

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Sixth Session  
May 9, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:02 a.m. on Monday, May 9, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/](http://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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Marilyn K. Kirkpatrick, Chair  
Assemblywoman Irene Bustamante Adams, Vice Chair  
Assemblyman Elliot T. Anderson  
Assemblywoman Teresa Benitez-Thompson  
Assemblyman John Ellison  
Assemblywoman Lucy Flores  
Assemblyman Ed A. Goedhart  
Assemblyman Pete Livermore  
Assemblyman Harvey J. Munford  
Assemblywoman Dina Neal  
Assemblywoman Peggy Pierce  
Assemblyman Lynn D. Stewart  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Senator John J. Lee, Clark County Senatorial District No. 1

Assemblyman Richard (Skip) Daly, Washoe County Assembly District  
No. 31

**STAFF MEMBERS PRESENT:**

Susan Scholley, Committee Policy Analyst

Cynthia Carter, Committee Manager

Jenny McMenemy, Committee Secretary

Olivia Lloyd, Committee Assistant

**OTHERS PRESENT:**

Gustavo Nunez, Manager, State Public Works Board

Leo M. Drozdoff, Director, State Department of Conservation and Natural  
Resources

Richard L. Haskins II, Deputy Director, Department of Wildlife

James M. Wright, Chief, State Fire Marshal Division, Nevada Department  
of Public Safety

Keith Lee, representing the Nevada State Contractors' Board

Walter Bruce Robb, representing the Nevada State Contractors' Board

John Madole, representing the Nevada Association of Mechanical  
Contractors; and Associated General Contractors of America, Inc.,  
Nevada Chapter

Brett J. Scolari, representing RHP Mechanical Systems, Inc., Reno,  
Nevada

Steven L. Scolari, President, RHP Mechanical Systems, Inc., Reno,  
Nevada

Len Savage, President, Savage and Son Plumbing and Heating  
Contractors, Reno, Nevada

Richard Lisle, Executive Director, Mechanical Contractors  
Association, Inc.

Robert Witt, President, Mechanical Contractors Association,  
Las Vegas, Nevada

Robert J. Gardner, President, Gardner Engineering Inc., Reno, Nevada

Chuck Beaupre, Branch Manager, JW McClenahan Co., Sparks, Nevada

Russell Rowe, representing the American Council of Engineering  
Companies of Nevada

Steve Holloway, Executive Vice President, Nevada Chapter  
Associated General Contractors

Larry Carroll, Managing Principal, Poggemeyer Design Group,  
Las Vegas, Nevada

James Duddleston, President, G.C. Wallace, Inc., Las Vegas, Nevada

Warren B. Hardy II, representing HDR Engineering; Associated Builders  
and Contractors Association; Private Citizen, Las Vegas, Nevada

Gene Krametbauer, President, VTN Nevada, Las Vegas Nevada

James Caviola, President, C A Group, Inc., Las Vegas Nevada

Danny L. Thompson, representing the Nevada State American Federation  
Labor-Congress of Industrial Organization

Ted J. Olivas, Government Affairs Director, City of Las Vegas

Greg Esposito, representing the Plumbers, Pipefitters, Heating,  
Ventilating, Air Conditioning, and Refrigeration Local Chapter 525

P. Michael Murphy, representing Clark County

Kyle Davis, Policy Director, Nevada Conservation League and  
Education Fund

Charlie Donahue, Deputy Administrator, Division of State Lands,  
Department of Conservation and Natural Resources

**Chair Kirkpatrick:**

We are going to open the hearing on Senate Bill 40 (1st Reprint).

**Senate Bill 40 (1st Reprint):** Requires the State Public Works Board to adopt regulations concerning the construction, maintenance, operation and safety of certain buildings and structures. (BDR 28-436)

**Gustavo Nunez, Manager, State Public Works Board:**

The original version of S.B. 40 (R1) that was requested by our Board, provided that all state agencies that adopt building codes consult with the deputy manager at the State Public Works Board. Upon further discussion with Senator Lee, he felt that he wanted the assurance that it would happen and that the State of Nevada would be under the same set of codes. The reason for the original request was that various agencies in the past have used different versions of the building code which has led to inefficiency and extra cost in the design, construction, and inspection of state buildings. The purpose of this bill is to get us all on the same set of codes. Having said that, there are various other state agencies at this time that would like to go back to the original version of the bill which was basically consultation only. It was not a requirement to be under the same set of codes. The Public Works Board can support either version of the bill. Anything that works toward getting us all on the same codes is fine with the Board, whether the Board is actually the one that adopts the regulations for all the agencies or the other agencies come in and consult with the building official.

**Assemblywoman Bustamante Adams:**

Could you give me a historical background of why the other agencies would have separate codes?

**Gustavo Nunez:**

The law allows the various other agencies, aside from Public Works, to adopt their codes. For instance, under the Department of Business and Industry, the Division of Industrial Relations, which deals with pressure vessels and elevators, adopt their own codes for plan check and inspection of those particular items. That is currently the case. The State Fire Marshal adopts their own codes. In the past, not all of the agencies that have adopted codes have been in the same set of codes. The codes are supposed to act as a system all together. You are trying to make this system work with this other system. It then becomes problematic. This is an attempt to get us all on the same set of codes for the State of Nevada for only those projects that are built on state lands. The Public Works Board does not have jurisdiction outside of state lands. The local governments have no jurisdiction on state lands. This is just to get us all on the same set of codes with respect to projects built on state lands.

**Assemblyman Anderson:**

Could you describe, specifically, what these codes would entail? When you say operation of buildings, you could make a case for all the other agencies, depending on what their specific agency is, having that say. In terms of construction or safety, is that not better suited to the State Public Works Board? You deal with construction every day. How much sense does it make to have someone who has a medical background making decisions on codes for construction?

**Gustavo Nunez:**

*Nevada Revised Statutes* (NRS) Chapter 341 designates the deputy manager for code compliance at the Public Works Board as the building official of the State of Nevada for all projects built on state lands. That is the intent. I believe, under this particular bill, it does not change. We are still the building official for plan check and inspection under NRS Chapter 341. We are talking about who is going to adopt the building codes. As a public works board, we adopt a set of codes to control any construction, remodeling, or anything that requires a building permit. We adopt those codes whether it is the nonstructural life safety, structural plumbing, mechanical, electrical, et cetera. We adopt that whole family of codes. We also adopt the International Energy and Conservation codes. What happens with the current law right now is that other agencies have oversight over specific sections of the code. The current law allows them to adopt the codes for enforcement of those specific areas. In some cases in the past, there have been codes adopted that are different

than the ones that we have adopted on the Public Works Board. This is an effort to get us all on the same set of codes. We are not talking about building officials. We are just talking about the adoption of codes.

**Chair Kirkpatrick:**

I believe that section 3 of the amendment ([Exhibit C](#)) says that before the State Board of Health can adopt any regulation they have to talk to the Public Works Board. Is that correct?

**Gustavo Nunez:**

That is correct. The original language was for them to consult with us. At a point when the bill was going through the Senate side, they wanted to set up a system where it would require everyone be under the same code. There are some other agencies that have concerns with making that a requirement. Anything leading toward getting us under the same code is acceptable to the Board. The original language or the amended language is supported. I know other people have concerns.

**Chair Kirkpatrick:**

Did you go back and tell the Senate Committee on Government Affairs your position on the bill and the amendment? It did pass unanimously on the Senate floor. Have you talked to Senator Lee about the change?

**Gustavo Nunez:**

I talked to Senator Lee on Thursday of last week. I indicated that there were other concerns by other agencies. His direction to me was to get together with them and see what can be worked out.

**Assemblyman Livermore:**

The codes that you are speaking of adopting are unified building codes that are adopted nationally. Is that correct?

**Gustavo Nunez:**

That is correct.

**Assemblyman Livermore:**

What version are you on?

**Gustavo Nunez:**

We are currently on the 2006 *International Building Code*. It is a family of codes. Those are published by the International Code Council.

**Assemblyman Livermore:**

Have you done a survey of county and local governments and what codes that they are on? Is that the latest version that can be adopted?

**Gustavo Nunez:**

There is a later version, which is the 2009 version. We discussed going to the 2009 version. We started the regulation process to go to the 2009 version. The State Fire Marshal started the process to go to 2009. Later on, the Fire Marshal came to us and said that some of the smaller counties in the state had some concerns with going to 2009 and wanted to stay with 2006. The International Code Council is on a three-year cycle. We will skip the 2009 codes and go to the 2012 codes. As a result of that request, it was a recommendation of the State Fire Marshal to stay with the 2006 codes; I went to the Board with that suggestion. The Board went along with what the State Fire Marshal was requesting.

**Chair Kirkpatrick:**

I can give you some huge changes that would affect some of our smaller counties. One is that there is a requirement for fire sprinklers in anything that is built. I have the codes upstairs in my office. They are very much geared toward the new Leadership in Energy and Environmental Design (LEED) certification. It would be hard for some counties that do not even have building permit departments to comply with that. They would have to tear their buildings down and start over.

**Assemblyman Livermore:**

That is why I was asking that.

**Assemblyman Ellison:**

The state is trying to make a blanket uniform code that is not going to work. We have a lot of problems with fire suppression in areas that have to hold a certain amount of water for fire protection. Some of the requirements are ridiculous. When the state tries to make a uniform code to match all, it does not work. We adopt our codes as we see fit and make changes to them. You are trying to make a blanket code. Is that what you plan to do?

**Gustavo Nunez:**

Right now we are on the 2006 codes. We will skip the 2009. That is what the Board decided. We will look at the 2012 codes. It would only be for projects on state land. This would not affect any of the code adoptions that the local governments do. This is only for projects on state lands. Clark County, Las Vegas, Reno, Washoe County, and the rest of the local governmental agencies adopt their own codes. In the adoption of their own codes, they can

also adopt amendments to those codes. With respect to fire sprinklers, the reason we could go on state projects on state lands with the 2009 code, even though the sprinkler requirement came about, the State Fire Marshal requires all of our buildings to have sprinklers. From that perspective of being only on state projects, with respect to that section of the code, there would not be an impact on local governments.

**Chair Kirkpatrick:**

I was just trying to point out that there are significant changes. That new code requires residential. Some counties adopted it and some did not. There are some big changes as far as how we have done business in the past.

**Assemblyman Anderson:**

This is about section 8. I have a concern about the original bill as well. Why is NRS Chapter 461 brought into this? I thought the Manufactured Housing Division just regulated parks. That is one thing I want to check on. I do have a lot of those parks in my district.

**Gustavo Nunez:**

Premanufactured housing, such as mobile homes, is regulated. We do erect those on state projects for various uses. With respect to how those types of buildings are built, it would be good for all of us to be under the same set of codes because once the building is on state land, the State Public Works Board, as the building official, has to review the setting and occupancy of it. The State Fire Marshal also has to review those structures. We will be looking for Americans with Disabilities Act (ADA) access and those types of things. It would be good for all of us to be on the same set of codes so that we can require everyone doing those projects to be on the same code and to be on the same standard.

**Chair Kirkpatrick:**

There are a lot of people here to testify. If you would like to testify in support of the bill the way it is, please come forward. [There was no one.] If you want to testify in opposition of the way the bill is, please come forward. [There was no one.] If you want to testify in support of the amendment ([Exhibit C](#)) that will bring us back to the original bill, then you need to testify in neutral. If you are in neutral, please come forward.

**Leo M. Drozdoff, Director, State Department of Conservation and Natural Resources:**

We are neutral in that we would oppose the first reprint of this bill. We are in support of the original bill, which would be restored by the amendment. The original intent of the bill, which agencies in my department supported when it

was first heard in the Senate Committee on Government Affairs, was to formalize the need for state agencies and officials to coordinate and consult prior to adopting regulations in these agencies concerning the construction, maintenance, operation, or safety of building or structures. The Department's Division of Forestry testified that passage of this bill as originally introduced will assist understanding and minimize the potential for conflicting regulations. As amended in the Senate, S.B. 40 (R1) represents a serious intrusion into the way many departments and agencies in state government do business. That intrusion would occur without consultation. In fact, it would not be valuable and add to serious delays and costs. The determination of maintenance needs and operational soundness should remain solely within the purview of the departments responsible for these matters. Thank you for considering the amendment presented here today which would return the bill to its original intent. We believe cooperation is truly commendable. These concerns are shared by the Departments of Public Safety, Wildlife, and Transportation. If you would like me to go through the amendment, I am able to do that, but I think Mr. Nunez described it correctly. It is simply the original bill that called for these agencies to consult with the Department of Public Works. The amended bill in its first reprint said that there would be a prohibition on any of these until there was Public Works approval. Our preference is to go back to the original bill.

**Richard L. Haskins II, Deputy Director, Department of Wildlife:**

We are here in support of Mr. Drozdoff's recommendation to go back to the original language of the bill. Our concerns were very simple. They were addressed within section 1 of the proposed amendment ([Exhibit C](#)) regarding operation maintenance of facilities. We support the amendment that was proposed.

**James M. Wright, Chief, State Fire Marshal Division, Nevada Department of Public Safety:**

I am in support of the proposed amendment. I would like to suggest some recommended language to the amendment ([Exhibit D](#)). The State Fire Marshal has a difficult job as far as the code adoption process. Not only do I have to make sure that the Fire Marshal codes are coordinated with the Public Works Board for state projects, I also have to coordinate with the local governments in establishing a base minimum fire code for the state. I have to have an open ability to adopt codes beyond the state projects. To go back on this, the State Fire Marshal has always been in coordination with Public Works regarding our code adoptions. We intend to continue that. For the Fire Marshal, I would suggest that you allow me the opportunity to adopt codes that affect the local governments as a slight language amendment to the proposed amendment going forth for section 10.



This basically allows me to adopt codes within the state, which would allow me to address the local governments and then consult with the deputy manager regarding compliance and code enforcement as it relates to state-owned structures and buildings. That is the only language change that I could recommend for the proposed amendment today.

**Chair Kirkpatrick:**

Can you read that for me? I am not sure what you are changing. I heard your testimony on the Senate side, and I know you were concerned about a few things. Life and safety have to be a big component of your regulations. Where would that fit in?

**James Wright:**

Section 10 would read, "Before the State Fire Marshal adopts any regulation concerning the construction, maintenance, operation or fire and life safety of a building, structure or other property within this State, the State Fire Marshal shall consult with the deputy manager regarding compliance and code enforcement as it relates to State owned structures or buildings for the purposes of subsection 9 of NRS 341.100."

**Chair Kirkpatrick:**

These are currently buildings that are within your purview. Is that correct? There are some buildings that are not within your purview that are in the state and fall under Public Works. These are just ones that are currently within your purview.

**James Wright:**

They would address both state buildings and buildings of the local government facilities that the Fire Marshal has regulatory authority over.

**Chair Kirkpatrick:**

Let us use the Clark County School District as an example. They had their own building department last session. Would you then responsible for them as well?

**James Wright:**

The State Fire Marshal has retained authority for the Clark County School District. They are the only school district in the state that the Fire Marshal still has authority over.

**Chair Kirkpatrick:**

Would this give you more authority than what you currently have?

**James Wright:**

What I meant when I said within the state was that it would be within the boundaries of the state. The Fire Marshal has the responsibility of establishing a minimum fire code that works from Laughlin to Jackpot to Reno to West Wendover and everything in between. That was the intent. We wanted to clarify that the State Fire Marshal has to adopt that minimum code and also have the state building requirements.

**Chair Kirkpatrick:**

Is there anyone else who would like to testify on S.B. 40 (R1)? Mr. Nunez, do you agree with the Fire Marshal's amendment?

**Gustavo Nunez:**

We are fine with going back to the original language.

**Chair Kirkpatrick:**

We will close the hearing on S.B. 40 (R1). We will move to S.B. 487 (1st Reprint). Mr. Lee, I recognize that you did ask for some time to work on this bill, however our schedule is very tight. I realize that you will come back with some additional amendments.

**Senate Bill 487 (1st Reprint):** Revises provisions relating to the award of a contract for a public work to a specialty contractor. (BDR 28-394)

**Keith Lee, representing the Nevada State Contractors' Board:**

Present with me today is Mr. Bruce Robb who is legal counsel to the Contractors' Board. We are here to present S.B. 487 (1st Reprint). We thought we had this worked out, and then some problems arose late Thursday. We are still talking with some of the members of the industry. We will continue to do so to try to resolve any outstanding issues that those people have. We will then come back to you. We welcome those conversations.

I will present the bill, and then Mr. Robb can go through it in greater detail. He spent the last several months working with many interested members of the industry to develop this bill and work on some fairly lengthy amendments that were processed on the Senate side. By way of some brief background, the State Contractors' Board has subclassifications of licensure for what we call specialty contractors. These are landscape, heating, sheet metal people. These are people who are not general contractors. We have a number of classifications or subclassifications in which we qualify these individuals and these companies as meeting the standards of the industry and their ability to perform whatever the tasks are within their subspecialty. Under *Nevada Revised Statutes* (NRS) Chapter 624, which concerns contractors,

we have it as a matter of discipline if someone performs responsibilities and duties outside of the scope of the license. The scope of the license is the person who has been classified as a, for instance, landscape contractor. Outside of the scope of that license would be to, for instance, connect electrical or other things outside his ability as a landscape contractor.

I would also like to indicate that contractors can have more than one classification or subclassification. A landscaper can also be qualified in a subclassification as an electrical contractor and could do that job. That is not necessarily the norm in the industry. We do, however, make an exception for a specialty contractor to perform work outside the scope of his or her specialty contractor's license, if that work outside is incidental to the primary job. That is what we have had in law in NRS Chapter 624 for a number of years.

We have had in NRS Chapter 338, the Public Works chapter, a little different version of that. The way the law reads now is under certain public works projects, a specialty contractor may be awarded the full job if 51 percent of the work within that public works contract is within the scope of his subspecialty license. We have a difference in NRS Chapter 624 and NRS Chapter 338 that we are attempting to resolve through this bill with some exceptions and some grandfathering in to bring them in compliance with NRS Chapter 624. In other words, we are suggesting that within those particular public works jobs that now allow a subspecialty contractor to perform the work if 51 percent of the jobs is within his specialty, we are asking that that be brought within the incidental provision of NRS Chapter 624. There are some exceptions and grandfathering that Mr. Robb and members of the subcontractors associations have worked on during the construction of this bill.

**Chair Kirkpatrick:**

I would like to hear from Mr. Robb. Could you tell us where the conflicts are?

**Walter Bruce Robb, representing the Nevada State Contractors' Board:**

This is a technical bill. It affects Public Works, local governments, and subcontractors who are licensed contractors in the state of Nevada. We worked with Senator Lee on the Senate side to adopt an amendment that we felt resolved all of the concerns that were addressed by the licensed subcontractors in the state of Nevada. We did that by exempting the little projects. This bill only affects projects that are in excess of \$250,000. Once we sit down and talk with anyone who objects to this bill, we can make their objection go away. We worked for eight months with public entities in southern Nevada, particularly the school district. We also worked with the subcontractor legislative coalition which was many subcontractors working together on this legislation. What we are trying to resolve is simple. We allow

a subcontractor, where it has been proven that he has successfully completed one public works project in the state of Nevada previously, that subcontractor can act as a prime on a public works project. That subcontractor will be selected by the public agency. It will not be selected by the Contractors' Board. We are on the same side. We want qualified people to do good work for the public entities in this state. I believe that we will be having some discussions about some of the more technical aspects of this bill. I appreciate the opportunity to work with objectors.

**Chair Kirkpatrick:**

I would like to be invited when you are meeting. This bill did pass unanimously out of the Senate. I will be the one explaining to the Senators why we had to change it.

**Walter Robb:**

It would be our great pleasure to have you there.

**Assemblyman Ellison:**

I know these gentlemen quite well. I served on the Nevada State Contractors' Board. It will not cloud my ability to vote fairly.

**Chair Kirkpatrick:**

Is there anyone who is in favor of S.B. 487 (R1)? [There was no one.] Is there anyone who is in opposition?

**John Madole, representing the Nevada Association of Mechanical Contractors:**

We do have some concerns with the bill. We would be glad to try to work those out with Mr. Lee. We are concerned that this bill is not necessary. On page 2, it talks about being "Upon application by a specialty contractor, the State Contractors Board *may* issue . . . ." If a person is qualified, we are wondering why it does not say "shall" issue. Another concern would be, with a freeze on regulations, if this said "may" and we had the interim of six, eight, or ten months where there were no regulations issued, perhaps the Board would not be able to issue a regulation to take care of that. It might be in limbo and it adds another layer of government regulation which we think is not necessary. Those are our concerns. There are several other people who would like to briefly speak on this issue.

**Assemblywoman Bustamante Adams:**

At the beginning of your statement you said that "it" was not necessary. Are you saying that the bill is not necessary? Is that what your intent was?

**John Madole:**

Yes. I was making the point that we have gone through a lot of years without having these regulations. We thought that our current process is working.

**Assemblywoman Flores:**

Can you repeat where you found the "may" rather than "shall" language?

**John Madole:**

The "may" appears in two different places. It is on page 2, line 29, "the State Contractors Board may issue" and similar language appears on page 4 . . .

**Assemblywoman Flores:**

Are you looking at the first reprint? I do not see that. I will find it. Where else did you say?

**John Madole:**

It is also on page 4, line 6.

**Brett J. Scolari, representing RHP Mechanical Systems, Inc., Reno, Nevada:**

My father, Steven Scolari is the president of RHP Mechanical in northern Nevada. He called me on Friday in a panic over this bill. We apologize that we did not work on this bill while it was on the Senate side. There might have been a disconnect. There are quite a few subcontractors with some concerns on this bill that echo what Mr. Madole alluded to. His company has been working under these rules for quite a while on projects that far exceed the \$250,000 limit. In statute, there is already the incidental requirement. Anyone performing work outside of the specialty must be a subcontractor in that area already. I can appreciate Mr. Lee and Mr. Robb. They worked hard on this. I would like to offer my help to bring something forward if we can agree.

**Steven L. Scolari, President, RHP Mechanical Systems, Inc., Reno, Nevada:**

I am here to oppose S.B. 487 (R1). We have license number 3714, 3714A, C-1, and C-21 classifications. We have been operating since 1950. Historically, we have performed mechanical work under this delivery system as a prime mechanical contractor for decades. I agree with the comments that have come before mine on the concerns with S.B. 487 (R1).

**Chair Kirkpatrick:**

Is this because in mechanical you sometime do other portions of the project?

**Steven Scolari:**

Our licenses allow us to perform all of those specialties whether it is incidental electrical or concrete work. We bid against qualified contractors and list those other specialties that are outside of our scope of work.

**Chair Kirkpatrick:**

I am married to a construction worker, so I understand. He is a plumber so sometimes they have to go outside of their scope. I wanted to make sure the rest of the Committee understands what it entails.

**Len Savage, President, Savage and Son Plumbing and Heating Contractors, Reno, Nevada:**

Our business was established in 1893. We are fifth-generation Nevadans. We strongly oppose S.B. 487 (R1). Like Mr. Scolari, we were notified last week. We have not been in discussion with any issues pertaining to this bill. As a mechanical contractor for a number of years and me being the fifth generation, we have not had a problem being a prime contractor with clients such as the State Public Works Board, the Washoe County School District, or the Washoe County Department of Building and Safety. There is currently a process with the State Public Works Board called the certificate of eligibility where we provide financial statements for past work projects. The owners of these different entities prefer working directly with the prime mechanical or electrical contractor. For incidental work, we are still required to use licensed contractors to perform that incidental work. As a mechanical contractor, we are not going to perform electrical wiring work. Everyone has to be clear on that. The certificate of eligibility takes care of a lot of that. In today's time, another governmental layer is fiscally irresponsible. The owners need cost-efficient projects. We are here to provide that. I am willing to sit down with anyone at any time as leaders of this industry to make this a more efficient process. That is what needs to be done. If this bill is passed, it would be a lack of fiscal responsibility. I do not understand it. It has worked well.

**Chair Kirkpatrick:**

We have some questions on why the incidental was put into statute to begin with. You alluded that this was a protection clause. Is that correct?

**Len Savage:**

I am not an attorney. I am a contractor. For instance, right now we are in contract with the Washoe County Courthouse for mechanical retrofit that is upwards of a \$1 million project. The majority of it is mechanical. There is incidental work like electrical and some Sheetrock and incidental work for licensed contractors where we have to use licensed contractors for that work.

It is incidental to our work. There is no dollar amount in current legislation that requires us not to hire that work out.

**Assemblywoman Neal:**

You mentioned additional factors. Is that what you were alluding to? I was reading section 2, page 2, of the bill and in NRS Chapters 624 and 338. *Nevada Revised Statutes* Chapter 624 has that incidental language, but are these additional factors that a specialty contractor now has to deal with that was not set up in NRS Chapter 338?

**Len Savage:**

I am not clear on that.

**Chair Kirkpatrick:**

We should ask Mr. Robb when he comes up. Is there anyone else that would like to testify in opposition?

**Richard Lisle, Executive Director, Mechanical Contractors Association, Inc:**

We were originally in support of this bill, but as we go closer to the finalization of it, many of our members decided that it was a case of something that was not broken and did not need to be fixed. We worked for decades under the current situation and this prime mechanical requirement is a very small section of the industry. It is mostly C-21 sheet metal contractors and C-1 piping contractors. We echo what Mr. Savage and others have said up north. We stand in opposition to it. I would also like to introduce the president of our association, Mr. Robert Witt.

**Robert Witt, President, Mechanical Contractors Association, Inc.  
Las Vegas, Nevada:**

I am in opposition to this bill. About 40 to 60 percent of my business is performed in prime contracting depending on the year. We have been doing this for 15 years. We have never had a problem with doing this. It would completely cripple my business if they changed the way we operate now. There has not been a problem. We work mostly for the school district. Some work has been for the state and some work has been for the hotels. I am opposed to this bill. Most of the people in prime contracting in Las Vegas are opposed to it. We did not realize the amount of support it had to begin with. All of the work that I do on prime contracting is more than the \$250,000 limit.

**Robert J. Gardner, President, Gardner Engineering, Inc., Reno, Nevada:**

Our company has been in business since 1975 doing mechanical and plumbing work. I strongly oppose S.B. 487 (R1). I am in agreement with the comments made previously in opposition to this bill.

**Chuck Beaupre, Branch Manager, JW McClenahan Co., Sparks, Nevada:**

We have been doing business as contractors in Nevada since 1967. We do a lot of the same work as prime contractors for mechanical retrofits. I am against this bill. It is unnecessary. We have been operating this way as long as I have been doing this work.

**Chair Kirkpatrick:**

Is there anyone else who would like to testify in opposition? [There was no one.] Is there anyone who would like to testify as neutral? [There was no one.]

**Keith Lee:**

I am familiar with all of the companies that have testified in opposition to this bill. Clearly, if this bill were processed the way it is written now, they would be grandfathered in. They would have to apply for the certification which would be easy and not problematic to them. There would be no cost to them for this to be granted. They would all be included in that. The important thing to remember is that they have been using the term "prime" or "general" contractor. You can only act as a prime or general contractor if you are licensed as a prime or general contractor. We are trying to bring the two into NRS Chapters 624 and 338. We would like to bring them together so that the enforcement proceeding is the same. I would like to anecdotally state that, as with most things we do in this building, we are talking about that small percentage of sublicensed contractors who are not the good actors. We are spending 90 percent of our time going after 10 percent of the bad guys. That is what we are doing here. None of the gentleman who appeared before you today in opposition to this are the bad guys. They are not the guys that we have to concern ourselves with at the Contractors' Board.

**Walter Robb:**

I am very happy to sit down with each of these gentlemen and discuss this issue. None of them will be adversely impacted by S.B. 487 (R1). It is a misunderstanding of the effect of this bill. This bill would ensure that contractors of the quality of those who have testified in opposition to this bill can do the work for the public agencies. That is what this bill ensures. I am very confident that when we sit down together, we can agree on language that will allow them to support this bill and not oppose it. Their largest concern was the "will" versus "may" language where we talk about the Contractors' Board "may" issue a certificate to a compliant subcontractor. That is their largest concern. We can address that concern when we come back before you.

**Assemblywoman Neal:**

In section 2, and in NRS Chapter 624, the language changes are what? In NRS Chapter 624 there is incidental language and you added "may not award



a contract for the public work to the specialty contractor unless the public body or its authorized representative determines" multiple stipulations. So those are added factors under NRS Chapter 624 to qualify for work that costs \$250,000 or more. You are saying that these factors are necessary to keep bad actors out. Is that correct?

**Walter Robb:**

The answer to your question is yes. It is not necessarily a bad actor, it could be a person who wants to do a good job but is not qualified to do a good job and does not have the experience. Those three factors are "or"; they are not "and." So a qualified subcontractor like the gentleman who spoke to you earlier in opposition to the bill, would qualify under that "or."

**Assemblywoman Neal:**

Normally some type of bonding has to occur before the work can begin. How does this affect that bonding requirement when you have inserted a \$250,000 piece of language in here?

**Walter Robb:**

It does not affect bonding at all. The \$250,000 language insertion was to exclude the small job. The small job would not be impacted by this bill.

**Assemblywoman Neal:**

Why do you need to put the \$250,000 requirement in this bill? If it was open before, and the opposition is saying that it worked well before, why do you need that number inserted in the bill?

**Walter Robb:**

It is because Senator Lee said that he understood the concerns about big projects but not on littler projects. We were working with the coalition of subcontractors and came up with a \$250,000 figure that was acceptable to everyone. That is how we got that exception. That was an amendment that came in after the presentation to the Senate Committee on Government Affairs.

**Chair Kirkpatrick:**

When you have your meeting, I am happy to invite Assemblywoman Neal to come with me. Hopefully all of you can get together soon. We will close the hearing on S.B. 487 (R1). The hearing on Senate Bill 268 (1st Reprint) is now open.

**Senate Bill 268 (1st Reprint):** Revises provisions relating to competing for public works by design professionals. (BDR 28-740)

I know there is an amendment coming to your bill. We will not let them get tangled up. We will work with you to make it a good bill.

**Senator John J. Lee, Clark County Senatorial District No. 1:**

Good morning Madam Chair and members of the Committee, for the record, I am John Lee, Senator, Clark District No. 1. [Read from prepared text ([Exhibit E](#)).]

**Chair Kirkpatrick:**

There are a couple of different amendments to this bill. We should talk about the bill as it is first.

**Russell Rowe, representing the American Council of Engineering Companies of Nevada:**

We represent most civil and other engineers throughout the state. We want to thank Senator Lee for bringing this important legislation forward. This is all about putting Nevadans back to work. This bill makes sure that public works projects go out to Nevada-based companies. This is critical legislation for the design community, particularly for engineers. The engineering out-of-work rate is continually going up. Last time I checked, unemployment was above 60 percent. Based on our membership rolls, we feel that number has gone higher. We have based this legislation on existing law for contractors. In 1999, the Legislature adopted a preference for Nevada-based contractors. This was based upon the payment of taxes.

As the law is now, for contractors, that is \$5,000 in both sales and government services taxes annually for five consecutive years. If you do that, you qualify for a preference. That law has worked very well for contractors in Nevada. We patterned this legislation after that. The only difference we have in here is the criteria for the tax. Instead of the sales tax and government services tax, we use a modified business tax (MBT). That is because the design professionals have a different industry from contractors. They do not have as much purchases of materials as contractors do for sales tax. They do not have as many vehicles as contractors often do for the government services tax. We base it on the MBT and put it at a level of \$1,500 instead of \$5,000 to make sure we capture small firms as well. That would be approximately \$250,000 to \$300,000 in annual payroll which is about a three- to five-member firm depending on the pay scales within those firms. We would encourage your support of this legislation.

**Assemblywoman Neal:**

In section 1, subsection 3(a), line 24, the engineer or architect can pay the excise tax themselves rather than paying it through an employer. Is that correct?

**Chair Kirkpatrick:**

It says, "Paid directly" and that is where the confusion is. It should be that they have to have paid to the agency specifically. Maybe they are paying directly to the MBT. That is where the confusion is. The other language does not say "paid directly"; it says that for contractors, he has to pay a total of \$5,000 and it could be either of them. It says, "paid directly on his or her own behalf, the excise tax." What is the thought behind that language?

**Russell Rowe:**

The intent is for the total wages paid for the year by the firm. We believe the way the language is drafted captures that. It is drafted that way because you may have a firm composed of principals as opposed to employees. The intent is to capture the total wages for the firm.

**Assemblyman Anderson:**

The provision that Assemblywoman Neal was talking about is in a couple of different places within the bill. Are you saying within that provision that it has to be each month within a five-year period, or is that just each year?

**Russell Rowe:**

Our intent is that to qualify for the preference you would have to pay at least \$1,500 annually for five consecutive years.

**Assemblyman Anderson:**

I must have been reading it wrong. I was concerned, at first, that it might be difficult to spend that much each month.

**Assemblyman Goedhart:**

I have a concern for those that may not have been in business for five years. Are you open to that amendment?

**Russell Rowe:**

I have seen that amendment. As an association, we support the bill as proposed. We do have some concerns with respect to that amendment. I am not sure it passes constitutional muster. The easiest way to have a Nevada preference is to say any Nevada-based company. The problem with that is you have national or regional companies that may move into the state for one project and leave with the revenues. We want to make sure we capture true

Nevada companies. To differentiate between a company that is only based in Nevada and a company that engages in interstate commerce raises constitutional questions. I have not done research on the legislative history for the provision for contractors. I would suspect that is why the legislation for contractors in 1999 was based on a tax threshold and not on whether or not it was part of a company that crosses interstate boundaries.

**Assemblyman Goedhart:**

The \$1,500 amount of that excises tax, we are talking about MBT, sales taxes, et cetera, all of those different items that feed into a company's expense. Is that correct?

**Russell Rowe:**

This would be based on the MBT.

**Assemblyman Livermore:**

A couple of days ago, I received an email from a constituent who works for local government. The local government decided to do the design in-house for an upcoming project. They presented to me in their email significant savings for the project job. Do you see this as an additional cost that the local government may incur?

**Russell Rowe:**

No. We do not see it as an additional cost. Particularly today, there is pretty stiff competition among the firms that are left standing. I cannot imagine this would increase any costs. Not to get into a debate about the efficiency with which a private design firm can do a job versus the local government, but typically when comparisons like that are made, the local government does not include costs of overhead and other costs that are very difficult to calculate into the true cost that the local government has versus a private sector company that has all of that encompassed in one job. It is much easier to roll that in. In fact, they have to roll it in. We need to be careful when we are making an apples to apples comparison.

**Assemblyman Goedhart:**

This bill relates directly and specifically towards the MBT. During the last session, they lowered that MBT down to 0.07 percent. Is that equivalent to an approximately \$250,000-a-year-wages-paid firm over the last five years?

**Russell Rowe:**

We based these calculations off of the existing taxes paid. It is based on the existing tax rate as it stands in statute today.

**Assemblyman Goedhart:**

Is that 0.05 percent?

**Chair Kirkpatrick:**

We did lower it to 0.05 last session. He is just saying that if they are a smaller firm and they only have 3 or 4 employees, are they going to be able to meet the criteria based on the lower wages of the MBT?

**Assemblyman Goedhart:**

At that point, it would require 0.05 percent. You would have to have today's MBT rate. There would have to be a minimum payroll at the firm of \$300,000 per year. We are now giving preference to in-state Nevada design professional firms but also ones of a certain size and hire. We are not including the firms that are smaller.

**Chair Kirkpatrick:**

They are two separate issues. They have now been brought together in one bill. The way the MBT works currently is that if you make less than \$250,000 in wages on the MBT for the year you get 0.05 percent, but if you make more than that, you have to pay at least this amount. There are some businesses that will barely make this, but there are others that can do this in a day's time.

**Assemblyman Goedhart:**

The minimum threshold to participate in this would be \$250,000. Is that correct?

**Chair Kirkpatrick:**

That is correct.

**Russell Rowe:**

We believe that is correct.

**Assemblywoman Neal:**

In section 9, page 4, I understand that they are paying for preference, but where they adopt the regulations and assess a reasonable fee related to the certification, is there a range of what the fee is? It is now going to be \$1,500 for the year and the reasonable fees that are assessed to these individuals?

**Russell Rowe:**

I do not know what the reasonable fees would be. This language is patterned after the contractors' language. We are simply pulling that and giving the

regulatory body some ability to cover their own costs. I cannot imagine it is anything more than negligible.

**Assemblywoman Neal:**

Is there similar language? Since the person is paying for the preference, if someone challenges their validity, is there a situation where there would be restitution? The issue that came into my mind is for instance, if someone challenges falsely. The person is not able to move forward with the public works project or is delayed, what is the trigger or the restitution that that person can get? They have paid for a bidder preference but now, someone is challenging the certification that they have presented. It may be false.

**Chair Kirkpatrick:**

You can probably talk to Mr. Holloway about this issue. He was one of the original people who came up with this idea for the contractors. There is a specific form that you have to fill out. We had to look at all of that on Assembly Bill 144. Mr. Holloway may be able to shed some light on this issue. It is a pretty simple process.

**Steve Holloway, Executive Vice President, Nevada Chapter, Associated General Contractors:**

When a contractor protests an awarded bid for any reason, including the dispute of the fact that the contractor who got the award truly had bidder's preference, he must post a bond. If he is then found to be wrong, he is going to pay for the cost of litigating that protest through that bond. In 2005, the Legislature enacted legislation so that, instead of each individual public works agency being responsible for bidder's preference, we had the Nevada State Contractors' Board become responsible for doing that for all contractors throughout the state. That has worked very well. We have not gotten a protest based on bidder's preference since then.

**Fred L. Hillerby, representing the American Institute of Architects of Nevada:**

It seems like we have already been through this. The American Institute of Architects of Nevada supports this bill, as we did two years ago. The last time we did an informal poll, there was about 75 percent unemployment. When we were talking about the payment of the MBT, many of our firms are simply principals; they do not have any employees. That is why the unemployment rate is so high. This is good public policy. In section 9, subsection 3, on page 16 the original language in the law states that if you have a design professional who was given the opportunity to bid on the project, they still have to sit down with the governmental entity and come to an agreement on the contract about how much they get paid. The 5 percent is not a dollar amount. They are selected because whatever point system the government agency uses

to develop the qualified architect or engineer, they get a 5 percent bump, but they still have to be competitive when they sit down with that local or state government. They still have to come to an agreement on a contract. If they cannot, they move down the line.

**Assemblyman Ellison:**

On page 7, line 19, it says, "a public body shall not enter into a contract with a design professional who is not a member of a design-build team." Can you address that?

**Fred Hillerby:**

When the project is put out to bid for design-build teams, they cannot let someone who is not a member of a design-build team independently try to enter into the contract. The whole purpose is that it is going to be a design-build project. You need to be sure you are identifying the appropriate team to complete that project.

**Assemblyman Ellison:**

I believe in 5 percent preferential to keep the work in this state. It should be that way for everything.

**Fred Hillerby:**

We agree with you.

**Chair Kirkpatrick:**

We have a really great college of engineering at the University of Nevada, Las Vegas (UNLV). Those kids are dying to do their internships. Without any work, it is very hard to keep them in our state to finish their degrees.

**Fred Hillerby:**

We also have an outstanding school of architecture at UNLV.

**Chair Kirkpatrick:**

Is there anyone else who would like to testify in support?

**Larry Carroll, Managing Principal, Poggemeyer Design Group, Las Vegas, Nevada:**

We have offices in Las Vegas and Reno. We have been in business in Nevada since 1982. I am in support of this legislation to keep our design professionals employed. As all of you know, the economic downturn has impacted every citizen of the state. Our design and construction sectors have experienced the most severe unemployment I have ever seen. This legislation is critical. We need to keep a pool of design professionals employed in the state. The state

cannot afford to see the exodus from the state of our brightest and most talented engineers and architects because we are not taking advantage of this local talent. Our engineers and architects are more knowledgeable of local design considerations and cost-effective design solutions. Our employees are highly educated and well-paid members of our local communities and contribute to all aspects of making our local communities a better place to live. We do practice in other states. We are not rated and ranked the same as local design firms. However, there is no state legislation requiring local and state government agencies to give any preference to in-state design firms at the present. The federal government allows a local preference for design firms as mandated in the Brooks Act of 1972.

We have legislation passed to give our local contractor brothers local preference for pursuing public works projects. Local engineers and architects should be afforded a similar 5 percent preference. We cannot continue to allow our public projects to go to out-of-state engineers and architects and have those precious tax dollars supporting the economies of other states. We should not make minimum thresholds too high which may preclude small design firms from qualifying for local preference. Some agencies and state local governments seem to believe hiring out-of-state design firms still contributes to our economy. How wrong they are. Our employees own homes, they shop in our stores, eat in our restaurants, support our local charities, go to our local churches, buy vehicles, and more importantly, pay our local taxes. We have local design expertise and do not need to go beyond the state's borders to find an expert. This legislation is necessary and is needed now, before we destroy this critical industry which designs everything within our state's build environment.

**Chair Kirkpatrick:**

Is there anyone else who would like to testify in support?

**James Duddleston, President, G.C. Wallace, Inc., Las Vegas, Nevada:**

We are an engineering company that was established in 1969. It is headquartered in Las Vegas. I would like to echo everything that Mr. Carroll offered. We have worked diligently with Senator Lee. We have offered up suggestions. Senator Lee was very kind to sponsor this bill on our behalf. We incorporated the landscape architectural community to make sure that this addressed all design professionals. I could add surveyors as well. It is good that we have an opportunity to make certain that Nevada public works projects are earmarked to be designed by Nevada firms. We are in support of this legislation as it is currently written. As was indicated earlier in testimony, the original bill draft was targeted to replicate what was written on behalf of the contractors. However, it was soon discovered that it did not work. Design professionals do not purchase supplies to the degree that contractors do.



Therefore, a \$5,000 threshold did not work except for the very largest of firms. That is not what we intended to do with this particular bill draft. Senator Lee was open to a suggestion to look at the MBT and set a threshold that would qualify most firms that are headquartered here in Nevada.

**Warren B. Hardy II, representing HDR Engineering:**  
We are here to add our support to the legislation.

**Gene Krametbauer, President, VTN Nevada, Las Vegas, Nevada:**  
I am in support of the amendment ([Exhibit F](#)) that Mr. Caviola is going to talk to you about. My firm is an engineering firm. I have been in Nevada since 1960. We are a design professional engineering and land surveying company. Mr. Caviola has a firm that has been incorporated in Nevada for three years. All of his people work here. They are incorporated in Nevada, and this is their only office. I would like to be in support of that amendment for companies that are incorporated in Nevada and their employees work in Nevada.

**Chair Kirkpatrick:**  
We will now call those that would like to testify in neutral. Mr. Caviola, if you would like to come up and present your amendment ([Exhibit F](#)). We need to check that it meets legal muster. This is a touchy subject. We do not want to violate the *Nevada Constitution*.

**James Caviola, President, C A Group, Inc., Las Vegas, Nevada:**  
The intention of my amendment is not to violate the *Constitution*. Hopefully there is a way that passes constitutional muster that can accomplish the goals that I seek. [Read from prepared text ([Exhibit G](#)).]

**Chair Kirkpatrick:**  
If you are here doing private work, you meet the criteria for the first five years. The only thing that you would not get the bidder's preference on would be the public works jobs. How does that affect you currently? We want to make sure that we get people that have a little bit of history within our state so that we can look at their past jobs. Has that been a topic of the conversation yet?

**James Caviola:**  
There are a number of firms that do both private and public sector work. There are many firms who focus on either private or public sector. They have different skill sets and expertise. My firm is involved in transportation engineering. That is the plan and design of local roadways and freeways. Unfortunately, there are no private contracts to be had. We work almost exclusively in the public arena. There are many firms that are in that same category. We do not have the chance to work on land development projects to

pay the tax for five years and then branch out into public works contracts. We work on public works contracts exclusively.

**Chair Kirkpatrick:**

I am trying to get a sense of what the situation may be so we can try to figure out how to address it. We will look into your amendment and see if there is a way that we can make it work for everyone.

**Assemblyman Richard (Skip) Daly, Washoe County Assembly District No. 31:**

My charge was to take part of what was in Assembly Bill 371, Assembly Bill 470, and Assembly Bill 38 to see if we could get everyone together on that. I believe we have done that. We have worked with the northern and southern building trades councils, northern and southern Associated General Contractors of America, the State Public Works Board, the public bodies, and subcontractors. Everyone is a little bit unhappy but no one is completely unhappy. That is the deal. I will go through the sections of the amendment ([Exhibit H](#)). I will just give you an overview. Section 2 allows a construction manager at risk (CMAR) to hire licensed subcontractors to provide preconstruction services without going through the prequalification and bid proposal process. [Read from prepared text ([Exhibit I](#)).] Section 18 of this bill is the part that I know least about, and it was the part that was holding us up. I am told that there is agreement. Mr. Holloway and Mr. Nunez will explain about these parts.

**Chair Kirkpatrick:**

I would like to give the Committee a little bit of history as to where this came from. What happened was we had heard those two bills, Assembly Bill 371 and Assembly Bill 470. That was the night where if one more person had to explain the CMAR process at 9:30 p.m., we were not going to get it anyway. I met with a large group of people until midnight. We thought we came to an agreement on this subject. However, two days before the work session there was no agreement. We went back and forth until late the night before. I did give my commitment that we would not be making decisions on bills at midnight on the night of the deadline; I chose to not do anything with those bills. I told the sponsors that if they could find a germane section that they could come together and have an amendment. We still need to verify that this amendment ([Exhibit H](#)) is on this side. That is the history behind this amendment. It was only fair to the Committee to not put them in a situation on a Friday night with things that could not be worked out. After a couple of weeks of cooling off, they all came together with clearer heads and they seem to have worked this out. We will acknowledge that this is Senator Lee's bill. We appreciate the ability to try and fix some of the issues that we have had with CMAR. We will not jeopardize your bill with this amendment. I believe

that people are going to come up in support of all the changes that have been done. Is that correct?

**Assemblyman Daly:**

I am hoping so. Everyone has told me that they are not going to come up to oppose it. All of their issues have been covered. I do not have anyone coming up and saying this is bad. We worked it through. There are still issues. The other thing I would like to put on the record is that I have committed to everyone in the process that this is a work in progress. We need to move forward. We think we have closed all the loopholes and tried to step over as many of the unintended consequences as possible. If we have issues, we have all agreed that we will come back here in two years and address those issues. We need to make sure that we do not have unintended consequences and loopholes that cause problems. That is where we are at in this process. That is how we were able to get people to come together. The Nevada Department of Transportation (NDOT) wants to be included. That is not in the amendment, but I think we have agreement on a two-year pilot program. Apparently it will be statewide.

**Chair Kirkpatrick:**

There have been some really serious issues with CMAR. You have heard from the Public Works Board that they have different processes. I worked on it in the interim. I believe it is important enough to fix the things that we can to see if it makes the process better. Otherwise, we are going to have to do something a little bit more drastic next session. I received correspondence from people who agree with this bill. All those that would like to testify in support of the amendment proposed by Assemblyman Daly may do so now.

**Steve Holloway:**

We support the amendment that Assemblyman Daly has fervently and kindly put together. It was a long process. He should be applauded for what he has done. There are things in this amendment that we do not like. Overall, we are here to support this amendment.

**Gustavo Nunez, Manager, State Public Works Board:**

We are in support of this amendment ([Exhibit H](#)) overall. There are some things that we would have preferred to be different. Overall, it will be an improvement in the current process. We did want to get something on the record with respect to a concern that we still have. That would be on section 18, subsection 2, paragraph (c). Subparagraphs (1), (2), and (3) are reiterations of what case law is currently. With respect to subparagraph (4), "Caused by a decision by the public body significantly add to the scope or duration of a project." If we are going to add anything to the scope or duration of a project

that requires a negotiation of a change order to effectuate that, we want to make sure that it is clear. We want to make sure that the change order is a final settlement of all costs upon approval and sign off from that change order and not an ability to contract it to come back after the fact. After the change order is negotiated, they should not be able to file a claim. I am being assured that it is in discussion by Mr. Holloway. We wanted to get on the record that that is not the intent of this particular clause here. We will go along with this bill at this point, as long as that is clear. We will obviously have to amend our contract document. The word "significantly" is not defined anywhere within the language of the bill. That is an issue that we will work on. Finally, I would like to express my thanks to Assemblyman Daly and his effort in bringing all of us together. It was a trial, but we made a lot of progress.

**Chair Kirkpatrick:**

The easiest way for us to clarify the legislative intent, should this amendment ([Exhibit H](#)) make it to the floor, is to make sure it is engrossed in the *Assembly Daily Journal*. That is where your protections will come. You can use that.

**Gustavo Nunez:**

Thank you for that advice. We will make sure that it happens.

**Chair Kirkpatrick:**

I do not want to forget the Committee members that stayed at the first meeting. Assemblyman Ellison, Assemblywoman Bustamante Adams, and Assemblyman Anderson spent the evening with us when we were going through this. Assemblyman Daly has worked on this a couple of different times since then.

**Danny L. Thompson, representing the Nevada State American Federation Labor-Congress of Industrial Organization:**

We support the amendment as it is written and the proposal that if CMAR is given to NDOT that it sunset and we come back and look at it again in two years.

**Chair Kirkpatrick:**

I do not disagree with you on that. I struggled on that part myself. We will see how well they do with two years.

**Russell Rowe:**

We support the amendment and the expansion to NDOT under a two-year trial. We want to thank Assemblyman Daly, Chair Kirkpatrick, and all those involved for giving us that opportunity.

**John Madole, representing the Associated General Contractors of America, Inc., Nevada Chapter:**

We would like to support the amendment. We also support the two-year trial for NDOT to use CMAR.

**Ted J. Olivas, Government Affairs Director, City of Las Vegas:**

We wanted to thank Assemblyman Daly for working with us. This was a very difficult process to go through. We spent a number of hours on it. We believe that this compromise reflects a process that will work for all of us. We are going to give it a shot and see how it goes. We are committed to continuing in that endeavor as things progress.

**Chair Kirkpatrick:**

I feel better now; everyone is in agreement with this bill. If it goes down, we are all going together. I would like to call up those that are neutral on S.B. 268 (1st Reprint).

**Greg Esposito, representing the Plumbers, Pipefitters, Heating, Ventilating, Air Conditioning, and Refrigeration Local Chapter 525:**

I am cautiously neutral on this amendment. It has been a very long time as far as working on it. The three things that we were trying to accomplish when we brought forth A.B. 371 were the ability for all subcontractors to be able to bid on public works, for those bid amounts to remain the same, and to prevent bid shopping. This bill does as much as it possibly can with this amendment. It does as much as it can while keeping the process friendly to the general contractors, the subcontractors, and the public body. I appreciate Assemblyman Daly's commitment that if it does not work, if any contractors get disenfranchised by the process, he is willing to bring it back in two years to work on it and tweak it to perfection. That is my hope, that that will be the legislative intent that gets put on record on the floor.

**Chair Kirkpatrick:**

Is there anyone else who would like to testify as neutral on S.B. 268 (R1)?

**Warren B. Hardy II, representing the Associated Builders and Contractors of Nevada:**

We appreciate Assemblyman Daly's effort to bring this back around. The changes to the current CMAR system were absolutely critical based on my testimony in that meeting. I am neutral because I have not been able to get a hold of the most recent amendment. I had some conversations late Friday night. I have not been able to see the new amendment. If it is as represented, we are in the same boat as Mr. Esposito, which is cautiously neutral. We think it addresses some very significant things. It is worth going forward.

**Chair Kirkpatrick:**

We will make sure we get you a copy of the amendment. I would like to see how Senator Lee feels about the amendment on his bill.

**Senator Lee:**

I think I have a great bill. I think they have made it better. Sometimes you just cannot get things done in the time allotted. You are getting two amendments on this bill that I never heard on my side. We would have covered these. I talked to Mr. Holloway about the three years for the engineers. He seems to think that will not affect the five years that all the contractors have. That seems like a good amendment. I would call these friendly amendments.

**Chair Kirkpatrick:**

We like to hear that. We will close the hearing on S.B. 268 (R1). I will clarify with legal that the amendment ([Exhibit H](#)) is germane to this bill. We will open the hearing on Senate Bill 396 (1st Reprint).

**Senate Bill 396 (1st Reprint):** Changes the governmental entity entrusted to administer and distribute the additional funds generated by the special license plates for the support of the natural environment of the Mount Charleston area. (BDR 43-919)

**Senator John J. Lee, Clark County Senatorial District No. 1:**

About eight years ago I was able to help on a bill that gave Mount Charleston a license plate. It was an exciting bill. Our goal was to see that we did wonderful things on the mountain. This bill changes the governmental entity entrusted to administer and distribute the additional funds generated by that license plate in support of the natural environment of the Mount Charleston area. What had happened was, that when we envisioned this bill, it was for Mount Charleston. The Nevada Division of State Lands got involved. By the time we got the bill, it sounded good to us; it said the Spring Mountain Range. Little did we know that the Spring Mountain range ran all the way from Nye County to Lincoln County. We had this money being generated off the license plate and we were getting all kinds of people from areas that we had never identified as users of this plate to ask for that money. The Mount Charleston Town Advisory Board came and asked if they could be the arbiter of where this money went. The advisory board is made up of members who are appointed. People come and go. It is not a really good regulatory body. It could work against itself because they do not have the experience or the secretarial staff to work with them. A decision was made along with Clark County Commissioner Larry Brown, that the Clark County Commission might be better staffed to handle this. If you buy a Mount Charleston license plate in the future, the additional \$35 will go into this

account. The money will then be within the purview of the Clark County Commission. People can come to the Commission and propose their ideas for the mountain. It is specific circumstances and needs that this bill addresses. This encompasses all the wonderful things we want to happen on the mountain. This is what we envisioned when we passed the bill years ago.

**Warren B. Hardy II, Private Citizen, Las Vegas, Nevada:**

We had a bill on Friday where I represented the Las Vegas Ski and Snowboard Resort. This conversation came up in conjunction with the discussion we had on the residents about their concerns that Senator Lee has just articulated. I will not revisit them. This is an example of how the community can work together. The bill changes the way the fees are collected and distributed. They currently go into the license plate account for the natural environment of Mount Charleston which is the way the money is currently distributed. This bill changes it by placing the money into the General Fund until, on a quarterly basis, the State Treasurer will deposit the money into another account that is controlled by the Board of County Commissioners. With the consent, advice, and consultation of the town advisory board they will decide how the money is spent. It does not change the criteria. It does not change the things that it can be spent on. It gives the residents of Mount Charleston more direct input into how these dollars are spent for their intended purposes. Senator Lee did a better job than I could of walking through the reasons for the bill.

**Assemblyman Anderson:**

I am probably wrong on this but I just wanted to clarify. The bill says that provisions of *Nevada Revised Statutes* (NRS) 354.599 do not apply. Part of that says the additional revenue may only be used to pay expenses directly related to the program or service. I am sure there is something else that has to do with an unfunded mandate. That is the unfunded mandate provision if I remember correctly. Could you explain why that is in there?

**Chair Kirkpatrick:**

I believe he is talking about the existing language that was put in when the first bill came across eight years ago. They cannot charge more than the administrative amount to utilize the program. Is that your recollection?

**Warren Hardy:**

That is my recollection. I would have to go back and verify that that is the portion that Assemblyman Anderson is speaking about but that is my recollection of the intent. Mr. Murphy from Clark County is here and may be able to speak in more detail to that. It is protection to make sure that these

funds go to the extent possible. It is to make sure that the majority of those funds go to the projects that they are granted to.

**Chair Kirkpatrick:**

Assemblyman Anderson, we can get clarification for you, but I believe that is existing language that they put in the beginning to ensure that it goes to programs.

**Assemblyman Anderson:**

I am looking at section 4 in the bill; it says that it does not apply to the provisions of this act.

**Chair Kirkpatrick:**

Right, it is section 4, page 3. That is currently existing language of the original bill. Mr. Hardy, could you clarify that?

**Warren Hardy:**

We will do that and get back to the Committee with that clarification.

**P. Michael Murphy, representing Clark County:**

There are several others that have said everything that needs to be said on this legislation. I would also note that in one of the sections it talks about the funds not being used to replace or supplant money available from other sources. We are very clearly stating that it is the intent to not supplant any funds but to use these funds specifically as they had been designed. That would be in section 1, subsection 5, line 26, on page 3. It is noted that we cannot "replace or supplant money available from other sources." The goal is to keep that money available for the environmental issues related to Mount Charleston. We are in support.

**Chair Kirkpatrick:**

It makes more sense for all of those people that got the original license plate to actually have the program money go up into Mount Charleston with the recent fires that we have had. There are a lot of destroyed guzzlers that happened. There is a lot of wildlife up there. Section 1, subsection 5 does a good job of spelling out the wildlife habitat, the ecosystem, the forest, some of the trails, the recreational use. That is pretty clear. I know that Clark County understands the meaning of supplanting. I am comfortable with leaving it to the residents of Mount Charleston. They are very protective of their territory, and they do a good job of making sure money and zoning go the way it is supposed to. Do you know how much money is being generated yearly from that?



**Warren Hardy:**

I do not know. We will find that out and get that information to you. There was a question in the Senate about what would happen with the current projects that are in place that are being reimbursed by the Division of Public Lands. We adopted an amendment in the Senate to make sure that those dollars are unaffected by this. This will all be future programs and grants.

**Chair Kirkpatrick:**

Is there anyone else who would like to testify in support of S.B. 396 (R1)? [There was no one.] Is there anyone who is in opposition of S.B. 396 (R1)? [There was no one.] Is there anyone who is neutral on S.B. 396 (R1)?

**Kyle Davis, Policy Director, Nevada Conservation League and Education Fund:**

I had two things that I wanted to make clear. I participated on the Senate side with this bill as well. We do not have any issue one way or the other. Whether it is the state or Clark County that is the fiscal agent for this account is something we are neutral on. On page 3, line 16, it talks about being with the advice of the Mount Charleston Town Advisory Board or its successor. In the Senate, there was discussion of maintaining the existing Technical Advisory Committee that is currently involved in the process and helping make these grants. We want to make sure that that continues. That was put on the record in the Senate but, Chair Kirkpatrick, I know you are a stickler for making sure that things are put on the record. It is most appropriate to mention that the Technical Advisory Committee would continue to be a part of this process. That is an important thing to us because that committee does have a lot of expertise in figuring out what the best ways to spend this money is and making sure that these are benefitting all areas of Mount Charleston.

The other thing that I wanted to point out is the issue of making sure that grants that are currently out there are taken care of as we go through this transfer. The nature of these grants is that these nonprofit organizations and a few of the groups that are part of our coalition have received these grants in the past to do environmental work. Usually, these groups expend their own money to do the work and then they are reimbursable grants. We would want to ensure that for the grants that have been awarded already that have not been reimbursed, that there is still a funding mechanism for these groups to make sure that they get their reimbursement for those grants.

**Chair Kirkpatrick:**

I am a stickler so we can make sure that is in the floor statement that the Technical Advisory Committee must stay in place to ensure that we are going in the right direction.

**Charlie Donahue, Deputy Administrator, Division of State Lands, Department of Conservation and Natural Resources:**

I am testifying as neutral on this bill. State Lands currently administers the Mount Charleston license plate program. The Division plans to handle the transition from our agency to Clark County by closing out grants and projects which are either expiring or considered nonactive by both the agency and the grantee and to advance funds for the remaining two or three grants for the remainder of the grant award with the requirement of regular reporting.

**Chair Kirkpatrick:**

How much money goes into this program on an annual basis?

**Charlie Donahue:**

Approximately \$80,000 on an annual basis goes into this program.

**Chair Kirkpatrick:**

Do you have a list of the current projects that are in place?

**Charlie Donahue:**

We can provide that information to you.

**Chair Kirkpatrick:**

That way, I can help to make sure the record is clear so that we do not lose anything in transition. That means there are a lot of people that get those plates. Is there anyone else who would like to testify neutral on S.B. 396 (R1)? [There was no one.] If we could have some of those questions clarified and get some of that information to us it would be much appreciated.

**Warren Hardy:**

We will clarify that. Mr. Murphy will make sure that the Clark County gets back to Assemblyman Anderson on that issue. I want to thank Mr. Davis for bringing his points up. It is absolutely the intent to include the advisory board. We want to make it more involved and not less. We support what we said, and we appreciate that being provided for the record on the floor.

**Chair Kirkpatrick:**

Who oversees the Technical Advisory Committee currently?

**Charlie Donahue:**

Currently, the Technical Advisory Committee is overseen by staff in the Division of State Lands. We have three representatives from the Town Advisory Board, one representative from Clark County, a representative from the Bureau of Land Management, a representative from the U.S. Forest Service, and a representative from a local nonprofit organization that is involved with recreation and environmental issues.

**Chair Kirkpatrick:**

I just wanted to make sure that was clear. It is now on the record. We will close the hearing on S.B. 396 (R1). Is there any public comment? [There was none.]

Meeting is adjourned [at 11:16 a.m.].

RESPECTFULLY SUBMITTED:

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Jenny McMenomy  
Committee Secretary

APPROVED BY:

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Assemblywoman Marilyn K. Kirkpatrick, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** May 9, 2011

**Time of Meeting:** 9:02 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 40 (R1)	C	Richard L. Haskins	Amendment
S.B. 40 (R1)	D	James M. Wright	Amendment
S.B. 268 (R1)	E	Senator John Lee	Prepared Testimony
S.B. 268 (R1)	F	James Caviola	Amendment
S.B. 268 (R1)	G	James Caviola	Prepared Testimony
S.B. 268 (R1)	H	Assemblyman Richard (Skip) Daly	Amendment
S.B. 268 (R1)	I	Assemblyman Richard (Skip) Daly	Talking Points