

**MINUTES OF THE SUBCOMMITTEE OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session  
February 19, 2009**

The Subcommittee of the Senate Committee on Judiciary was called to order by Chair Terry Care at 9:48 a.m. on Thursday, February 19, 2009, in Room 2149 of the Legislative Building, Carson City, 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.

**SUBCOMMITTEE MEMBERS PRESENT:**

Senator Terry Care, Chair  
Senator David R. Parks  
Senator Maurice E. Washington

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Bradley A. Wilkinson, Chief Deputy Legislative Counsel  
Janet Sherwood, Committee Secretary

**OTHERS PRESENT:**

James L. Wadhams, Coalition for Fairness in Construction

**CHAIR CARE:**

We will open this first hearing of the Subcommittee of the Senate Committee on Judiciary on construction defects. On February 3, we heard testimony from builders, subcontractors, trial attorneys and homeowners covering much of the scope of Nevada Revised Statute (NRS) 40. Without taking a remedy or a protection away from a homeowner, can we come up with some mechanism whereby there are—if not less litigation—at least fewer parties in the litigation? Should the builder, but for the most part the subcontractor named as a party in litigation through the course of discovery, never have been made a party in the first place? This implicates putting their carriers on notice, writing checks just to get out of it and having nothing necessarily to do with the merits. That is what I understood to be the case. I also understand there have been attempts to do something about this issue in prior legislative sessions but with limited success.

Tomorrow is the deadline for the committees to seek bill draft requests. I want to ask Senator Parks and Senator Washington if there is an appetite to request from the full committee a bill draft to address the issue of keeping parties from litigation in the first instance or getting out of litigation early.

Can there be a requirement where a homeowner, class of homeowners or a contractor named as a defendant must plead with specificity before lodging third-party complaints? Not only must specificity be pleaded, but should there be some proof to back up that allegation? There was also discussion about the right to repair. There is reluctance of some subcontractors to engage in repair based on the theory that if they do, it will not be satisfactory.

I would like to go to the full committee tomorrow and ask to reserve the spot for a bill draft even though we do not have the language yet. What we must do is have subsequent hearings, review the testimony and exhibits we heard on February 3, and meet the week after to exchange ideas and come up with some direction to draft a bill.

JAMES WADHAMS (Coalition for Fairness in Construction):

As we testified previously, the current system is not working for any party. We would encourage a bill draft to be requested. As the Committee develops more information, it can be refined or amplified.

SENATOR PARKS:

We go away from every session thinking we have the solution, and it seems to deteriorate from that point forward. Is there something we can easily do, in your estimation, to resolve this?

MR. WADHAMS:

In past sessions, the Legislators looked at the system, tried to improve it but were not successful. Senator Care has identified possible areas where the system can be improved. As all three of you will recall, we suggested the system be repealed and the unfettered right of the homeowner to access the justice system be restored. This is an evolutionary process. We need to address the elimination of additional people held in lawsuits. It is one thing to access the justice system but another not to get out when you are finished. The easy solution would be to accept our recommendation. There are other issues and interests that have to be considered, but it is important that the opportunity be

addressed for Legislators to have the full discussion and hear from all parties so judgment can be made.

SENATOR WASHINGTON:

Through any legislative process, we have two Houses. I am not trying to handcuff the second House, but I want to make sure we do not go through an exercise of futility. I am not asking you for any guarantees or assurances, but if we come up with a meaningful piece of legislation agreeable to the stakeholders, are we going to be torpedoed? Can we get a reasonable, intelligent hearing that will make some difference?

MR. WADHAMS:

That is a legitimate question. This being a bicameral Legislature, I can assure you the second House has a similar process. They will deliberate and listen. What this Committee decides as a matter of policy will not be disregarded. It will be given full effect. Your concern will be given the same level of engagement by the members of the Assembly Judiciary Committee. I cannot guarantee what the second House is going to do, but I can assure you that Chair Bernie Anderson and his committee members will be fully interested in hearing the issues. They also wonder why the system has not worked. It is worth addressing policy when the opportunity presents itself.

CHAIR CARE:

As a litigator, I have had clients sued who swore there was no reason for the lawsuit. The rules of pleading are fairly liberal. If you have a good faith basis in fact and law, you can legitimately file a suit. I have seen cases where people have been drawn into litigation when they had no business being there. Once you get past the level of motion to dismiss, you have to go through depositions and discovery of documents, hoping to get a motion for summary judgment, partial summary judgment or some way to get somebody out. Litigation puts people through a lot of gut-checking. If you have a culprit, that person should be sued. I do not think anyone would dispute action against a builder, contractor or subcontractor if that person has not fulfilled his duty pursuant to the contract. We have NRS 40 to protect the homeowner. I would like to discuss the appetite for seeking a bill draft request from the full Committee.

SENATOR WASHINGTON MOVED TO RECOMMEND THE FULL COMMITTEE SEEK A BILL DRAFT REQUEST RELATING TO CONSTRUCTION DEFECTS.

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SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR CARE:

There is no further business. The meeting is adjourned at 10:01 am.

RESPECTFULLY SUBMITTED:

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Janet Sherwood,  
Committee Secretary

APPROVED BY:

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Senator Terry Care, Chair

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