

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Sixth Session
February 11, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 11:50 a.m. on Friday, February 11, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Kelvin Atkinson, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblyman Richard (Skip) Daly
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Crescent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman John Ocegüera
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

Assemblywoman Maggie Carlton (excused)
Assemblyman Tick Segerblom (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Ira Hansen, Assembly District No. 32

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Committee Policy Analyst
Sara Partida, Committee Counsel
Andrew Diss, Committee Manager
Jordan Grow, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Fred Hillerby, representing Nevada Optometric Association
Louis Ling, Board Counsel, Nevada State Board of Optometry
Alaina Cowley, representing Luxottica Retail North America Inc.
Keith Lee, representing State Contractors' Board
Margi Grein, Executive Officer, State Contractors' Board
Marlene Lockard, representing Subcontractors Legislative Coalition and
Plumbing-Heating-Cooling Contractors Association of Nevada
Clara Andriola, President and Chief Executive Officer, Nevada Chapter,
Associated Builders and Contractors, Inc.
Gary Milliken, representing Las Vegas Chapter, Associated General
Contractors
Brian Kerzetski, President, Plumbing-Heating-Cooling Contractors
Association of Nevada
Dennis Sieben, Owner, August Plumbing and Heating, Carson City,
Nevada

Chair Atkinson:

[Roll was called, and a quorum was present.] We will take our bills in order today. We will open the hearing on Assembly Bill 20.

Assembly Bill 20: Revises provisions governing the practice of optometry.
(BDR 54-501)

Fred Hillerby, representing Nevada Optometric Association:

I represent the Nevada Optometric Association. However, this is the Nevada State Board of Optometry's bill. We would like to wait until the legal counsel for the Board of Optometry is here to present the bill before we offer our testimony.

Chair Atkinson:

Okay. We will take a brief recess until they arrive. [Recess taken.]

Chair Atkinson:

We are back from our recess. We will now invite you gentlemen to testify.

Louis Ling, Board Counsel, Nevada State Board of Optometry:

I have spoken with Mr. Hillerby, and his clients have a few issues with the bill. We would like to ask the Committee to set this bill aside for now so both parties have an opportunity to talk. We would like to negotiate these issues and bring back a bill which both of our clients agree to.

Fred Hillerby:

I know you have a full agenda, and we apologize for making this request. There is also another group that would like a chance to discuss a couple provisions in the bill. We commit that we will not drag this out.

Chair Atkinson:

We will make every effort to get A.B. 20 on the agenda again soon. In the future, we would like to know these things before the hearing.

Assemblyman Conklin:

Mr. Hillerby, who is in the negotiating party?

Fred Hillerby:

The Nevada State Board of Optometry and the Nevada Optometric Association will be working out provisions in the bill.

Louis Ling:

We have been contacted by LensCrafters, and they also have some issues with some language that needs to be discussed.

Alaina Cowley, representing Luxottica Retail North America Inc.:

I contacted the Nevada Board of Optometry on behalf of my client, Luxottica Retail North America. We were planning on testifying in support of the bill, with some clarification. We have no problem working with the Board or with the Committee.

We are supportive of licensure by endorsement; we just wanted clarification. If you look at the notation regarding section 3 in the Legislative Counsel's Digest, it seems clear that the exam would be limited only to the criteria listed, but if you look at the bill language, it is not as limiting in scope. We would like

clarification, either from the Board or from the Committee, as to the intent of the language.

Our concern is if you have an exhaustive examination, it defeats the purpose of having licensure by endorsement. That was our only clarification. We have no problem testifying in front of the Committee, working with the Committee, or working with the Board.

Chair Atkinson:

Okay. We will try to bring the bill back next week. We will close the hearing on Assembly Bill 20 and open the hearing for Assembly Bill 31.

Assembly Bill 31: Revises an exemption from the provisions governing contractors. (BDR 54-621)

Keith Lee, representing State Contractors' Board:

Assembly Bill 31 is one of the State Contractors' Board's bills. I would like to introduce Margi Grein, the Executive Officer of the Board, who will present the bill to you.

Margi Grein, Executive Officer, State Contractors' Board:

[Presented Exhibit C.] Assembly Bill 31 would reduce the exemption currently allowed for repairs and maintenance work under contractors licensing law from \$1,000 to \$500. The current exemption of \$1,000 has been in place since 2007, and as a result we have experienced many problems associated with the high dollar amount of the exemption. Many individuals are simply ignoring the provisions of the exemption and are continuing to do work that does not fall within the exemption.

There are advertisements everywhere, on bulletin boards, Home Depot stores, and the Internet, announcing these services. Part of the problem we face is that individuals who contract with these handymen and experience substandard work have no recourse through our Residential Recovery Fund. While \$1,000 may not be a lot to some people, for those on fixed incomes and senior citizens it is a problem.

Chair Atkinson:

Are there any questions?

Assemblyman Ellison:

As an electrical contractor and a former member of the State Contractors' Board, I understand that in the last several months we have been receiving a lot of calls from senior citizens and the public at large regarding the misuse of the

"handyman license." We have people out there with handyman licenses building full structures that are not passing codes. I wish to show my support for this bill. I would even support the repeal of the exemption because there has been so much misuse; the intent of the exemption is not being achieved.

Chair Atkinson:

Are there any other comments?

Assemblyman Conklin:

Mr. Lee or Ms. Grein, can you help us understand if changing the exemption from \$1,000 to \$500 will solve this problem? What happens if a handyman has concurrent bills totaling just under the exemption amount, which in aggregate would exceed both \$500 and \$1,000? Is there some way to prevent that from happening? Or do you believe we need to take a whole new look at this issue? I believe it is important for handymen to maintain their ability to operate, but I also understand there is plenty of room for problems.

Keith Lee:

Assemblyman Conklin, that is indeed the problem we are facing. To clarify, there is no "handyman license" as provided in Chapter 624 of *Nevada Revised Statutes*; there is only an exemption from licensure. There probably is a need for a handyman's license, but this does not provide for one. Perhaps we should reengineer this whole thing and talk about a handyman's license.

Some of you may recall, through negotiation in 2007, the Contractors' Board agreed to this exemption. In 2007 we were focused on trying to take care of the little person out there who is a skilled individual, who has the ability to fix things, and where the license process itself would be too expensive. So we compromised with the handyman exemption, where work did not exceed \$1,000.

I think our experience in the last two and half years has been that this exemption has been abused. We thought that we might be able to address some of the concerns by reducing the limit to \$500. However, it does not prevent the compounding of multiple bids by one person on the same project. The Residential Recovery Fund really works, and it is a good tool that takes care of citizens who work with licensed contractors. Maybe we need to put some more work into this issue. We are prepared to do whatever we can to address this problem.

Chair Atkinson:

Are there any questions or comments from the Committee?

Assemblyman Grady:

I would like to support Assemblyman Ellison's position. We have had many cases here in Carson City, where a handyman is going out and bidding on work from which he is prohibited. The exemption under the law is being abused. We understand there are a lot of people out of work and they are trying to make some money, but they are bidding against contractors. The contractors have to have licenses and bonds and make their reports. I think it is really being misused now. I agree with Mr. Lee that we have to do something to get the handyman issue back under control.

Assemblywoman Kirkpatrick:

This may be a question for Legal. Since there is no provision to help people get their money back, is the Consumer's Advocate Office able to help these people get some type of settlement?

Sara Partida, Committee Counsel:

I am unaware of how the Consumer's Advocate Office would work in this particular instance, but I can find out and get back to you.

Assemblyman Ellison:

The contractors all pay into the Residential Recovery Fund with their licensing. If there is a complaint, they can pull an amount from that fund for a necessary settlement. Handymen do not pay into any type of license agreement, so there is no way for a homeowner to recover that money. There are four specialty trades exempt from this handyman provision: electrical; plumbing; heating, ventilating, and air-conditioning (HVAC); and alarm systems. They are exempt from the handyman provision because you must have a master's license to do them. These problems exist; maybe we can send it back and make the necessary changes to address them.

Assemblyman Daly:

If you are going to go back and look at this subject, I think we should add asbestos, mold, and hazardous remediation to trades which are exempt from the handyman provision. I do not believe the average handyman is qualified to do that type of work in a safe manner. It is also a public safety concern.

Assemblyman Goedhart:

I have some concerns. Doing handyman work is how I put myself through college. I did not do the specialty trades, but I did do painting, flooring, and things like that. I am afraid that by putting such high barriers to entry into the trades, you may discourage young men and woman of this day from learning new skills.

Chair Atkinson:

Are there any questions from the Committee? [There were none.]

Margi Grein:

At our meeting last week, after discussions with the industry, the State Contractors' Board voted, and we would support a repeal of the exemption if the Legislature decided that was the best way to go.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else in favor of A.B. 31 to testify?

Marlene Lockard, representing Subcontractors Legislative Coalition and Plumbing-Heating-Cooling Contractors Association of Nevada:

We support this bill; we think this is very important legislation. We would also be in support of removing the exemption in its entirety, if that is the desire of the Committee.

Chair Atkinson:

Are there any questions from the Committee? I see none.

Assemblyman Ira Hansen, Assembly District No. 32:

I am a licensed master plumber. I have a C-1 mechanical contracting license and a B-2 general contracting license. I am also certified in mold, asbestos, fire, trauma, and other things. I am here to support A.B. 31. I love the direction the Committee is going. Currently, this exemption results in a competitive disadvantage to licensed contractors. Licensed contractors have higher overhead costs because of workers' compensation and bonding. Contractors can not compete with unlicensed handymen. We need to make sure the enforcement mechanisms are in place for the Contractors' Board. We need to give that some teeth, and the very minimum would be what is suggested in A.B. 31.

Chair Atkinson:

Are there any questions from the Committee? I see none.

Clara Andriola, President and Chief Executive Officer, Nevada Chapter, Associated Builders and Contractors, Inc.:

I am the president of Associated Builders and Contractors. I am also supporting A.B. 31. If you start creating all these exemptions you are not going to have much left. We always want to have people working; we do not want to do anything to displace anyone. We are hearing from our members that folks are going in and doing exactly what has been described. There are safety issues

and hazards. We would support the repeal of the handyman exemption. We need to look at this problem and try to solve it for the consumer.

Chair Atkinson:

Are there any questions from the Committee? I see none.

Gary Milliken, representing Las Vegas Chapter, Associated General Contractors:

We are in support of A.B. 31 as written. If you want to take a look at licensures and exemptions, we would certainly like to work with the Committee and the States Contractors' Board on those issues.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in favor of A.B. 31?

Brian Kerzetski, President, Plumbing-Heating-Cooling Contractors Association of Nevada:

We agree with everyone who has spoken so far. We are in favor of this bill. We are also in favor of repealing the exemption. As it has been mentioned, the exemption of handymen does not allow them to perform mechanical, electrical, and plumbing trades; however, that has been abused. Theoretically, someone could be out on a painting job and notice that the garbage disposal needs to be fixed, and he might work that into their project.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Ellison:

How do we go about repealing this exemption? Do we need to work on the bill and come back to this?

Chair Atkinson:

We can bring this back for a work session if that is the Committee's desire. Are there any other questions?

Assemblyman Hickey:

I would like to ask Mr. Lee a follow-up question. I am also a licensed contractor, so I understand some of the problems this handyman exemption has created. Should it be the desire of this Committee to eventually repeal the handyman exemption, what would be the handymen's recourse? Or what would their status be? I share my colleague's concern that these people are providing a legitimate service in some ways.

Keith Lee:

If we were to repeal what we refer to as the handyman exemption, then all these individuals would be unlicensed contractors. If they were to perform a service within the scope of the many classifications and categories within Chapter 624 of NRS, then they would be unlawfully performing the duties of a contractor. They would be subject to the penalties of an unlicensed contractor. It would be easier for us to enforce. We would not have to worry about the total price of the contract bid.

Assemblyman Hickey:

Has there been any consideration given to a new category of license? The alternative would be to have some of these people apply as general contractors. Some of them might not be able to reach that threshold monetarily or skill wise. Would it be wise to try to find another category in which they might be able to qualify?

Keith Lee:

Essentially we made this exemption in 2007 because they would not qualify for a general contractor's license, usually because of financial responsibility issues. It would be very difficult for them to qualify from an expense standpoint. I think Ms. Grein might be able to give you more perspective on the issue.

Chair Atkinson:

Is there anyone else wishing to testify in favor?

Dennis Sieben, Owner, August Plumbing and Heating, Carson City, Nevada:

I am a plumbing and heating contractor with a state license. I think the main reason people get licensed is for public safety. Most of the handymen I see around here have no experience. That is why we have to get a license, to prove that we are experienced and financially responsible. I am all for people learning how to be in a trade, but anyone who wants to be a contractor should get their license. That is why we have a licensing board. I think the dollar amount to the exemption is irrelevant because there are so many ways around it.

I would recommend that you do not put any type of exemption in, but maybe something simple; such as a residential property owner may hire an exempted person provided there is no classification already provided in the State Contractors' Board's classifications. So, if it is listed in the dedicated classifications, they cannot perform that type of work. That would still leave them with work they can do.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in favor? [There was none.] Is there anyone wishing to testify in opposition? [There was none.] Is there anyone neutral to this bill wishing to testify? [There was none.]

We obviously have some issues to work out with this bill. I would like to appoint one of the Committee members to work with the interested parties and bring something back to the Committee that we all could live with. All interested parties should contact Assemblyman Ohrenschall. We will bring the bill back to the Committee soon.

We will now close the hearing on Assembly Bill 31 and open the hearing on Assembly Bill 32.

Assembly Bill 32: Revises provisions governing licensed contractors.
(BDR 54-620)

Keith Lee, representing State Contractors' Board:

The purpose of Assembly Bill 32 is to amend a provision of the State Contractors' Board licensing law that provides for a contractor to request a onetime increase in his monetary limit for the purpose of bidding a particular job.

When we license a contractor, we put a bonding requirement on that contractor and establish a monetary limit. The monetary limit essentially sets the ceiling above which the contractor may not bid a job. For instance, if the monetary limit for a contractor is \$50,000, that contractor may not bid a job in excess of \$50,000. *Nevada Revised Statutes* 624.220, subsection 3 provides a mechanism for a onetime relief from that monetary limit. Currently, the language requires a contractor submit his request only two working days prior to the bid and does not require prior approval to submit that bid with an increased monetary limit. This has turned out to be an unworkable situation.

This bill requires the contractor to submit his request for an increase in his monetary limit at least ten days prior to the submission of the bid. The proposed language increases the deadline from two days to ten. We are also suggesting a substantive change, in that the board must grant prior approval to that contractor for the increase in the monetary limit prior to his submitting a bid.

We are also suggesting an amendment to A.B. 32 ([Exhibit D](#)). After we had the bill printed we had further discussions with the industry. We are now

suggesting we amend the bill to require contractors to submit their requests five working days prior to submitting a bid. We were able to reach an accord with the industry, and both parties are happy with the bill as amended.

Chair Atkinson:

On line 26 in section 1, the amendment will change that language from ten working days to five. Is that correct? [Mr. Lee concurred.]

Assemblyman Conklin:

Mr. Lee, when you expand that limit to bid, does that come with a bond? If you were to expand a monetary limit from \$2 million to \$10 million, does the contractor have to be able to be bonded for that amount?

Keith Lee:

I would like to defer that question to Ms. Grein.

Margi Grein, Executive Officer, State Contractors' Board:

Certain times with the onetime raise in monetary limit, it would require a payment and performance bond. However, it does not increase their total bond. They have to provide a financial statement to make sure they can support the project. That is why we are looking for this additional change. It would not necessarily increase their bond amount.

Assemblyman Conklin:

We have had a slew of bankruptcies. If you are a subcontractor, I do not know how you stay afloat right now for the simple fact that half of all your jobs are not paying. The businesses are going out of business, or you may do a project and the owner of the project does not pay. Do you suspect that these changes will allow you to have better control and decrease the likelihood that a general contractor will be able to bid on a project for which he does not have the fiduciary assets or fiduciary capability of seeing from start to finish? I am concerned because many of the subcontractors do the work first but do not get paid until the end.

Margi Grein:

That is correct. That is what this bill is attempting to correct, that we ensure that our licensee is financially responsible prior to him contracting or bidding to contract.

Assemblyman Conklin:

So the most important part of this bill for you is line 28, where it states, "and must be approved by the Board before the submission of a bid by the contractor for the project"?

Margi Grein:

That is correct.

Chair Atkinson:

Are there any questions?

Assemblyman Daly:

When a contractor requests that approval, does he have to go in front of the full Board?

Margi Grein:

No, he does not. If the applicant meets the requirements and establishes his financial responsibility, it is approved by staff. Those who do not meet the requirements set forth in statutes and the *Nevada Administrative Code* can appeal the decision in front of the full Board.

Assemblyman Daly:

I wanted to make sure there would not be a conflict with open meeting laws, because I was unsure of how often the full Board meets.

The old process allowed the contractor to request the increase, make the bid, and then hope afterward that he got approved? [Ms. Grein nodded.] And this process will require approval ahead of time? [Ms. Grein concurred.]

I am in support of that.

Assemblyman Hickey:

What is the typical turnaround time for you in reviewing and approving these requests? Has it been the experience of the contractors who ask for this increase that you can do this in a timely manner and give them the opportunity to bid?

Keith Lee:

Yes. We worked with the industry throughout this process, and everyone believed ten days would be sufficient when we submitted the bill draft request. Upon review we agreed that we could get the job done in five working days. That would be the turnaround. Keep in mind, right now there is no requirement for approval. We did review all of the requests, but there was not an approval process at the end.

We feel comfortable with our staff and expertise. Our limited review deals only with the financial situation. Do they have the financial wherewithal to be able

to do a job that is above their monetary limit? As Ms. Grein said there may be some additional surety bonding required either by us or, more likely, by the project itself. Those are things that we have, and we feel very confident we can get that turned around in five working days. That is why we agreed to that change with the industry.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in favor?

Marlene Lockard, representing Subcontractors Legislative Coalition and Plumbing-Heating-Cooling Contractors Association of Nevada:

We support A.B. 32. We have worked closely with the Contractors' Board, and they have accommodated our input. We support this as amended.

Chair Atkinson:

Are there any questions from the Committee? [There was no response.]

Gary Milliken, representing Las Vegas Chapter, Associated General Contractors:

We are in agreement with the bill and the amendment. In reference to Assemblyman Conklin's statement, we hope this will increase the Board's ability to determine who is financially sound and who is not.

Chair Atkinson:

Are there any questions from the Committee? [There were none.] Does anyone else wish to testify in favor? [There was no response.] Is there anyone wishing to testify in opposition to the bill? [There was no response.] Is there anyone with a neutral stance wishing to testify? [There was no response.] We will close the hearing on Assembly Bill 32.

I believe we have an answer to Mrs. Kirkpatrick's question on Assembly Bill 31.

Sara Partida, Committee Counsel:

Assemblywoman Kirkpatrick had asked about consumer protection. I see that the Consumer Affairs Division of the Department of Business and Industry was temporarily repealed in Assembly Bill No. 561 of the 75th Session, so it does not appear to be active right now, but it would require that civil penalties be recouped through some type of a civil action. This action can be brought by the Attorney General's Bureau of Consumer Protection (Consumer's Advocate) on behalf of the consumer.

Chair Atkinson:

Are there any other questions or comments from the Committee?
[There was no response.] The meeting is adjourned [at 12:40 p.m.].

RESPECTFULLY SUBMITTED:

Jordan Grow
Committee Secretary

APPROVED BY:

Assemblyman Kelvin Atkinson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 11, 2011

Time of Meeting: 11:50 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 31	C	Margi Grein	Prepared Testimony
A.B. 32	D	Keith Lee	Proposed Amendment