MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
March 30, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:34 a.m. on Monday, March 30, 2009, in Room 2149 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 Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

Josh Martinez, Las Vegas Metropolitan Police Department
Scott Jackson, Chief, Investigation Division, Department of Public Safety
Samuel G. Bateman, Nevada District Attorneys Association
Jason Frierson, Office of the Public Defender, Clark County
Orrin J. H. Johnson, Washoe County Public Defender's Office
Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada
James Parsons, President, Medical Cannabis Consultants of Nevada
Michael McAuliffe
Pierre Werner

Todd Renwick, Commander, University Police Services, University of Nevada, Reno
Steven B. Silva, Senior Law Enforcement Specialist, Division of State Parks, Department of Conservation and Natural Resources
James G. Miller, Sheriff, Storey County; President, Nevada Sheriffs' and Chiefs' Association
Richard P. Clark, Executive Director, Commission on Peace Officers' Standards and Training
Steven Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter; Northern Nevada Associated General Contractors
Boyd Martin, Boyd Martin Construction LLC
Greg Korte, President, Korte Company, Las Vegas Division; Associated General Contractors
Randy Highland, President, Nevada Division, McCarthy Building Companies
Becky Pintar
Leon Mead, Senior Construction Partner, Snell & Wilmer; Associated General Contractors
Renny Ashleman, Southern Nevada Homebuilders Association
Richard L. Peel, Subcontractors Legislative Coalition

CHAIR CARE:
I will open the hearing on Senate Bill (S.B.) 262.

SENATE BILL 262: Prescribes penalties for the cultivation of marijuana in greater amounts than is allowable for medical use. (BDR 40-1107)

SENATOR ALLISON COPENING (Clark County Senatorial District 6):
Senate Bill 262 was brought to me by the Las Vegas Metropolitan Police Department, who will walk you through the specifics of the bill. The purpose of S.B. 262 is to put provisions in place for people who are cultivating marijuana for profit. As Officer Josh Martinez will explain, individuals are targeting Nevada to cultivate their marijuana within the State due to lack of laws to prosecute. Individuals involved in this illegal activity can range from medical marijuana patients who are growing amounts in excess of the medical marijuana laws to gangs and drug cartels. They use abandoned homes or rent homes to grow their marijuana indoors. They destroy the homes as well as create a health risk, including but not limited to mold, to the public as you will see in photos, (Exhibit C).

JOSH MARTINEZ (Las Vegas Metropolitan Police Department):
The intent of S.B. 262 was drafted so it does not interfere with medical marijuana. Senate Bill 262 is to address cultivation of marijuana outside of the medical marijuana Nevada Revised Statute (NRS) 453A.

The reason S.B. 262 states that eight or more plants is a violation is because medical marijuana patients that comply with NRS 453A may possess three mature and four immature plants for a total of seven. The NRS 453A also applies to caregivers who have complied with registration, and only one caregiver per patient is allowed. I verified this with Nevada Department of Health, which now oversees the program.

Any person who has eight or more plants or does not comply with NRS 453A will be impacted by this law. The reason why the law change is being requested is because currently Nevada does not have a cultivation law.

In 1999, A.B. No. 454 of the 70th Session removed marijuana from inclusion in the manufacturing statute. In order to be charged for trafficking, a person must have over 100 pounds. The other charge a grower could face under current law is possession of a controlled substance with more than one ounce. A person could have several plants or a thousand and be charged the same.

This law is attempting to get at the individuals who are clearly growing outside the scope of medical marijuana.

For instance, the pictures (Exhibit D, original is on file in the Research Library) show a nice house in an upscale neighborhood. A medical marijuana patient lived in the home. There were 818 plants found with children living in the home.

One marijuana plant can yield anywhere from two ounces to one pound. The price for one pound of hydroponic marijuana is between $3,500 and $6,000. These houses are not used as distribution points of sales. Individuals grow, harvest and sell on the streets.

One may ask what type of individual is participating in these large grows. It encompasses all types of individuals, all the way to the street gangs or possibly cartels. These grows are dangerous; they involve power theft, weapons and booby traps, as well as molds and chemicals.

Over the last two years, southern Nevada has seen an increase in this marijuana growth. Metro narcotics units handle more grows than methamphetamine laboratories. Marijuana grows are not isolated to southern Nevada. Central and northern Nevada experience marijuana grows as well.

CHAIR CARE:
Was it in the 2001 Session we approved medical marijuana?

OFFICER MARTINEZ:
It was 2001. It was a voter-approved initiative, so it was the will of the people. We are not trying to interfere with that.

CHAIR CARE:
What is in place if some entity is cultivating marijuana for medical use? Is there a registry, does somebody have to be notified, how does that work?

OFFICER MARTINEZ:
There is a registry. It is under the Department of Agriculture; they moved it to the Department of Health, and they indicated they are going to bring a bill draft forward this Session to make that administrative move.

The patient has to get a form. Patients go to a physician, then the physician will state that they comply to use medical marijuana for their condition. The conditions are outlined in NRS 453A. If approved, they get a card, like a driver's license. I know from experience working in patrol, I encountered a subject that was in possession of marijuana and he had his medical marijuana card with him, which exempts him from prosecution.

CHAIR CARE:
What is to prevent somebody from cultivating marijuana in his home for legitimate medical purposes? `

OFFICER MARTINEZ:
If they are in possession of three mature and four immature plants and they are registered under the law as a caregiver or a patient, they can be in possession of that amount.

CHAIR CARE:
Your concern is not so much medical marijuana use; it is cultivation of an excessive number of plants?

OFFICER MARTINEZ:
Correct. I have been on a search warrant, where the home is stripped down, there is no furniture, and nobody lives there. People will come to tend to the crops, they usually tap illegally in to the power, so they steal it, and they have clones that are set up that they use to continue the grow operation. With an indoor grow, since it is manipulated, they can get more product than with an outdoor grow. I believe you are supplied with pictures from our agency of operations that we have conducted and see the effects these grows are having on our community.

CHAIR CARE:
There is an effect on the State, according to the bill. I am looking at the fiscal note that we have, and I do not show a fiscal note. Do you know what figure that would be?

OFFICER MARTINEZ:
I am not sure what the figure would be. The only thing that I could think of, since it has to deal with the felony section, is that people would be incarcerated, so they are looking at that as a possible fiscal note.

What we want to get at with this piece of legislation is individuals who are truly not growing in compliance with the medical marijuana statutes or are growing on their own accord to make money since it is a lucrative business. The other thing that makes it easier is since 9/11 the borders are tighter and it is harder for these individuals to move the product in. It is easier for them to grow it in-State. An example is the two kidnappings of federal fish and game researchers up in the northern part of the State that I am sure Scott Jackson from the Department of Public Safety will testify to. He can talk about their experiences as well as the outdoor grows.

CHAIR CARE:
I have one other question, and then I will turn it over to the members of the Committee. I am doing this with other bills that change the criminal code this Session. This is under NRS 453. Nonetheless, there are sanctions contained in here. What was the thought process in coming up with what would constitute a

Category E, D, C and B felony. The reason I ask is because the State is short on money. We are having to look at every bill like this in the Senate Committee on Judiciary. The more severe the penalty, the greater the impact is going to be on the penal system.

OFFICER MARTINEZ:
We did research across the country, and one of the laws we came across was in the State of Kentucky. Other state and federal laws refer to it as manufacturing. Kentucky law was specific to cultivation, and it said anything over seven or more plants would constitute a felony. We figured that was pretty close to our law in regards to growing a total of seven plants, so we figured eight or more. We started at Category E felony, which is a probationary offense and had a progressive discipline as we do with other narcotics. It would not be harming the State and not be harming individuals who may have grown outside the limit of medical marijuana.

I would like to read a quote from the Committee hearings on April 12, 2001, in reference to A.B. No. 453 of the 71st Session, which was the medical marijuana bill. This was from Assemblywoman Giunchigliani. It says: "If caught with more than that deemed the appropriate number of plants or usable marijuana, the person would be busted." What we are seeing is these individuals need the severe penalty, because the amount of plants we are encountering are larger. As I testified, 818 plants; most grows are 50 plants or more.

SENATOR COPENING:
I will correct the record. It is the Public Defender's Office, Jason Frierson, who has a proposed amendment.

SCOTT JACKSON (Chief, Investigation Division, Department of Public Safety):
As Officer Martinez said, the outdoor cultivation of marijuana is a problem in Nevada, and it is a growing trend. In the last few years, we have had several instances of large outdoor marijuana grows where we confronted individuals who were armed. We believe them to be members of Mexican drug-trafficking organizations.

Several years ago, east of Carson City, we investigated a 900-marijuana plant outdoor grow. During that investigation, multiple individuals armed with rifles

guarding the marijuana grow were confronted. There was a booby trap that any hiker or other citizen could have stumbled across and been harmed.

In October 2008, three Bureau of Land Management biologists in Humboldt County were performing a stream study on the Little Humboldt River near Winnemucca. They came across an outdoor marijuana grow and were confronted by armed Hispanic individuals from a possible Mexican drug-trafficking organization.

Last summer, the Investigation Division of the Department of Public Safety and Esmeralda County Sheriff's Department seized two significant marijuana grows. One was 3,000 plants and the other, 12,000. We typically count the root system. The 12,000 plants counted by the Forestry Service was based on the stalks of the plant. If you counted the stalks of the 3,000 plants seized, again you would be at approximately 12,000 plants, bringing the total count to about 25,000 marijuana plants being grown by a Mexican drug-trafficking organization.

Those are just the outdoor marijuana grows we became aware of last summer. This summer, we intend to launch a campaign to discover more marijuana cultivation operations. We need the law in place to enforce those laws. We also believe the indoor marijuana grows that Officer Martinez testified to will become a more significant problem because Mexican drug-trafficking organizations are looking for ways to generate revenue.

This legislative body has done a phenomenal job of appropriately addressing the methamphetamine problem. This law, if passed, would give us similar appropriate legislation so we can charge people with manufacturing marijuana instead of simple possession or, in large grows, perhaps a trafficking offense. I would be happy to answer any questions.

CHAIR CARE:
Let me be absolutely clear, Mr. Jackson. Is this just an additional tool? Are you saying there is no existing statutes, which if somebody caught growing that many plants, could be prosecuted under?

MR. JACKSON:
That is true. What they could be charged with now is possession of marijuana, perhaps possession with intent to distribute marijuana. If the grow is large

enough, with trafficking marijuana. If they exceed 100 pounds, the next threshold is 1,000 pounds, and then it goes up to 10,000.

There is discrepancy about the actual weight of the marijuana. The way the current statute reads for trafficking in marijuana, whether growing it or not, it excludes the stems and stalks of the plant. When it comes down to the trafficking offense, there is a question of whether or not it includes the weight of the stems and the stalks.

CHAIR CARE:
Mr. Martinez suggested there may be a loose formula, one plant equals "X" number of pounds or ounces.

SENATOR WIENER:
What is the financial yield of a plant in the illegal activity arena?

MR. JACKSON:
The federal Drug Enforcement Agency (DEA) estimates that each marijuana plant, when mature, will yield one to two pounds of raw finished marijuana.

SENATOR WIENER:
What would that convert to in terms of dollars and cents?

MR. JACKSON:
High-grade cannabis with a high tetrahydrocannabinol (THC) content runs as high as $5,000 per pound. The average is $3,000 to $5,000 per pound, which makes it highly profitable.

SENATOR WIENER:
There is a high financial threshold for penalty. Even those eight-plus plants can yield a substantial sum of money, and it looks like we have reached it.

SAMUEL G. BATEMAN (Nevada District Attorneys Association):
We are in support of S.B. 262. It fills in a hole in the various statutes we can use to attack the problem in our community.

CHAIR CARE:
Is this going to mean additional prosecutors?

MR. BATEMAN:
If we could use assets seized from a growing operation, we could use it toward hiring more prosecutors. One of the problems is a plant may have over an ounce of usable marijuana or not, depending on the grow cycle. If we execute a search warrant for a large grow operation, but they have already harvested most of the usable marijuana, you may not have enough marijuana to charge them with a Category E felony, possession of a controlled substance. At another time in the grow operation, you might have a substantial amount. It leaves a gap in the statutes.

The other option is possession of controlled substance with intent to sell. We would be forced to prove at trial the individual who was growing 25 plants intended to sell. We would need additional information in the investigation such as they were attempting to sell the product or other evidence to prove that intent. That is an important part of this.

Section 1, subsection 4 of the bill makes prima facie evidence of intent to sell when an individual has more plants than they are allowed to have under the medical marijuana statute. It is important for us in grow-operation cases to prove possession of intent to sell, which is a Category D felony, a probationary offense, and carries a sentence of one to four years. A Category C felony is a sentence of one to five years for 100 plants or more. Then you have a case with the ability to distribute to the community, with not a significant penalty. Does that answer your question?

CHAIR CARE:
Any questions for Mr. Bateman? I do not show anyone signed in to testify in favor of S.B. 262. I do not see anyone in Las Vegas signed in favor of testifying on S.B. 262.

If we can confine the testimony to the bill itself, not to the virtues or lack of virtues of medical marijuana use. The voters decided that in 2001. The issue is the necessity or lack of necessity for this bill in any form or measure.

JASON FRIERSON (Office of the Public Defender, Clark County):
We come today in opposition to S.B. 262. We have spoken with the sponsors of this bill, as well as law enforcement, regarding their goal. After our discussion, we were unable to present anything today. We are still in discussions on how to target the true growers with mass amounts.

The example Mr. Martinez gave was a home, no furniture, and no evidence of occupation, a home to grow marijuana. Metro was frustrated with their limited ability to prosecute.

I want to clarify NRS 453.316. It is a Category B felony to operate or maintain any place for the purpose of selling, gifting or using marijuana. That example where no one was living in the home but was maintained for the sole purpose of growing, selling, gifting or using marijuana, is a Category B felony now.

There are other examples where people actually live in the home. There is case law that says the location is not solely for the purpose of growing marijuana, and it would not be covered. We are talking about the gap between one ounce and 100 pounds of marijuana. Possession of less than one ounce of marijuana is a misdemeanor. The third offense is a gross misdemeanor and the fourth offense is a felony. Those individuals are the users. Over an ounce is a felony, a Category D, or it may be a Category E.

Another example Mr. Martinez gave was people growing upwards of 50 plants. This was our concern when we saw this bill. The threshold was so low that it would clearly encompass casual users. We do not condone the violation of any law. We are talking about casual users versus the major traffickers, ones connected with drug lords outside the country. That was the basis for our discussions with the sponsors of this bill, to avoid people growing one plant of marijuana and making that a felony.

Testimony was provided that each plant yielded one to two pounds. We are talking about 100 plants, which is upwards of 100 to 200 pounds, which is trafficking marijuana under an existing law.

We are open to targeting the mass growers, the people growing in the desert to avoid getting caught. I have spoken with law enforcement about these remote locations and how difficult they are to find. They are being operated, maintained and watered for the purpose of growing marijuana.

We are willing to work with the sponsors to form language that does not treat the casual user as the trafficker. There may be a problem with Nevada statutes referring to pounds and this one in terms of the number of plants. A plant could be a bud or a completely mature plant. The medical marijuana statute discusses a mature plant, starting at seven or eight plants. For us to begin a felony at a

single plant is problematic and would have overall implications in our judicial system. We need to work with language consistent with the NRS but target the people without encompassing all who are violating the law.

CHAIR CARE:
Have your discussions focused on section 1, subsection 4, possession of eight or more marijuana plants, which constitutes prima facie evidence of possession of marijuana for the purpose of sale in violation of NRS 453.337? Where did the figure eight come from?

MR. FRIERSON:
Trafficking in other drug aspects is presumed based on packaging. Trafficking marijuana is charged on evidence of intent to sell based on packaging. If somebody has a bag of marijuana, it is generally for personal use, unless it is in a large bag. If someone has five bags of marijuana worth $10 each, it is presumed to be for the purpose of sale. There is no need for the prima facie aspect of this. We have judges and juries to determine the intent. It is based on the individual's record, the way drugs are packaged and other contraband confiscated at the arrest, such as scales and tallies and things of that nature.

Any time there is prima facie evidence, there is a concern because it presumes something a trier of fact should be deciding.

SENATOR WIENER:
Would four locations of 25 be a total of 100? Would it be a different category felony if it were cumulative?

MR. FRIERSON:
The testimony was it is the sponsor's intent to focus on a location. The language, as written, would allow for aggregation of several locations if the evidence was there. Our conversations were focusing on individual cases.

ORRIN J. H. JOHNSON (Washoe County Public Defender's Office):
If you have one plant, the difference between having a grow operation of 50 plants and a single pot in your closet is huge. The idea both are the same crime, and a felony, seems disproportionate. Our concern is proportionate sentencing and making sure we are getting the huge grow operations. We do not want to make felons of our casual users, people growing their own plants.

SENATOR AMODEI:
I understand the 1 to 25 distinction; what number are you thinking? You do not like 1, 25 is okay. What is your opinion?

MR. JOHNSON:
Some numbers we discussed, and were unable to settle anything. Perhaps one to seven plants a misdemeanor, eight to ten a gross misdemeanor, and anything above that ...

SENATOR AMODEI:
Do those numbers coincide with the medical marijuana statute?

MR. JOHNSON:
I am not familiar enough with the medical marijuana statute and do not want to misspeak.

LEE ROWLAND (Northern Coordinator, American Civil Liberties Union of Nevada):
The American Civil Liberties Union (ACLU) shares the same concerns as the public defenders offices who testified—tightening up the language so it is aimed at people who are more criminally culpable.

Our concern is when you are at the casual levels under seven plants, that you are automatically making that a felony when the statute for possession would be a misdemeanor. You are disproportionately penalizing people who have not engaged in the black market of purchasing marijuana illegally. Instead they have chosen to grow a plant or two in their home. While we are not condoning that conduct, disproportionately the criminal penalty would be quite different in those two situations.

There is another piece to the bill that is helpful, which is the ability to charge people for cleanup of these large operations. Similar to a nuisance situation, it can be helpful. We understand the logic but want focus on folks who are using it with more criminal intent, or intent to sell. We may be getting closer to that language. In that case, we would not oppose S.B. 262.

MR. FRIERSON:
It is my understanding, oftentimes the casual users with the intent to have one or two plants will often grow ten to see which ones will grow. Evidently, there are male and female plants, and growers look for ways to find out which plant

would be a producer. A number avoiding those individuals is what we are collectively trying to obtain as being in excess of the medical marijuana limit.

SENATOR AMODEI:
You said earlier each plant yield is one to two pounds. Is that correct? There may be different markets, and you talk about medical use and casual user. How much money are we talking about? You have eight plants or 16 pounds for your personal use?

MR. FRIERSON:
I will get some information for you. However, different strains value differently. There are cheaper versions and more expensive versions. It might not be a plant-for-plant equation as far as value goes.

MS. ROWLAND:
When the proponents were talking earlier, they said the average value would be $3,000 to $5,000 for the higher strain THC plants. Generally, the strains grown at home are less powerful, because you are not working in a gardening environment. If you have a hot house, like any plant, you get a certain strain that is more valuable.

People who are casual users have a few plants at home. Those are the less valuable plants. But a couple of thousand dollars a pound could add up quickly. The common practice for any plant, marijuana included, is you often start seedlings to see which one is healthy. If you have 10 seedlings, you are already looking at a high felony count, even though you may only find one to grow legally for medical purposes or you are a casual user.

We are far apart if you have 16 pounds at home at $3,000 a pound; you are talking about $50,000 worth of cannabis. You are probably looking at intent to sell. Our concern is making sure the statute focuses on those people, not somebody who has three ounces worth of seedlings.

SENATOR AMODEI:
I agree with you, and I will defer to Senator Copening in her discussions with you. But if I have seven plants, and I have $20,000 worth of drugs, that does not strike me as casual use.

MR. FRIERSON:
Something that has not been discussed in sections 2 and 3 is crimes relating to racketeering and crimes of immorality. We oppose those portions of S.B. 262. The sponsor indicates a willingness to work on the issues, but for the record those are issues that exceed the scope of S.B. 262.

JAMES PARSONS (President, Medical Cannabis Consultants of Nevada):
We are a nonprofit entity in the State of Nevada, licensed by the State and by the City of Las Vegas to help people navigate the Medical Marijuana Program in the State of Nevada.

I have one comment. We have listened to people speak in favor of this legislation. We have heard statements that people are not aware of NRS 453A.

How can we pass S.B. 262 when we have not ironed out NRS 453A? You made mention it was originally passed in 2001 and eight years later we have not made changes to the original bill. Nationally, policies are changing.

The Senators who introduced this bill have the best intentions when targeting cartel members. However, the way S.B. 262 is written, you have made felons of me, my family and almost all of my close friends, and this is not the case. We are sick patients doing everything we can to follow vague and misunderstood laws. We are trying to do this while managing our responsibilities as parents, holding jobs and functioning within the community.

Our intent is not to break laws. Our intent is to find relief from debilitating medical conditions. I am a veteran of the United States military. I deal with veterans who have post-traumatic stress disorder and average people who call me for help, not your 18-, 25- to 30-year-old cartel members, but your 45- to 60-year-old people who watch their medical bills skyrocket through Medicare. We need to seriously think about how S.B. 262 relates to NRS 453A.

CHAIR CARE:
Thank you, Mr. Parsons. Again, I have your e-mail indicating the inefficiency of NRS 453A.

MICHAEL MCAULIFFE:
I would like to rebut the inaccuracies of Officers Martinez and Jackson. Officer Martinez says there is a limit of seven plants. The text of NRS 453A reads

seven or more plants as recommended by a physician based on medical necessity.

The federal program which sends medical cannabis to patients across the country has set a default limit of 300 grams per month which is almost 11 ounces. Officer Martinez said possessing seven plants would call for possession charges, where Officer Jackson indicated it would be possession with intent to distribute. Officer Martinez diminishes the penalties that are already on the books.

Officer Martinez said growers usually tap into the electric supply illegally. I have known patients seven and one-half years and have never seen them stealing electricity.

To rebut Officer Jackson, he talks about a one- to two-pound yield per plant. That is achievable if you are growing large plants, outdoors, all season long. But we are not an agricultural State, and it is difficult for anybody in Clark County to grow one of these plants to maturity outdoors. One to two pounds is an unrealistic number for you to consider. Most patients are growing indoors in their home and are lucky to get one to two ounces per plant.

The Washington State Medical Cannabis Program, enacted after Nevada conducted a study, determined 8.24 grams per day as the needed dosage. Growing indoors, it is impossible to provide that amount to the most seriously ill patients. I am talking about cancer patients, AIDS patients, fibromyalgia, muscular dystrophy, etc., with only seven plants. The NRS 453A accounts for larger amounts, in contradiction to what Officer Martinez stated.

Second, S.B. 262 labels conviction for one plant over that default value as a prima facie case for distribution. Other witnesses have testified that is not so. It also adds cultivation to the list of racketeering crimes. This is an attempt by Metro to build revenue through asset forfeiture. Senate Bill 262 has the potential to devastate the lives of licensed sick people who may need larger amounts of medicine than this bill would allow.

Third, in labeling cultivation an act of immorality, S.B. 262 moves from science into radical social conservatism. The idea that the growing of any plant is immoral is ludicrous on its face.

Fourth, S.B. 262 provides persons convicted under this statute shall bear all costs for cleanup and disposal. The unlimited aspect of this section is ripe for abuse. While the rest of the country is debating whether or not we can afford to continue this prohibition, in effect fighting three wars at once, Nevada should not move backwards towards intolerance and fiscal irresponsibility. Around us, California is debating tax and regulation of cannabis, as is Massachusetts. Oregon is considering state-grown medical cannabis that they will sell at $98 per ounce. The *Arizona Republic*, Arizona's paper of record, has called for legalization of cannabis to quell the narcotic violence on Arizona's southern border. Sixty percent of what the narcotic traffickers have is cannabis, and they are sending it over the border. Moving to recriminalize and impact the State financially when we are in budgetary crisis is the wrong move.

Last week, Clark County announced they were not going to open the brand-new jail that they built with taxpayer money for at least a year because they do not have the funds to operate it. This bill would put people growing plants—maybe there are 10, maybe 20, maybe 30—in jail when we are having to release violent criminals because we do not have the money to keep them incarcerated.

PIERRE WERNER:
This law is needless. I am the first medical marijuana user to be sent to the Nevada State Prison. I was sentenced to 19 to 48 months for growing and selling medical marijuana to medical marijuana patients.

The detective stated they have no way to deal with patients growing 100 plants or more. They are wrong. There is a law for possession with intent. They also have DEA that can charge people at no cost to the State. They can go to federal prison which would not cost the State anything. There are already major penalties involved. If you go over 1,000 plants, under the federal statute that carries 10 years in prison. We do not need this law.

Another issue is the seven-plant limit was a political number. It is not based on any medical survey done. The State of New Mexico allows 99 plants, the State of California allows 99 plants and 8 ounces, the State of Washington allows 24 ounces per patient. The State of California allows dispensaries.

My amendments (Exhibit E) allow the patients of Nevada to purchase their medicine. To ask patients in Nevada who are handicapped and going through chemotherapy to grow their own medicine is unrealistic. We need a system

where patients can buy their medicine from caregivers, nonprofit organizations or profit organizations and stay within the law and pay their taxes.

I have suggested that the Department of Health charge $50 per ounce to medical marijuana patients. This would bring in millions of dollars of revenue for the State and allow patients who cannot grow their own medicine to purchase their medicine.

I have also proposed an amendment to rescind the order that allows violent criminals to be added into the program. Murderers and rapists are allowed while people who have been convicted of possession within intent are not allowed.

I have also increased the limit to 24 ounces, which is a 90-day supply. I have also added the difference between outdoor plants and indoor plants. There was testimony previously to the limits on what the yield is from outdoor to indoor.

The Department of Health should provide the application for the Medical Marijuana Program online. It is only available in Carson City at a charge $50 for the application. I ask the application be available on the Department of Health's Website, free of charge.

CHAIR CARE:
I have a copy of your proposed amendments, Exhibit E which I will share with the Committee and include in a future work session.

SENATOR WIENER:
Mr. Werner, you said you were arrested and sent to State Prison. Did you say you are a participant in the Medical Marijuana Program? Were you growing to provide it to people who are using it for medical purposes?

MR. WERNER:
I was a medical marijuana patient. My physician still recommends medical marijuana for me. The Parole Office will not allow me to use medical marijuana.

I started a business to get other people into the Medical Marijuana Program. I have people who cannot grow their own medicine ask me to provide it for them. I only sold and provided to medical marijuana patients. I was sent to prison for that.

SENATOR COPENING:
Mr. Werner, I have two questions. Were you arrested more than once? How much marijuana did you possess when you were arrested?

MR. WERNER:
The first time I was arrested, I had 30 plants growing for three patients. The second time I was arrested, I had 100 plants growing for 10 patients. The third time I was arrested, I had 200 plants growing for 17 patients.

SENATOR COPENING:
We will get together with Metro and the Public Defender's Office because the language does need to be tightened up. The intent is to go after the drug cartels, the people who are growing for profit, not the medical marijuana patients. These are two different issues we are dealing with.

You have heard patients talk about the problems with the medical marijuana laws, and I am very willing to work with those people to see if there is something that can be done outside of this particular bill. I have e-mailed the medical marijuana patients back to tell them that I am willing to work with them. Lieutenant Tom Roberts said he was willing to work with the laws themselves. With that in mind we will work to tighten up the language.

CHAIR CARE:
We will close the hearing on S.B. 262 and open the hearing on S.B. 353.

SENATE BILL 353: Revises certain provisions relating to sealed records concerning criminal proceedings. (BDR 14-193)

TODD RENWICK (Commander, University Police Services, University of Nevada, Reno):
I support S.B. 353. Nevada Revised Statute 179 allows persons convicted of many felonies and misdemeanors to seal their criminal records.

According to NRS 179, the only exemptions persons have to seal criminal records is convictions against children or sexual offenses. The statute includes language which orders recall of all records from other states, the FBI and other law enforcement agencies.

The most disturbing portion of the statute is if the court orders the record sealed, the crime is deemed never to have occurred. The person to whom the order pertains may properly answer accordingly to any inquiry, including without limitation an inquiry related to an application for employment concerning the arrest, conviction, dismissal or acquittal and the events proceeding to the arrest, conviction, dismissal or acquittal. That is found under NRS 179.285(1)(a). Somebody can lie when they are applying for the position of police officer if they have been convicted of a crime and they have had their records sealed.

It is clear that persons may seek employment in sensitive positions such as law enforcement and yet may be convicted criminals. They may seek employment legally and become trusted members of our society.

Senate Bill 353 revises the statute by authorizing a potential law enforcement employer to inspect sealed records in order to make an informed decision concerning the applicant. It also requires a law enforcement applicant to disclose information concerning sealed records.

On behalf of law enforcement in Nevada, I urge action of this bill. It is critical for the safety of our State and for the protection and integrity of law enforcement.

CHAIR CARE:
I have raised this issue in previous Legislative sessions. If records are sealed, that person is asked in the private sector, have you ever been convicted of a felony, and he/she says no, it would be a lie—but you may say that. This bill is confined to an application with law enforcement, correct?

MR. RENWICK:
Yes.

STEVEN B. SILVA (Senior Law Enforcement Specialist, Division of State Parks, Department of Conservation and Natural Resources):
I will read from my testimony (Exhibit F).

SENATOR WIENER:
I have a disclaimer. I am not trying to protect anybody who has a sealed record, but it is the law. What would happen if someone had applied to one of the law enforcement agencies who had, under current law, the sealed record. Say we change it and allowed you to go into that arrest or conviction record. That person decides to do something outside law enforcement. What happens to that sealed record? Is there any way somebody can get that information? It has been opened. Is that a protected piece of information only you have access to?

MR. SILVA:
I can speak for our agency. Those records are sealed, used and stored separate from other personnel records within our agency. The information contained is used solely for making the hiring decision.

CHAIR CARE:
The bill says law enforcement may inquire into and inspect any records. How would that work? Tell me the procedure. Somebody gets a court order by petition; it is unopposed. The records are sealed. Where do you go to get the records if you do not know for sure they exist?

MR. RENWICK:
We are hoping S.B. 353 is designed so somebody will disclose they had their records sealed. That would direct us to where the incident, infraction, arrest or conviction took place. We would like to view the arrest, the occurrence, what happened and make a decision ourselves.

CHAIR CARE:
If somebody says, no I have never been convicted, you do not know that. You may suspect it is not true. In a case such as that what would you do?

JAMES G. MILLER (Sheriff, Storey County; President, Nevada Sheriffs' and Chiefs' Association):
You do not really know the person has a sealed record until it is too late. It may be in front of a jury where the officer has given testimony that he made an arrest, and all of a sudden the information comes out from someone who knew this officer had committed and been convicted of a felony. The newspaper may hear of it. There is the issue of integrity and issues about hiring people with sealed records when other people might know his background.

I am here as one of 17 sheriffs in support of S.B. 353. We are looking for some language for a disclosure on law enforcement applications only. There are provisions in NRS 179.259 allowing certain licensing agencies to inspect sealed records—one is the State Gaming Board. We have Peace Officers' Standards and Training (P.O.S.T.), which is a licensing board within our organization. The public demands professionalism and integrity from law enforcement officers.

Nevada Administrative Code (NAC) 289.110 was mentioned and includes the minimum standards for a peace officer. It says a peace officer must not have been convicted of a felony or an offense involving moral turpitude or unlawful use, sale or possession of a controlled substance and have no history of physical violence. We need a statute saying we could ask an applicant if they have a sealed record reflecting a felony conviction in addition to asking if they have a felony conviction. Drug use in the general population today has increased from 31.3 percent of the population in 1979 to 41.7 percent. Decreasing the qualified applicants will cause law enforcement agencies to reduce applicants' standards, which you should not do. You should never reduce your standards.

In October 2008, the *Atlanta Journal* reported one in three Atlanta police academy graduates had a criminal record. Under NRS 179.285, a person who has sealed records can say it never occurred. However, sealed records create a perjury situation if questioned on the witness stand about their background, and it diminishes law enforcement credibility.

Having drug dealers, gang bangers or convicted felons as peace officers is unacceptable and erodes the public trust. Peace Officers' Standards and Training issues the certification that a peace officer has met their required standards. That is similar to NRS 179.259. Peace Officers' Standards and Training and law enforcement agencies should be able to look at a sealed criminal record. Complete and thorough background checks, including sealed criminal records, are imperative to hiring quality law enforcement officers.

Our proposal suggests the application include a disclosure of any records that may be closed on a felony conviction.

SENATOR WIENER:
There are other records that could also be sealed. Is there a way we can craft it so it would be anything related to a conviction because there may be something else that is sensitive and sealed that maybe you do not need access to?

SHERIFF MILLER:
The NRS is clear regarding the minimum standard as far as what should be mentioned on the application.

SENATOR WIENER:
Any criminal conviction, if that is what you can access ...

SHERIFF MILLER:
It would be a felony conviction.

SENATOR WIENER:
Are there other things not dealing with criminal conviction that could be sealed but may still be protected?

SHERIFF MILLER:
Yes, there probably would be.

SENATOR WIENER:
So that would be my consideration, to protect those from being unsealed.

SHERIFF MILLER:
Yes, you could wordsmith that to protect those.

SENATOR COPENING:
Mr. Miller, is this bill for clarification? Is it just geared toward those who are applying, or would it allow you to go back into the records of current police officers?

SHERIFF MILLER:
It would be going forward when they fill out an application with that agency. They would disclose that they have not only a conviction, but a sealed record.

SENATOR COPENING:
So it will not go back to current officers?

SHERIFF MILLER:
In my opinion, it would be from this point forward.

CHAIR CARE:
If it is discovered later that an officer was hired and lied, under this bill is that cause for termination? Does that kick in the whole mandatory arbitration process?

SHERIFF MILLER:
Nevada Revised Statute 179.285 protects those who have sealed records and the understanding of that law states that it never occurred.

CHAIR CARE:
Yes, but if you have somebody you discover lied after you have hired him, what do you do?

MR. RENWICK:
That is an ex-post-facto situation that we would not want to get into. We want to start from this passage and move forward with our applicants who are applying now for these positions.

CHAIR CARE:
That is what I am talking about.

MR. RENWICK:
Yes. We would go into our due process, and we would not be interested in going back.

CHAIR CARE:
Once they have slid in and you did not catch it, they have a job and can keep the job.

MR. RENWICK:
Yes. But I am going to let Mr. Clark from P.O.S.T. answer that question on licensing.

RICHARD P. CLARK (Executive Director, Commission on Peace Officers' Standards and Training):
In direct response to that question: if it has been determined somebody under NAC 289.290 willfully falsified any information to obtain their P.O.S.T. certificate, they could be revoked at that time.

CHAIR CARE:
Does revoked mean terminated?

MR. CLARK:
They would not have a P.O.S.T. certificate. The certificate would be revoked.

CHAIR CARE:
You have to have that to have a job?

MR. CLARK:
That is correct.

CHAIR CARE:
I will close the hearing on S.B. 353 and open the hearing on S.B. 352.

SENATE BILL 352: Makes various changes to provisions governing mechanics' and materialmen's liens. (BDR 9-866)

CHAIR CARE:
I have read the proposed amendment (Exhibit G, original is on file in the Research Library) from Mr. Peel and his organization. Have you had a chance to review that?

STEVEN HOLLOWAY (Executive Vice President, Association General Contractors, Las Vegas Chapter; Northern Nevada Association General Contractors):
No, I have not.

CHAIR CARE:
Then I will not get into it, I will wait for testimony.

MR. HOLLOWAY:
We are in support of S.B. 352 and submit our Amendment (Exhibit H).

CHAIR CARE:
You also indicated Mr. Peel and the Subcontractors Legislative Coalition have an amendment. As we have discussed, I would like this to go to work session so we can consider their amendments.

MR. HOLLOWAY:
I will read from my testimony (Exhibit I).

CHAIR CARE:
On page 3 of S.B. 352, line 24 states: "an amount equal to any right or remedy provided pursuant to NRS ... ." When I read that, I took it to mean it is almost like a lien on damages yet to be established. Am I reading that the wrong way?

MR. HOLLOWAY:
Yes, this is primarily directed at change orders. I would say that our amendment modifies this. In fact, it deletes it, as I recollect.

CHAIR CARE:
Mr. Holloway, please give us a hypothetical. Make up a few facts and give us an example.

MR. HOLLOWAY:
Say we were to take any of the projects that are going on downtown right now. If you have a loan that is made before the start-up of construction, it has priority over all the liens and other loans on that project. If you get a loan to continue the project after the start-up of the project, that loan has no priority whatsoever. All of the other loans, preconstruction loans and liens have priority over that loan. That is one of the primary reasons it is so difficult to get money for a construction project after it has started up. That is one of the reasons money is so expensive if you do get it. This allows that lender to have a priority in the order of recording if they do one of three things. First, they would establish a construction disbursement account. Second, they would do a set-aside. Third, they would bond around any potential liens or a payment bond. If they do any one of those, then they get a priority and have more security in that loan. It should make that money more available.

We have asked the financial community for their reaction to this provision, and to date I have only heard back from two institutions. Both of them like it. I cannot speak for the whole financial community because they have not gotten back to us. Does that explain to you how it works?

Incidentally, the two banks who commented on this provision felt it protected them as well as the mechanic lien claimants. It will encourage the provision of money needed for construction projects.

CHAIR CARE:
We are about to get into attorney fees. The American Rule provides the parties bear their own fees and costs in litigation, absent some provision in the contract for a prevailing party or some provision in statute. We can change the statute. Please give me your thought process on the world of attorney fees.

MR. HOLLOWAY:
Two notices are required on a commercial project—one is called the preliminary notice, which is the notice of right to lien. You are required under statute to provide that notice to the owner. We also would like to change the statute to require that notice be provided to the prime contractor as well. Second is the notice of lien itself, which must be provided to both the owner and the prime contractor. We want the prime contractor to receive those notices because by contract and law, he is required to obtain lien releases when he has been paid for the equipment, material and labor by the owner. He is also required to defend the owner in the event of a dispute. It is very hard for him to do that if he is not aware of the lien claimants out there. That is why we have this process.

In the past, the penalty for not providing notices to the prime contractor was a fine levied by the Nevada State Contractors' Board. I do not know if that has ever happened. But it has not caused a lot of subcontractors and suppliers to provide the notices to the prime. We want to say, if you do not provide the preliminary notice, or the other notice to the prime, it is not fatal, but you would lose your attorney fees and court costs in the event of a lien foreclosure proceeding. We hope that the subcontractors' and suppliers' attorneys would encourage their members to provide the requisite notices. That is why it is in here, as an inducement to get the job done.

We have a proposed amendment, Exhibit H, and Mr. Peel has a proposed amendment Exhibit G. We are willing to sit down and meet with him over the next couple of days to see if we can reconcile any differences.

CHAIR CARE:
We are going to do that. It is not uncommon for this Committee to entertain changes in any session to NRS 108. We did a lot of that after the Venetian litigation. This seems to be another exercise along those lines where you sit down in the interim and review the statutes. You take evolving case law and certain situations that may have arisen because of the construction slowdown.

MR. HOLLOWAY:
Yes. This is a very important bill because of what we have done with the priority of liens. We think that will help free up money and protect the contractors that are doing the construction.

CHAIR CARE:
Do you want to talk about the amendment?

MR. HOLLOWAY:
I provided the Committee with copies of the proposed amendment, Exhibit H. We have been involved in discussion and negotiations with a number of groups, including the Subcontractors Legislative Coalition, for a number of months. We still have a couple of differences.

One is our language on preliminary notices, which I discussed. We add this in our proposed amendment, Exhibit H. The other is the language regarding unconditional releases. That is where we are hung up. I am confident we can reach some accord with your help.

On this proposed amendment, Exhibit H, we have added a number of definitions based on those negotiations. These definitions are added to clarify "agent of the owner," the definition of "commencement of construction," the definition of "to be furnished," which we have already discussed but are amending again. We also added the definition of a "principal on a surety bond" and the definition of a "nonresidential construction project."

We have addressed frivolous liens and have attempted to provide a clearer standard for when the amount of a lien has no basis or is excessive. We have provided a provision that would allow a contractor or subcontractor to terminate his involvement in any project if the insurance provided by the owner or prime contractor is not adequate. Quite often, a contractor will enter into a construction agreement, knowing there will be an Owner Controlled Insurance Program (OCIP). The contractor already backed out their worker's compensation costs and other insurance costs that will be covered by this OCIP, only to find there is not adequate coverage when the OCIP is finally provided. Under those circumstances, they should be able to terminate their agreement and get out of the project since they are not going to be adequately covered by any kind of liability insurance or worker's compensation.

We have added a provision that clarifies when materials and equipment to be furnished may be included in a notice of lien. We have clarified that subcontractors may stop work on a project for nonpayment when a prime contractor stops work. We have changed the amount of the post start-up surety from the proposed one and a quarter times back to one and a half times the total amount of the liens. We have changed the proposed amount of a prestart-up surety from 50 percent to 100 percent of the contract price. We have attempted to ensure that a labor management retirement or benefit trust has the same standing to file liens as an individual laborer who is a natural person. We have required a prime contractor to post a notice with the county recorder conspicuously on site notifying lower-tiered contractors and suppliers where to send their notices of right to lien, which is the preliminary notice. We have also allowed a lien waiver or release to cover a payment period.

Nearly all these changes have the approval of most of the industry, but not all.

BOYD MARTIN (Boyd Martin Construction LLC):
I support S.B. 352 as amended by the Associated General Contractors (AGC). It is good for owners. It is good for general contractors and subcontractors.

CHAIR CARE:
You have seen the bill. Have you had an opportunity to read the amendments or are you going by the testimony that you just heard?

MR. MARTIN:
I have served on a committee that has been heavily involved in it. I cannot tell you I have it all memorized, but I support them.

The primary goal we have is to make sure that everyone involved in the job, including the subcontractors and suppliers, receive payment. In order to receive payment, we have a couple of tools we use to make sure we are aware. One is a preliminary notice; the other is releases. Specifically, I would like to address unconditional releases and the problems I have experienced recently. I have employees in my office who make sure conditional releases become unconditional releases, and those releases become finals to protect our company and the owners we work with. We are still occasionally burned by a practice that has been occurring because unconditional releases, based on the way the statute is currently drafted, are not truly unconditional. They have a trigger that payment must be received. That is a problem because we have the

subcontractor we deal with, and they have subcontractors and suppliers. The only way we know the subcontractors and suppliers to our subcontractor have received payment is when an unconditional release is received.

We receive unconditional releases to induce us to make payments from a subtiered supplier. Those unconditional releases are executed, and we make payment in full to the subcontractor, only to find a couple of months later the subcontractor calling us and demanding payment for monies we already paid to our subcontractor. I am talking about a lower tiered subcontractor or supplier in the chain. We are left with two options—we either step up and pay that bill or we pursue legal action. Unfortunately, some of those claims are not large enough to justify legal action. Nevertheless, they are painful—thousands of dollars typically. The difficulty is that we have done nothing wrong. We have followed procedures very carefully to make sure we have paid the bills and that those lower-tiered subcontractors and suppliers have received their payment. Yet, we are put in a position where we have to again pay money to protect owners because we have an obligation both contractually and statutorily from liens. Unconditional releases should be unconditional. No owner, contractor or subcontractor should require anyone underneath them to require or execute an unconditional release unless they have received payment.

That is where the problem comes sometimes. The supplier will sign this document to allow the subcontractor to receive payment without a joint check. Then the subcontractor experiences financial difficulty, and those payments are never passed on to their suppliers and subcontractors, yet we think they have already been paid. The only protection we have is as this statute is amended, some teeth are given to the unconditional release. It would be an unconditional release that we could rely on when we make payment. No one would be hurt, and I see a great benefit and protection to general contractors.

CHAIR CARE:
This is one of those chapters where we think we have fixed everything and foreseen everything that can happen, and then we have not. I do not know if it is even possible to do.

GREG KORTE (President, Las Vegas Division, Korte Company; Associated General Contractors):
I am in support of S.B. 352 with AGC's amendment, Exhibit H. Boyd Martin, Randy Highland and I have tirelessly worked on drafting modifications to

NRS 108 lien law to make it fair to owners, general contractors and subcontractors and to fix issues that come up. Now in NRS, the process is not working. Payments are not getting to the subcontractors and general contractors, and others are benefiting from that.

Today I am speaking specifically on the modifications we have made to section 5 of S.B. 352 regarding the transfer of liens with the property and those liens remaining intact post foreclosure and until the liens are satisfied.

In 2000, my former company was contracted for renovations to the Aladdin Performing Arts Theater. At the completion of the work, an unpaid balance of $4.5 million to me and my subcontractors remained. My subcontractors and I had posted valid liens against the property in the amount of $4.5 million. These liens were obliterated when the property went into foreclosure and ultimately bankruptcy. I was forced to close my business, when we were doing $80 million in contract revenues a year. My subcontractors had no alternative but to turn to me personally to pay them back the debt of $4.5 million, which I have never received. To make matters worse, after settling with subcontractors and pulling money out of my own pocket, my bonding company, with whom I had posted a payment performance bond, came after me for another $680,000. It was quite painful and a difficult time.

Through bankruptcy and after the foreclosure sale, the Aladdin Theater, now known as Planet Hollywood Theater, has continued to put on shows and concerts and gain revenues, none of which is to my benefit or my subcontractors' benefit.

By the modifications AGC has made to NRS 108, I hope future instances like this will be rectified.

SENATOR WIENER:
Of the $4.5 million that you said were for your subcontractors and your company, how much of that was yours directly?

MR. KORTE:
Approximately $500,000.

RANDY HIGHLAND (President, Nevada Division, McCarthy Building Companies):
I will read from my testimony (Exhibit J).

CHAIR CARE:
Becky Pintar, I have your e-mail letter in support of the bill.

BECKY PINTAR:
I am a lawyer in Las Vegas, and much of my practice is dedicated to the construction industry. I am here to testify in support of the bill as supported by AGC and as amended.

A construction project is full of risks. This bill attempts to spread the risk around, but moreover it makes all of the parties responsible and tries to level the playing field. The requirements in this bill are not slanted toward any one group, but there are requirements and mandates from each group so everybody gets paid on a construction project.

Moreover, I support the portion of the bill that attaches the liens to the property in the event of a foreclosure. I represent subcontractors and materials suppliers as well as general contractors and owners. It is very hurtful to the industry when people lose large amounts of money. This requires the buyer to satisfy those liens because they are ultimately going to benefit by the construction project and the improvement thereof. I urge your support of this bill.

LEON MEAD (Senior Construction Partner, Snell & Wilmer; Associated General Contractors):
I echo the comments of my colleagues before you today. It is important that we be consistent in our current lien law. Our current lien law as it relates to unconditional releases is unique in the United States. To the extent any other state uses conditional and unconditional releases, none of them have unconditional releases contingent upon receiving payment. For that reason, many general contractors and higher-tiered subcontractors, who have lower-tiered subcontractors and suppliers as well as owners, are confused and taking a substantial risk because of our current lien law.

Current lien law states an unconditional release not accompanied by payments releases nothing, and any lien rights should remain with the project. An unconditional final release in this State again will release nothing unless payment is there. The gentlemen here have suffered with suppliers and subcontractors, providing unconditional final releases on promises of being paid by the subcontractors or promises of other checks arriving. Unfortunately these gentlemen, general contractors and owners, do not know of promises that go

unfulfilled. As a result, believing based on the unconditional final release that all the releases down the line have been taken care of and there are no more lien releases, spend the money and give the subcontractor in front of them substantial sums of money, only to find out months later that those suppliers who provided the unconditional releases were not paid. Under current lien law in this State they have no recourse but to pay again to protect their owners. I would encourage the Committee to focus on that as a very important aspect for the construction industry and to encourage development in our State.

RENNY ASHLEMAN (Southern Nevada Homebuilders Association):
The Southern Nevada Homebuilders Association does support the bill. The financing provisions and unconditional release provisions are extremely important and will be a great contribution. Some amendments are technical in nature, and we need to trouble the Committee at this point.

CHAIR CARE:
I want to start with you because your group consists of the subcontractors. It is apparent to me that a number of the people who have signed up to testify against the bill would be considered subcontractors. It is possible that your testimony and proposed language, which I have reviewed, may alleviate some of the concerns they have.

RICHARD L. PEEL (Subcontractors Legislative Coalition):
Our coalition is made up of a number of union and nonunion trade organizations, as well as labor groups in this State. These groups are many, and they employ thousands and thousands of individual employees who work on these projects, and their expectation is to get paid.

We represent the Mechanical Contractors Association of Southern Nevada, The Sheet Metal Air Conditioning Contractors National Association of Nevada, The National Electrical Contractors Association of Nevada, the Plumbing Heating Cooling Contractors of Nevada, the Southern Nevada Air Conditioning Refrigeration Services Contractors Association, the Nevada Underground Contractors Association, the Southern Nevada Fire Protection Association, the Southern Nevada Subcontractors Bid Depository, the Glass and Glaziers Association of Nevada, the Western Wall and Ceiling Contractors Association, Sheet Metal Workers' Union Local 88, International Brotherhood of Electrical Workers Local 357, Plumbers and Pipefitters Local 525, Southern Nevada

Building and Construction Trades Council, and the Northern Association of Mechanical Contractors.

Thank you for the opportunity to speak in opposition to S.B. 352. As Mr. Holloway indicated, there were numerous changes made to our mechanic's lien statute back in the 2003 and 2005 Sessions. Our subcontractor coalition sat with AGC and drafted the changes made and testified in support of those particular changes.

These changes made were coauthored by AGC and our group. Today, by way of S.B. 352, AGC is asking you to change the very language they voted in support of back in those Sessions. For example, at the March 11, 2003, hearing before this Committee with respect to S.B. No. 206 of the 72nd Session, AGC testified that S.B. No. 206 of the 72nd Session was fair to all those it affects—the owners, developers, general contractors, subcontractors, equipment rental companies and suppliers.

At the April 5, 2005, hearing, with respect to S.B. No. 343 of the 73rd Session, AGC testified that particular bill had the consensus of the industry. Associated General Contractors is now asking to change some of the provisions they testified in support of and asked prior Committee members to pass by way of legislation.

Here is the current problem. For the last three years we have seen numerous projects close. You have the Spanish View Towers project, the Echelon project, the Venetian Tower, parts of the Fontainebleau project have closed down, the 40/40 Club and the Caesars Tower, among others.

Last Friday, there was a very big scare. MGM came very close to filing for bankruptcy relief. MGM is not out of the woods yet. If MGM were to file for bankruptcy, thousands of laborers who are employed on that particular project and hundreds of millions of dollars that are owed to lien claimants would not be paid.

To give you an idea of the size and gravity of that project, if MGM files for bankruptcy, the monies owed on that project would be anywhere from five to ten times larger than the entire amount in the Venetian project dispute that took place ten years ago and has languished for the last ten years. Hundreds of millions of dollars would not be paid. Doug Lea wants to testify regarding how

detrimental it will be if he does not get paid on this project or other projects, and how important mechanic lien statutes are to him in getting paid.

The inability to lien for work materials or equipment would be catastrophic to lien claimants. The lien claimants are the financiers of these projects. They pay for labor, materials, equipment, taxes, insurance, etc., until such time as they are paid for all of that. In the meantime, it comes out of their pocket. If they are not paid, many of these companies will be forced to close their doors and their employees will be out of work.

MR. PEEL:
We cannot afford to allow this to happen in our State. We cannot afford to take three steps backwards as AGC has requested. If anything, we must strengthen the mechanics liens statute so people get paid for work, materials or equipment they furnish. We told you that in 2003 and 2005. That is why this Committee voted in support of S.B. No. 206 of the 72nd Session and then again S.B. No. 343 of the 73rd Session in 2005.

We are opposed to S.B. 352 for several reasons. First, sections 1 and 3 would prohibit a lien claimant from including in their notice of lien the value of offsite or preparatory work as well as the value of work, materials or equipment that has yet to be furnished. Many of these trades, such as Mr. Lea, who is with Quality Mechanical Contractors, will enter into an agreement to provide work, materials or equipment, and before he steps foot on that job site, he will incur hundreds of thousands of dollars, if not millions of dollars, ordering equipment or fabricating duct work or piping materials. For him not to be able to lien for those items in the event the project does not go forward does not make sense.

Section 4 prohibits lien claimants from lien for changed work, materials or equipment. In 2003 and in 2005, we told you why it was so important that lien claimants be able to lien for extras or additions to their original scope of work, and this Committee listened. Now AGC is asking you to take away that right, to delete the language from the statute that was added in 2003 and 2005.

Section 15 deals with notices of right to lien. You have heard from several general contractors, and they have told you their side of the story. But the reality is many of these general contractors and owners know there are subcontractors and other lien claimants on the project. What good would further notice do if they already know you are on the project?

Finally, section 16 as we have heard about the unconditional waivers and releases, we wanted to cure a wrong, the wrong being on the Venetian case. The No. 1 argument Venetian and Bovis made was that they had obtained unconditional waivers and releases from subcontractors, and therefore those subcontractors were prohibited from collecting any further monies. We had good judges; they saw through that, they realized there was a problem because the subcontractors had not been paid. In every case that I am aware of, those waivers and releases were tossed out.

Do not change these statutes. If anything, let us better the statutes to make them more protective of lien claimants. We have a bill that is pending, Assembly Bill (A.B.) 501 in the Assembly Judiciary Committee. That particular bill is what we are asking you to look at for passage at this time. Our amendment, Exhibit G, asks that S.B. 352 be deleted in its entirety and that the language being proposed is the language from A.B. 501.

ASSEMBLY BILL 501: Revises provisions governing mechanics' and materialmen's liens. (BDR 9-1159)

CHAIR CARE:
I did read it. It is 16 pages and includes a lot of definitions. There are a couple of points you do agree with AGC on. We have just been summoned to the floor, and I am going to appoint a subcommittee of one that will be me. You are going to be heard. We are going to hold the hearing open. Do not go away.

CHAIR CARE:
The Committee is adjourned for the day at 10:37 a.m., subject to the subcommittee of one reconvening his own hearing.

RESPECTFULLY SUBMITTED:

Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: