAY:

We deleted the \$10-million requirement and put in the requirement it applies to buildings of more than three stories. In discussing the original bill with Public Works agencies, this does not apply to building a highway because you are dealing with standards.

SENATOR RAGGIO:

There is not much that you can build anymore for \$10 million. I can understand the highway project, but facilities three stories in height seems arbitrary. It could be applicable to any type of structure.

MR. HOLLOWAY:

The bill allows you to use a CMAR on any project regardless of cost. Constructability reviews in section 14 come into play when you use the design-bid-build competitive bidding method. In the design-build and the CMAR methods, you already have the contractor working with the architects or engineers.

MR. OLIVAS:

We support S.B. 201. This bill is not perfect but adds another tool to get public facilities done in an efficient and effective manner.

JOHN SLAUGHTER (Washoe County):

Washoe County is in general agreement with the concepts in S.B. 201. We have specific comments and proposed suggestions in my handout ([Exhibit E](#)).

DANIEL ST. JOHN (Department of Public Works, Washoe County):

This is a tool we need in our toolbox to give us one more weapon in our method of delivering projects, meeting schedules and budgets for the state. I have had experience with the CMAR method, and the description in the bill explains it well. However, there are some details I would like to take into consideration as we move forward. They are outlined in [Exhibit E](#).

Section 4, subsection 2, paragraph (b) states the public agency would have to put the estimate for preconstruction services of a construction manager at risk on the table prior to selection. That is not done in the selection of professional services for architects and engineers and takes the negotiation out of the term negotiation once that individual is selected. I suggest we strike section 4, subsection 2, paragraph (b).

There is a provision for a 5-percent preference during the selection process; I suggest deleting it. I do not think 5-percent preferences benefit local agencies. In this case, it is based on points, not price.

Section 9 speaks to the ability to place a bonus provision in a contract with a CMAR, and that is great because incentives work well. If we are going to bonus, we might include language imposing liquidated damages should budget or schedule goals not be met. While this bill is innovative, everyone needs to be aware we are proposing to create a method that substantially delivers a capital project—not relying on low-bid prices.

In section 12, subsection 1, the language states if the subcontractor does more than 5 percent of the job, they would be selected based on price and qualifications. If they do less than 5 percent, they would be selected by price only. I suggest subcontractors be selected as determined best to serve the public benefit. There are situations where you can bid the subcontract without relying on qualifications.

Section 14 speaks to constructability reviews. Constructability reviews for projects is a good idea and good practice. However, projects that are routine in nature do not need them. There are many professionals who perform these services, not just general contractors. Section 14 limits the choice on constructability reviews. The language should be expanded to include other qualified professionals. I suggest section 14 not be mandated. This could be a permissive section where changing the "shall" to "may" would encourage the practice but not be mandated in all cases.

SENATOR CARE:

Could there be disagreement about what constitutes a building three stories in height?

MR. SLAUGHTER:

If you build on the side of a hill and have a daylight basement, someone might ask whether that is a story or a basement. Generally, the meaning is uniform.

CHAIR HARDY:

In the interest of full disclosure, I used to be Ms. McKinney-James's intern with the City of Las Vegas.

ROSE E. MCKINNEY-JAMES (Clark County School District):

I am here to offer our support for S.B. 201. Our current practice is we do undertake the constructability review. We appreciate the opportunity to expand that beyond general contractors. With that exception, we support this measure.

SHAUN E. JILLIONS (City of Henderson):

We support S.B. 201 but have an issue with section 14. We would like to allow licensed professionals, such as engineers and architects, to perform the constructability review.

CHAIR HARDY:

I do not want to exclude someone who ought to have the ability to do this, but we need to be careful, and Mr. Holloway's comments made sense to me.

SHWETA BHATNAGAR (Las Vegas Valley Water District; Southern Nevada Water Authority):

We support S.B. 201 as amended by the Associated General Contractors Las Vegas Chapter.

CHAIR HARDY:

We will now take testimony in opposition to S.B. 201.

RICHARD L. PEEL (Mechanical Contractors Association, Incorporated; National Electrical Contractors Association of Southern Nevada; Plumbing, Heating, Cooling Contractors; Southern Nevada Air Conditioning Refrigeration Service Contractors Association):

We have two concerns with S.B. 201. Mr. Holloway addressed one of them, in part, by way of the proposed amendment. However, the other concern with competitive bidding has not been addressed. Section 6, subsection 2, paragraph (c) and section 12 provide a two-tiered approach for bidding by subcontractors. If the subcontractor's bid represents more than 5 percent of the contractor's price, then there is no competitive bidding by subcontractors. If it is less than 5 percent, competitive bidding is the method subcontractors use to bid the project. For the last 37 years, subcontractors I represent have enjoyed the opportunity to bid through the Southern Nevada Sub-contractors' Bid Depository. This Depository selects projects subcontractors bid through, and general contractors pick up those bids. It provides a fair process for general contractors evaluating the bids they receive and keeps subcontractor bids on a level playing field. As a subcontractor industry, we try ensure the bidding process is fair. We would like to see the language in section 12 revised to provide for across-the-board competitive bidding for all subcontractors, irrespective of the value of the bid they are submitting as it pertains to the general contractor's contract.

We asked Mr. Holloway to modify the language in section 10, subsection 4. The language proposed in the amendment provides a limitation on indemnity to be given by prime contractors in favor of a public body. The same type of indemnity limitation is not codified by a subcontractor in favor of the CMAR. This causes us concern because it should be the same at all levels as far as indemnity limitations. The process needs to be competitive. We want subcontractors to bid through the Depository so they feel the bids are fairly evaluated.

JIM MORRIS (Construction Management Association of America):

Our position on S.B. 201 is for and against. I have provided written testimony on our position ([Exhibit F](#)). We are in support of the CMAR method. It is a valuable tool utilized by many states. Utah and Arizona use CMAR on almost all of their Public Works projects. We have concerns about sections 13 and 14.

Section 13 notes the construction manager as an agent is required to be a licensed general contractor, engineer or architect. The Construction Management Association of America has been around for the last 25 years and established a certification program for professional construction managers. Our program has certified 2,500 practitioners. Numerous states adopted and recognized this as criteria for providing professional construction management services. We would like to see the Committee review and adopt our criteria and have certified construction managers as a prerequisite to providing construction management as an agent.

Section 14 limits constructability reviews to general contractors. We have promoted this type of service for over 25 years. It has not been limited to general contractors, architects, engineers or construction managers. All professional construction managers need to be qualified to do this. We bring in mechanical engineers, electrical engineers, architects and other professionals to look at these projects, and they have been done successfully. The Nevada Department of Transportation utilized this process on numerous highway projects. I do not want to limit this valuable service to vertical construction.

We would like to lower the limit of \$10 million to \$2 million. Many issues come up on smaller projects. Constructability reviews have been performed on projects as low as \$500,000 with success.

CHAIR HARDY:

The issue brought up about architects justifying what another architect may have done needs to be addressed before I would include them.

MR. MORRIS:

There is confusion on constructability reviews versus peer reviews. This is not a peer review. You are not reviewing the design as much as looking for ambiguity and conflicts. You are overlaying details.

CHAIR HARDY:

That makes sense, but I have seen an architect and a contractor in a shouting match. That concern needs to be addressed.

MR. MORRIS:

Those details are generally picked up by structural engineers. The architecture is the look but the structural engineer puts it together and makes it work.

DARREN SCHULZ (Harris and Associates):

We are in favor of S.B. 201 overall. I echo the concerns about section 14. It is in the best interest of the entities to decide who is best suited to perform the reviews. There are cases where it may be best for a general contractor to do the review and other cases where an engineer should do it.

LARRY J. MACIAS (Larry J. Macias, AIA Limited):

The architects of Nevada agree with the intent of this bill. A lot of design decisions are made early on based on project specifics, performances of requirements, specifications and established codes. Ownership of the drawing remains with the architect and engineer, not the contractors. Responsibility and reliability of design rests with licensed professionals. Architects are qualified in section 13 and should also be qualified in section 14. Many architectural firms perform construction management services. No matter who conducts the review, a reviewer should not be released from liability. General contractors have expertise to do constructability reviews. However, many subcontract their work to others. The bill restricts competition and limits qualified professionals. Through the design-build method, more projects are involving contractors early in the design phase and address time and budget issues to be resolved.

It is not in the best interest of a public body to secure and restrict a service when licensed design and management professionals can also provide the same

service. This approach drives prices up and limits expertise. It is likely to produce constructability reviews which have no liability and are competed among a selected few. If you are looking for the most qualified professional to conduct this type of review and the most qualified contractors are bidding on the proposed work, the qualified pool of professionals is severely limited.

Line 1 of section 14 should be changed to require the reviewer to be at risk and liable for all recommendations. Other licensed professionals such as architects, engineers, certified construction managers and licensed subcontractors necessary for design and constructability review should be added to section 14.

CHAIR HARDY:

Part of the difficulty may lie with a lack of understanding of the architectural profession. When you think of an architect, you think of the design and not the structural engineer who is part of it. When you are speaking of an architect, are you also talking about the structural engineer?

MR. MACIAS:

When I talk about the architect, I am talking about the whole design team. That includes the structural engineer, mechanical engineer and electrical engineer. It forms one cohesive design team.

CHAIR HARDY:

There is less concern if we talk about the structural engineer. Mr. Morris, what is generally involved in becoming a certified construction manager?

MR. MORRIS:

It is a combination: education, on-the-job experience, responsible and in-charge construction manager work and a rigorous testing process.

CHAIR HARDY:

Who generally applies for that certification? Is there a general profession that draws construction managers?

MR. MORRIS:

Sixty percent are engineers, but architects and other professions also apply.

CHAIR HARDY:

Is certified construction manager generally their sole job or is the certification part of their profession?

MR. MORRIS:

Generally, it is their sole job.

DAVID ALEXANDER (CM Works; Poggemeyer Design Group Company):

I am in favor of the proposed bill but have concerns with sections 13 and 14 as previously discussed. I echo Mr. Morris's concerns and favor adding certified construction manager to the language. I am a certified construction manager and perform work listed in both sections. Limiting construction review to a licensed contractor concerns me. Some projects in Las Vegas have limited interest; requiring a general contractor to perform the review eliminates them from bidding on the project. Limiting the amount of bidders increases the cost to the public. Quite a few architects, engineers and contractors who may have engineering or architectural background are construction managers specializing in construction. This bill unfairly eliminates them from the process. With regard to the concern with architects reviewing other architects' work, it is a competitive market and architects and engineers do not hold back their opinion. We have a job to do, that will not be an issue.

MR. SALA:

We are not completely opposed to the bill. The one thing causing us concern is that between the design-build, lease-purchase and construction manager at risk, we may completely lose the competitive bid process. When the process becomes less open, inherent things happen that are not good for the construction industry. I echo the concerns Mr. Peel brought up in regard to the subcontractor issues. Once the CMAR has the project and goes through the process, he has good insight into that project. The over and less than 5-percent issue is confusing; the subcontracting level would be better served if we had subcontractors bid so the competitive process is preserved. The panel selection of who is to evaluate these construction managers concerns me. While some processes are in place, the panel often includes staff who work for the entity, and there may not be enough impartiality.

Section 11, subsection 1 refers to independent contractors. My interpretation of an independent contractor is someone who files taxes using an Internal Revenue

Service Form 1099. Hopefully, it means a contractor who is licensed in the state. We would like some clarification on that issue.

CHAIR HARDY:

Mr. Macias's comments about reviews not being relieved of responsibility interested me. Mr. Holloway, do you have any comments on that?

MR. HOLLOWAY:

That was an error in the bill; item 16 in [Exhibit D](#) corrects that. Independent contractor was not our language; it was the Legislative Counsel Bureau's language, and I missed that.

CHAIR HARDY:

It is interesting in that context. I wonder if another place in statute dealing with construction lists an independent contractor. I am not aware of one.

MR. HOLLOWAY:

I am not either. We would submit an amendment to delete that. I sympathize with the Construction Management Association of America; however, this bill is not the place for their concerns. If they want to be recognized as a professional organization, they should be licensed like engineers, architects and contractors in this state. This bill is not the place for indemnification of subcontractors. I know of three bills coming forth in this session that address that issue. I sympathize with the Southern Nevada Sub-contractors' Bid Depository, but it is not unilaterally used on a majority of Public Works projects. This bill says subcontractors who represent 5 percent or more of the cost of the project may be selected early on the basis of best value and cost. If you have a steel subcontractor, the price of the steel needs to be agreed upon early before it continues to escalate thereby saving the Public Works agency money. That is why that clause is in [S.B. 201](#). Under this bill, the CMAR is required to put together a plan for the selection of subcontractors who are more than 5 percent and a plan for the selection of subcontractors who are less than 5 percent. Most subcontractors on a project are still protected.

Senate Committee on Government Affairs
March 12, 2007
Page 21

CHAIR HARDY:

We have work to address concerns. Construction manager at risk is a good idea and the next logical step, but we want to make sure to get it right. We will close the hearing on S.B. 201. This meeting is adjourned at 3:24 p.m.

RESPECTFULLY SUBMITTED:

Erin Miller,
Committee Secretary

APPROVED BY:

Senator Warren B. Hardy II, Chair

DATE: _____