

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

**Seventy-Sixth Session
March 7, 2011**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:02 a.m. on Monday, March 7, 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/. 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:

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:

None

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Cyndie Carter, Committee Manager
Sheryl Burrows, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Steven E. Tackes, Attorney at Law, Kaempfer Crowell Renshaw Gronauer & Fiorentino
Gustavo "Gus" Nunez, Manager, State Public Works Board
John Russell, representing Laborers International Union of North America, Local 169
Tim Kretzschmar, Senior Vice President, Q&D Construction
Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter
John Madole, Executive Director, Nevada Chapter, Associated General Contractors of America, Inc.
Warren B. Hardy II, representing the Associated Builders and Contractors of Nevada
William E. "Rob" Roberts, Superintendent, Nye County School District
Mike Floyd, Vice President, Nye County School District Board of Trustees
Paul McKenzie, Executive Secretary-Treasurer, Building & Construction Trades Council of Northern Nevada, AFL-CIO
Renny Ashleman, Attorney at Law, representing the City of Henderson

Chair Kirkpatrick:

[Roll was taken.] We will be going out of order today, based on the number of amendments I have received. We will begin with Assembly Bill 103.

Assembly Bill 103: Makes various changes to the Airport Authority Act for Carson City. (BDR S-645)

Assemblyman Livermore:

I would like to turn this presentation over to the attorney for the Airport Authority, Mr. Steven Tackes.

Steven E. Tackes, Attorney at Law, Kaempfer Crowell Renshaw Gronauer & Fiorentino:

I am here as legal counsel for the Carson City Airport Authority. I previously served as chairman for the Airport Authority and have been involved with them in one capacity or another since it was formed by this body in 1989.

The governing board for the Airport Authority consists of seven volunteer members. It is structured so that each member has some qualifications that interact with the airport. Each has a background in manufacturing, or airport operations, or is a pilot at large, or a citizen at large. The issue we are facing is that we have difficulty finding two manufacturer members. Actually, for the last year we have only had one manufacturer sitting on the board. We have only had six members because we cannot find another manufacturer. This bill increases the area from which we can pull a manufacturer candidate to a three-mile radius from the airport, instead of being adjacent to the airport. The Carson City Board of Supervisors appoints the members to the Airport Authority. This bill will also allow the board to appoint someone who meets the other qualifications, if they cannot find another manufacturer. Carson City Airport Authority is governed by a special act, so this law only affects the Carson City Airport, not any other airport.

Assemblyman Ellison:

I think this is a good bill. Do the members at large have aviation interests, pilots, or something in that category?

Steven Tackes:

Currently, the make-up of the authority is one pilot at large, a citizen at large, a city official, two fixed base operator representatives, which are aviation businesses on the airport, and two manufacturers. As a practical matter, nearly everybody on the board is a pilot. Unless you are a pilot, you typically do not have that great an interest in what goes on at the airport. We are pretty well covered in the pilot department.

Chair Kirkpatrick:

Can you give me the list of the board members again?

Steven Tackes:

We have a pilot at large, a citizen at large, a city official, two fixed based operators, and two manufacturers. In the past we have found that this is a great mix. It brings good talent and helps us make good decisions. Invariably we end up with people who are very plugged in with the process. It has worked very well for us.

Assemblywoman Benitez-Thompson:

Does the three-mile radius basically encompass the entire Carson City area?

Steven Tackes:

Yes, three air miles typically picks up most of Carson City. It certainly picks up the entire manufacturing area in Carson City.

Assemblyman Anderson:

Why is a manufacturer needed? Does this bill say that they are no longer needed if they cannot be found to fill the position?

Steven Tackes:

Originally, the airport was developed adjacent to a manufacturing area. This turned out to be a very good thing. Carson City developed an airport right next to a manufacturing area, and they saw a big synergy there. That is why they originally put two manufacturer members on the board. We have found, over the years, that there is yet another reason to have manufacturers on the board. They bring business sense to the board. It has been enormously valuable to us. Even though we are not limiting it just to the businesses that are adjacent to the airport, we think there is still a very good reason to keep them.

Chair Kirkpatrick:

In the past, this has not been a problem, correct?

Steven Tackes:

Correct.

Chair Kirkpatrick:

Will the process be established by ordinance, such as a certain time frame, that if you cannot find anyone you will appoint someone at large?

Steven Tackes:

The language is drafted so that the criteria would be there. The city can advertise for the position. If they cannot find someone, they will advertise more broadly. Then they will appoint somebody. I do not think they need to adopt an ordinance to implement.

Chair Kirkpatrick:

Any other questions? Is there anyone here who would like to speak in favor of A.B. 103? Anyone opposed? Anyone neutral?

Assemblyman Livermore:

I would like to mention that Mr. Tackes is a pilot and understands the workings and intricacies of the Airport Authority.

Chair Kirkpatrick:

With no other comments, I will close the hearing on A.B. 103. I will now open the hearing on Assembly Bill 38.

Assembly Bill 38: Revises provisions governing contracts for public works.
(BDR 28-437)

Gustavo "Gus" Nunez, Manager, State Public Works Board:

I am here representing the State Public Works Board (SPWB) in support of A.B. 38. Our board requested this bill from the Governor's Office and it is intended to address a problem in the bidding community that was brought to the attention of the board.

[Read from written testimony ([Exhibit C](#)).]

We have reviewed an amendment from Clark County ([Exhibit D](#)). Our only concern is line 16 on the last page of the amendment. It states, "A first tier subcontractor who is licensed and is only providing materials or rental equipment which does not include labor does not need to be listed as a subcontractor in the 5% and 1% subcontractor listing. A first tier subcontractor not licensed providing materials or rental equipment does not need to be listed as a subcontractor in the 5% and 1% subcontractor listing." In the current statute, that would be a materials supplier which should not be a part of this process. I have talked to the authors of this amendment and they indicated it would be acceptable to delete that part of their amendment. We have no concerns with the rest of the proposed amendment to A.B. 38. I did have someone else get in touch with me regarding the penalty for substituting, when the prime contractor originally listed himself either on the 5 percent list or the 1 percent list. They believe this penalty should be higher than what was proposed in A.B. 38. We would not object to increasing the penalty; however, without a copy of the proposed amendment, I cannot state certainly that we are in support of it.

Chair Kirkpatrick:

The amendment is in the Nevada Electronic Legislative Information System (NELIS).

John Russell, representing Laborers International Union of North America, Local 169:

I spoke with Mr. Nunez about our proposed amendment ([Exhibit E](#)) to increase the penalty for the prime contractor to make it a greater penalty for substituting himself with a subcontractor.

Gus Nunez:

I just reviewed that amendment and have no concerns.

Chair Kirkpatrick:

Do any of these concerns conflict with Clark County's amendment?

Gus Nunez:

I do not believe there is a conflict with the amendments. Again our only concern is line 16 of page 5 of Clark County's amendment.

Chair Kirkpatrick:

Line 16 of page 5 of the Clark County amendment will be deleted.

Assemblywoman Pierce:

For clarification, we will be removing line 16, correct?

Chair Kirkpatrick:

We will be deleting anything that says, "A first tier subcontractor who is licensed and is only providing materials or rental equipment which does not include labor does not need to be listed as a subcontractor in the 5% and 1% subcontractor listing. A first tier subcontractor not licensed providing materials or rental equipment does not need to be listed as a subcontractor in the 5% and 1% subcontractor listing." Mr. Nunez believes that does not need to be in the amendment, correct?

Gus Nunez:

That is correct.

Assemblyman Ellison:

This is relating to subcontractors. What provision deals with general contractors?

Gus Nunez:

This bill addresses both. If the prime contractor substitutes a subcontractor for another subcontractor, or if the prime contractor lists himself to perform a portion of the work which falls within the 5 percent or 1 percent of the contract amount, that must be listed in their bid prior to award. The 5 percent list is due when the bids are open and the 1 percent list is due within two hours after the bid opens. When the prime contractor lists himself to do the work after the contract is awarded and then takes himself out and substitutes another subcontractor, that is when the penalty would apply.

Chair Kirkpatrick:

I heard about this problem this summer from one of my constituents. He is a cabinetmaker for the school district. What happens, when the contractor gets

the bid, they bid shop it. He did not want to submit a lower bid, so he did not get the job. With the penalty in place, this makes it a more fair process.

Gus Nunez:

This is correct. Our main intent is to enforce the law, and discourage that practice.

Chair Kirkpatrick:

Are there any other questions?

Assemblyman Stewart:

How often does this occur?

Gus Nunez:

Not very often, but it does occur.

Chair Kirkpatrick:

Do people need to come to you to complain about these problems? This has occurred a number of times with my constituent, but he has never complained because he just gets frustrated.

Gus Nunez:

With the current law, our only choice is to declare the contractor in breach of the contract and terminate it. At that point, it hurts the owner by going in breach of contract and cancelling a contract in the middle of a project. Therefore, it becomes very difficult for us to enforce that part of the law. This will discourage this type of behavior, and if it does occur, then there is a penalty that we can impose.

Chair Kirkpatrick:

This bill does not require any regulations, correct?

Gus Nunez:

It does not require the passage of a regulation.

Chair Kirkpatrick:

Any other questions? Is there anyone who would like to testify in support of A.B. 38?

Tim Kretzschmar, Senior Vice President, Q&D Construction:

I am in favor of the bill. The problem we have been seeing in the construction community is that it has become a bid strategy. General contractors who are dual licensed will list themselves as doing the general engineering on a project.

When the project gets started, they actually do not even list themselves, because right now, by statute you do not have to. When they get the job, they sub the work to someone else. They shop all of the work in the process. My concern is that I think it needs to be clear that it is 1 percent of the entire amount of the contract, not just the subcontract amount. It needs to be a stiff enough penalty that it is a deterrent. If you impose the penalty at 1 percent of the subcontract amount, you would probably be setting the price at what it would be to shop the job. I like the amendment. I think the stiffer the penalty, the better. I also think that the penalty should be per incident, in case the contractor shops for more than one subcontractor.

John Russell:

Our amendment would assess a penalty for the total amount of the contract for replacing the subcontractor.

Chair Kirkpatrick:

That is the due diligence of the prime contractor, correct? They are the ones responsible. I have an email from a constituent, asking that the responsibility be on the prime contractor.

Tim Kretschmar:

That is correct.

Chair Kirkpatrick:

Anyone else to testify in support. Any opposition?

Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter:

Bid shopping is a problem within the industry, in particular with public works jobs. For close to 1.5 years we have held meetings that involved contracting associations in both the north and south, purchasing agents for public works agencies, Public Works Department representatives, and the SPWB, including Mr. Nunez, to address a number of problems. One of the problems we attempted to address was bid shopping. In fact some of the language of this bill comes from these meetings. Unfortunately, we were not able to come up with language that we felt was fair to all. There are legitimate cases where a contractor may elect to self-perform a portion of work, and put a number in the bid to cover that. Later, that contractor may not have the capability to perform the job. For instance, his crew may be stuck on other jobs, which is quite common. He would then hire a subcontractor to do the work, sometimes for more than he actually bid. He would pay that subcontractor the extra money, and not recover that money because it was not a part of the contract price. He would have that work done at his expense. Are you going to penalize that

contractor for doing that? Probably not. This is just one example of why there needs to be some kind of latitude and a way of mitigating these penalties. I see no way of doing that in this bill. That is the reason we did not come forward with a joint bill on bid shopping. We did come forward with a joint bill on the five areas in *Nevada Revised Statutes* (NRS) Chapter 338 that we could all agree needed improvement. You will, at some point, be introducing that bill. We call it the Chapter 338 cleanup bill. The other aspect that we could not support was the penalties. It is a problem, but we do not feel that this bill adequately addresses it.

Assemblywoman Flores:

I would like to preface this with the fact that I know nothing about the process of contracting or what it entails. Everyone has acknowledged that there is an issue with this. You said that sometimes contractors will be awarded a project and then get stuck on other jobs. My question is if someone bids and receives a contract, they have entered into a binding agreement. Do they do that knowing that they may not be able to perform? Do they not adequately plan in advance for whether or not they can fulfill that contract? This may be common practice, but they should have known better, correct?

Steve Holloway:

You would think so, but that is not always the case. According to the language in the existing statute, you can substitute subcontractors for a variety of reasons. There also needs to be a variety of reasons why, if you indicate you are going to do the work, then you should be able to substitute if you are unable to do it. I believe this bill lacks fairness. I gave just one example of why you might need to substitute a subcontractor to do work that you were going to self-perform. There are a number of other examples. On an engineering job, you might run into caliche, for example, and have to bring in a subcontractor who has demolition experience to remove the caliche. There are several different things that can happen on a construction project that require some latitude.

John Madole, Executive Director, Nevada Chapter, Associated General Contractors of America, Inc.

I would like to offer an example that might help answer Assemblywoman Flores' question. There is a \$10 million job with \$2 million worth of mechanical, and the general contractor also has a mechanical license. As soon as the job is bid and the \$2 million price is out on the street, he gets a phone call from another mechanical subcontractor who says he can do it cheaper. Depending on how you interpret this bill, there is going to be a 1 percent penalty against \$10 million, which is not a big sum of money. Our fear is that everyone will list himself to do the work, and then subcontract it. There are legitimate reasons to

substitute subcontractors. Those provisions should remain in the bill. It is the abuse and unintended consequences that we are all concerned with.

Chair Kirkpatrick:

My constituent submitted a sealed bid; he did everything he was supposed to do. There are people who are spending money to submit sealed bids, and then someone else underbids them.

Steve Holloway:

I wish I knew how to fix the problem. This is one of those issues where we could not come up with a solution that we all thought was fair and would work. The language in this bill is essentially where we ended up in our discussions, but we could not get an agreement that the language was both fair and equitable and would work in all situations. I still do not believe this is fair and equitable and will work in all situations. I would love to be able to come up with a solution. This is not it.

Assemblyman Bustamante Adams:

Mr. Holloway, are there other best practices in other states in regards to this issue?

Steve Holloway:

We have looked at other states, but none of them seemed to have a good solution.

Assemblywoman Bustamante Adams:

In this case, is the state the owner?

Steve Holloway:

Nevada Revised Statutes Chapter 338 applies to the SPWB, it also applies to all the county public works departments and the city public works departments throughout the state.

Assemblywoman Bustamante Adams:

In my past experience, being on the owner's side, when there were situations like this, the owner would take the responsibility to make the determination on a case-by-case basis, understanding that there was a limit. Most of the time bid shopping could not occur, but in some special situations, especially when it came to art exhibits, we had to make exceptions, and it would be brought back to the owner. I do not know if that would apply to a situation like this.

Steve Holloway:

There are two situations that are addressed in this bill. The first part of the bill addresses prime contractors who have listed a subcontractor to do the work. There are five different situations which are deemed to be legitimate reasons for substituting a subcontractor for another subcontractor. The second portion of the bill addresses a prime contractor who has listed himself as performing a portion of the work. There is no language under which he can come back and substitute a subcontractor. My thought is that there need to be exceptions to cover situations where he could legitimately substitute a subcontractor for himself under certain circumstances.

Assemblywoman Neal:

It appears that subsection 5 of section 2 of A.B. 38 goes with what you are saying. Would it fit in here to add "if the prime contractor is listed to perform the work, and substitutes himself out for a subcontractor?" Then you would have an exemption; it is a legitimate reason but still protects the subcontractor that fails or refuses to execute. I am confused why no agreement could be reached when a prime contractor substitutes himself out for a subcontractor?

Steve Holloway:

Those exceptions do not apply when the prime contractor says he is going to do the work himself. They all apply when the prime contractor uses a subcontractor to do the work. We need to agree on the circumstances under which a prime contractor could substitute a subcontractor for himself for either the same or a lesser price, without bid shopping, which is what we want to prevent. This would not affect the overall price of the project, and he should be permitted to do that without being automatically fined.

Assemblyman Goedhart:

The intent of the bill is to do away with bid shopping. A general contractor has a \$10 million bid, \$2 million for mechanical. As soon as he is awarded the contract, he is going to bid shop that, right? The reason the general contractor is going to do that is to increase his margin. Basically, why not change it so that if a prime contractor goes to rebid with a new subcontractor, then all the savings from the rebidding goes to the entity that has awarded the bid?

Steve Holloway:

That sounds like a very good idea.

Assemblyman Goedhart:

That would take the profit motive out of the equation, and eliminate the necessity of having to come up with penalties.

Assemblywoman Flores:

I am wondering why there could not be some sort of modification afterward?

Steve Holloway:

You would need a fairly extensive amendment to do what has been suggested by Assemblyman Goedhart. It would completely change the penalty aspect of this bill. The amendment could state that any reduction of costs would go to the benefit of the owner.

Assemblyman Ellison:

On public works projects, do the subcontractors have to be prequalified and on the list prior?

Steve Holloway:

Yes, that is correct. If it is a hard bid job, they do not always have to be prequalified. They will often submit their sealed bid to the depository. The bids are opened at the time the job is awarded.

Assemblyman Ellison:

This is a small problem with public works as compared to what is happening in the private sector. We are getting bid shopped all the time. The problem is, we have to prequalify before we can submit our qualifications and our bid. Somebody knows that you have been prequalified. If they shop that bid after it has been opened, they should be held accountable.

Steve Holloway:

I agree, there should be accountability for bid shopping. I just do not think, in certain cases, that this bill does that fair and equitably.

Chair Kirkpatrick:

Any other questions? Anyone else who would like to testify in opposition to A.B. 38. Anyone neutral?

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

When this bill first came out, it went right to my slam dunk, easy-to-support file. Then we had a conference call on Friday, and it became obvious that it is very complicated. Bid shopping does serious damage to the bidding process, and it needs to be addressed. I am very intrigued by Assemblyman Goedhart's idea and would like to consider it. During the conference call, as ideas came forward, loopholes were found. I have my best people on it and will keep working on it. Our position has not changed; we support finding the most aggressive way possible to deal with the concept of bid shopping. Some issues

are very legitimate in terms of why a general contractor would need to make an adjustment. We would like to help in addressing these concerns.

Chair Kirkpatrick:

I personally would like to discuss Assemblyman Goedhart's idea further. It would eliminate all incentives to bid shop. I do have one last question. Is there currently an appeals process for any type of penalties with the SPWB?

Gus Nunez:

Yes there is. By law the method of dispute resolution in construction contracting is specified in the contract documents. I suppose that is one route that might work; we are part of the dispute resolution process. At one time, our board had five licensed contractors. There is one method where the owner can ask for the substitution of a subcontractor, and there are two other reasons for a prime to substitute a subcontractor. The owner can, but the owner has to pay the difference between the bid and the next lower bid. On the contractor's side, if the subcontractor cannot perform the work, or cannot be bonded, they can then ask for a substitution. We look into the matter and ensure it complies with one of these two issues. If that is the case, the law allows us to grant the request to substitute the subcontractor. When a prime contractor substitutes himself out and brings in a subcontractor, obviously, the bonding is not applicable. He already has a performance and payment bond in place in order to get the public works contract. When he prepared his bid, he made a business decision to list himself to do the work. Now he is faced with another business decision of substituting himself. I want to make sure that is the way we look at it. I understand that perhaps there are instances where he is not planning on bid shopping, but he has to live with those business decisions that were made. With respect to the example of the \$2 million sub-bid where the prime contractor listed himself to do the mechanical, when the contractor prepared his bid, he knew what everyone's numbers were, because the mechanical subcontractors were bidding. He chose to put himself on the bid and then not to do the job, but try to find other people who would do it for \$2 million. He cannot do that without bid shopping, unless there is a closed competitive bidding process that the agency will oversee. If that is done, that will change the whole concept of the competitive bid process.

Chair Kirkpatrick:

Is the 1 percent calculation for the subcontractor's portion, or the total job?

Gus Nunez:

There is 5 percent of the total job, so if your bid is 5 percent of the bid amount or more, then that list comes in with the bid. There is another list that comes in

two hours after the bid opening and that is for the 1 percent, the contractors that have sub-bids, which are 1 percent or more of the bid amount.

Chair Kirkpatrick:

Regarding the penalty, is your intention that it be for the total job or just the subcontractors?

Gus Nunez:

The original bill was 1 percent of the total job. What is being proposed now in the amendment is that the 1 percent would remain when a subcontractor is substituted by another subcontractor. The amendment is when a prime substitutes himself for a subcontractor. That penalty would be the amount of the value of that work. So if it was a \$2 million sub-bid, the penalty would be \$2 million.

Chair Kirkpatrick:

Let me clarify your intent. On the self-perform, the penalty would be 1 percent of the total value of the job.

John Russell:

My intent is 1 percent of the total amount of the contract, if the prime contractor replaces one subcontractor with another subcontractor. When the prime contractor lists himself as self-performing, his penalty would be 100 percent of that scope of work. If it is \$2 million, his penalty would be \$2 million.

Chair Kirkpatrick:

So, 1 percent for replacing subs and 100 percent of the self-perform replacement.

Assemblyman Stewart:

Mr. Nunez, would Assemblyman Goedhart's suggestion be workable for you? It seems that the contractors would be working with you to reduce the total price of the bid. This seems like a simpler solution.

Gus Nunez:

It is certainly an option I would prefer. Instead of changing the way we bid projects, perhaps we would have an appeal process. I would hate to try to come up with a solution right now. I would like to have time to think it through.

Assemblyman Stewart:

It sounds like a great solution, where contractors are working with you to reduce the bid.

Tim Kretzschmar:

I agree with the amendment, but the 1 percent needs to be looked at closely. It may work on smaller projects, but I would suggest it is similar to the self-perform part. You do not want to set the price of bid shopping with that 1 percent. The proposed idea of putting the savings back to the state, from a contractor's perspective, would be very hard for the state to quantify and verify. It is a very good concept, as long as everyone plays by the same rules. I think the actual accounting behind it may be difficult to ensure it actually occurs. In regard to the idea of a general listing himself and then being too busy and needing to sub, I would think that is a very low occurrence. They should be planning far enough ahead to know what is going on. Also, if something else did come up, he could substitute work on a private job, and not the state public works job.

Chair Kirkpatrick:

We will now close the hearing on A.B. 38. I will open the hearing on Assembly Bill 60.

Assembly Bill 60: Revises requirements pertaining to preferences in bidding on public works. (BDR 28-255)

William E. "Rob" Roberts, Superintendent, Nye County School District:

I am here to present A.B. 60. I am a third generation bricklayer, a stonemason blocklayer. I served an apprenticeship as a young man for my family, and am now serving as Superintendent of Nye County School District. We have recently had two major government construction projects in Nye County. One is to replace an elementary school at approximately \$12 million. The other is a remodel of the Pahrump Valley High School for approximately \$28 million. We also have one on the drawing board in Tonopah for approximately \$12 million. We saw that a general contractor bidding and receiving the 5 percent bidder preference did not have to have any subcontractors from our county or our state. We believe that general contractors receiving this 5 percent bidder preference must ensure that at least 75 percent of the estimated cost of the construction project be performed by subcontractors who are certified in the State of Nevada. The recently released census data shows that Nye County has over 4,000 vacant homes. Lyon County has over 2,000 vacant homes. Our construction industry in Nevada is in dire need. It is ailing. We need to ensure that Nevada government construction jobs go to Nevada citizens.

Mike Floyd, Vice President, Nye County School District Board of Trustees:

On behalf of the Nye County School District, I would like to thank the Committee for considering A.B. 60. The purpose of the bill is to correct a situation with the State Public Works bidding process that we felt was being

overlooked. As you know, *Nevada Revised Statutes* (NRS) 338.1389 grants a 5 percent bidder preference to any Nevada Public Works project bidder when they can show a valid certificate of eligibility from the Nevada State Contractors' Board. However, this discount only applies to the bidding prime contractor, not to any of the subcontractors who do most of the work and usually represent between 80 to 90 percent of the cost of the contract. We feel bill A.B. 60, by extending the bidder preference rules to the subcontractors, will help ensure that most of the peoples' money will be spent putting Nevada residents and taxpayers back to work. Thank you, we hope for your support.

Chair Kirkpatrick:

Would you assume that the subcontractors would get a certification as well to receive the 5 percent?

Mike Floyd:

That is correct. A subcontractor would need to obtain a certificate of eligibility from the State Contractors' Board as well.

Chair Kirkpatrick:

Have you seen the proposed amendments?

Rob Roberts:

The proposed amendment that I have seen is from the City of Henderson. We have no conflict with their amendments as posted on the Nevada Electronic Legislative Information System (NELIS) ([Exhibit F](#)).

Chair Kirkpatrick:

Any questions? Anyone here in support of A.B. 60? Anyone neutral?

Paul McKenzie, Executive Secretary-Treasurer, Building & Construction Trades Council of Northern Nevada, AFL-CIO:

We are neutral on the bill because we do not believe it goes far enough. The bidder preference extends to other groups besides just Nevada contractors. This issue extends to those groups, for example, veterans, minorities, et cetera. We feel that anytime there is a preference given, it should be in effect. Actually Assembly Bill 144 alleviates most of our concerns about the state bidder preference that this bill addresses.

Chair Kirkpatrick:

Anyone else neutral? Anyone opposed?

Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter:

We believe that A.B. 144 addresses what Nye County is trying to address, and does it in a manner that may be upheld by the courts. We do not think this bill, with a 75 percent requirement as opposed to a 50 percent requirement, will be upheld by the courts. That is not the major problem with the bill. This bill, as written, does not grant bidder preference to subcontractors. Specialty contractors by that definition, do not include all subcontractors. As the law is currently constructed, bidder preference only applies to prime contractors, general contractors, and to a few specialty contractors who are bidding on public works jobs that do not require a prime contractor, for example, replacing the air conditioning units in a school. Unfortunately, if it was the intent of the authors to extend bidder preference to subcontractors, this bill does not do it. This bill says that the prime contractor, or specialty contractor who bids as a prime contractor and gets the job, must perform, or see to it that they perform 75 percent of the work on that job. The facts are that most general contractors who do buildings, self-perform very little of the work. Generally you will only find three to four members of the general contractor's staff on any given project. They are there to manage the project, to supervise the work; they are not there to actually do the work and very seldom do they perform a significant portion of that work on a building. On a highway, you will see in statute that they must self-perform 35 percent of the engineering work. Thirty-five percent is the average that an engineering contractor might actually self-perform. The rest is going to be subbed out. There is no way, as this bill is written, that the prime contractor or the specialty contractor who is acting as a prime contractor can ensure that 75 percent of the work is done by local residents. We object to this bill because it does not do what it is intended to do; it just confuses the issues because there is a better bill out there.

John Madole, Executive Director, Nevada Chapter, The Associated General Contractors of America, Inc.:

I agree with Mr. Holloway.

Renny Ashleman, Attorney at Law, representing the City of Henderson:

I concur. We do not see how we could administer this bill to accomplish the objectives that Nye County is asking for. If you go forward with the bill, we would like to submit an amendment. The purpose of the amendment is twofold. One is in section 1, subsection 2, paragraph (a), subparagraph (3) and in section 2, subsection 2, paragraph (a), subparagraph (3). The initial affidavit of eligibility is supposed to be filed with the State Contractors' Board. That is not going to be very helpful. We are awarding the contract; it needs to be filed with the bid. We would also like to delete section 1, subsection 15, paragraph (b), subparagraph (2) and section 2, subsection 15, paragraph (b),

subparagraph (2). That would create a situation where the State Contractors' Board holds a hearing and it makes a determination, then we hold another hearing, essentially trying to make the same determination. That does not seem to be a very efficient process for handling these matters. That would affect statewide eligibility. It should be done by the State Contractors' Board, if at all.

Chair Kirkpatrick:

Any questions? Anyone else who would like to testify in opposition? I will go back to the bill sponsor.

Mike Floyd:

At the time we submitted this bill, it was the only bill request that had to do with bidder preference on public works projects. Since then, A.B. 144 has been introduced, and we have no objections to that bill. It appears we still have to explain why we asked for this bill. I have a few comments on some of the negative responses you received. Section 2, subsection 2, paragraph 3, states, "At the time the contractor submits his or her bid, files an affidavit with the State Contractors' Board stating that, regardless of whether the work on the contract will be performed by the contractor submitting the bid or by another contractor, the contractor submitting the bid will ensure that any work attributable to not less than 75 percent of the estimated cost of the contract is performed by a general contractor or specialty contractor, or both, who has a valid certificate of eligibility to receive a preference in bidding on public works issued by the State Contractors' Board." I do not read it that we are guaranteeing 75 percent of the work is going to be done by one contractor, or the other. I think it is still a good bill, but maybe it does not go as far as A.B. 144.

Assemblywoman Neal:

Are you backing off of this bill? If you are, my question is irrelevant.

Mike Floyd:

My personal opinion is that I think the other bill is probably more complete than our bill. I do not know why we continue to take up time with our bill if you have another one that is more complete. Personally, I would be agreeable to backing off of our bill if the other one is going to be passed.

Chair Kirkpatrick:

At this time, the other bill is stuck in the Senate. I do not know if it will get out. On behalf of the Committee, we try to hear every bill that comes out. Nye County is very much represented here, and who knows what will happen with the other bill. I think your intentions were great, and we are all working together to use whatever leverage we can to put people back to work within

our state. We all realize that those tax dollars came from our state and they should stay in our state. I appreciate your driving in today and you should be commended for thinking outside the box.

Assemblyman Ellison:

Mr. Roberts, have you seen a copy of A.B. 144?

Rob Roberts:

We do not have a copy in front of us and would not be able to speak to it specifically.

Assemblyman Ellison:

Before you cancel A.B. 60, I would like you to review A.B. 144. I agree with you; we have got to keep the people working and do what we can to do that.

Rob Roberts:

Maybe we could propose that A.B. 144 be amended to include our 75 percent requirement.

Chair Kirkpatrick:

It is stuck in the Senate. If we add more amendments, we will never get it out.

Rob Roberts:

This is the first time we have presented an Assembly bill. What would you recommend our next step be?

Chair Kirkpatrick:

I think Mr. Holloway was correct; if you are trying to give the subcontractors a 5 percent bidder preference, this does not do that. My concern is that the other bill was a year and a half in the works to make sure that when our contractors went out of state because there was no work here that they were not penalized. I will tell you that anything over 50 percent is very susceptible to a constitutional challenge of violating the interstate commerce laws. Are there a lot of Nye County jobs coming up, and you want to make sure that Nevada subcontractors get an advantage? I want to understand what specifically you are looking for and then we can try and work from there.

Rob Roberts:

We are not trying to give the subcontractors a 5 percent bidder preference. This bill states that any general contractor that receives a 5 percent bidder preference must ensure that 75 percent of the monies for that job be spent on employees from the state of Nevada.

Chair Kirkpatrick:

Assembly Bill 144 does put more of the residence piece in it. One thing I do want to ask is that we have to think long term. I understand there is no work out there now, but I remember when nobody wanted to bid on public works jobs because there was better work somewhere else. We have to make sure, for the long term, that we do not hinder ourselves. What happens when times are really good, and only a few people are bidding on the job? Will this preclude the job from going forward unless we come up with 75 percent?

Rob Roberts:

Can we amend our bill at this time to show 50 percent rather than 75 percent?

Chair Kirkpatrick:

I will call you in the next few days and we can work this out to ensure that we protect Nevada in the long run. Anyone else who would like to testify? We will now close the hearing on A.B. 60. Meeting adjourned [at 10:27 a.m.].

RESPECTFULLY SUBMITTED:

Sheryl Burrows
Recording Secretary

RESPECTFULLY SUBMITTED:

Nancy Davis
Transcribing Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 7, 2011

Time of Meeting: 9:02 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 38	C	Gustavo "Gus" Nunez	Written Testimony
A.B. 38	D	Clark County	Proposed Amendment by Clark County
A.B. 38	E	John Russell	Proposed Amendment by Laborers International Union
A.B. 60	F	Rob Roberts	Proposed Amendment by City of Henderson