

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

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

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 6:03 p.m. on Thursday, April 7, 2011, in Room 4100 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:**

Assemblyman Marcus Conklin, Clark County Assembly District No. 37  
Assemblyman Ira Hansen, Assembly District No. 32  
Assemblywoman Debbie Smith, Washoe County Assembly District  
No. 30  
Senator Ben Kieckhefer, Washoe County Senatorial District No. 4  
Assemblyman Richard Carrillo, Clark County Assembly District No. 18

**STAFF MEMBERS PRESENT:**

Susan Scholley, Committee Policy Analyst  
Cyndie Carter, Committee Manager  
Cheryl Williams, Committee Secretary  
Olivia Lloyd, Committee Assistant

**OTHERS PRESENT:**

Kathleen Boutin, Executive Director, Nevada Partnership for  
Homeless Youth  
Zufra Figuerou, Student, Las Vegas  
Corbin Davis, Private Citizen, Las Vegas  
Tim Mullin, Executive Director, Nevada Partnership for Homeless Youth  
Michael J. Pomi, Executive Director, The Children's Cabinet  
Kevin Schiller, Social Services Director, Washoe County Department of  
Social Services  
Ronald P. Dreher, representing Peace Officer Research Association  
of Nevada  
Patrick D. Dolan, representing Washoe County Sheriff's Office  
Tim Kuzanek, Captain, Washoe County Sheriff's Office  
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs'  
Association  
Chuck Callaway, representing Las Vegas Metropolitan Police Department  
Michelle R. Jotz, representing Las Vegas Police Protective Association  
Metro, Inc.  
Javier Trujillo, representing the City of Henderson  
Jackie Muth, Lieutenant, Department of Public Safety, Las Vegas  
Dale A.R. Erquiaga, Senior Advisor, Office of the Governor  
David Goldwater, Member, Nevada SAGE Commission  
Carole Vilardo, President, Nevada Taxpayers Association  
Keith L. Lee, representing Nevada State Contractors Board  
Randy Robinson, representing State Board of Professional Engineers and  
Land Surveyors

Randi Thompson, representing National Federation of Independent Business

Bruce Arkell, representing Nevada Senior Advocates

Greg Esposito, representing Southern Nevada Building and Construction Trades Council

Peter Krueger, representing Southern Nevada Fire Protection Association

Randy A. Soltero, representing Sheet Metal Workers Local Union No. 88

Jack Mallory, Director, Governmental Affairs, International Union of Painters and Allied Trades, District Council 15

Marlene Lockard, representing Southern Nevada Air Conditioning Association

Brian Keretski, President, Plumbing, Heating, Cooling Contractors of Nevada

Richard Lyle, Executive Director, Mechanical Contractors Association of Southern Nevada

John Jacobs, Vice-President, Big Town Mechanical LLC, Las Vegas

Bob Roach, Executive Director, Sheet Metal and Air Conditioning Contractors' National Association

B.J. Sullivan, President/CEO, Clark & Sullivan Construction, Sparks

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

Tim Kretzschmar, Senior Vice President, QD Construction, Sparks

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

Warren B. Hardy II, representing Association of Builders and Contractors of Nevada

Ted J. Olivas, representing City of Las Vegas

P. Michael Murphy, representing Clark County

Kathy Rainey, representing Nevada Public Purchasing Study Commission

William H. Hoffman, Assistant Director, Engineering, Department of Transportation

Mike Cathcart, representing the City of Henderson

**Chair Kirkpatrick:**

I want to share some good news with you. The Assembly Committee on Government Affairs was referred 118 Assembly Bills. We have heard 77, and we have several scheduled tonight, tomorrow, and next week. We have had 25 bills moved out, with 8 of those to the Senate. We have a little over 20 bills ready for a work session, which will start tomorrow. I want to say thank you for all of the hard work of this Committee. We are making significant progress, and we hopefully beat the Assembly Committee on Judiciary on its workload this session. With that, there is a work session list already posted. We will try to move as many bills out as possible tomorrow. There are some bills that are waiting for amendments. The ultimate goal is that next Friday, we

will not be in this Committee at 10:30 p.m. The hard work has paid off, and we have not had to have any Saturday meetings.

We are going to go out of order today because I want to keep similar topics together. We will start with Assembly Bill 472. We will then move to Assembly Bill 265, Assembly Bill 406, Assembly Bill 474, Assembly Bill 371, and then to Assembly Bill 470.

We will open the hearing on A.B. 472.

Assembly Bill 472: Revises provisions relating to youth shelters.  
(BDR 20-1134)

**Kathleen Boutin, Executive Director, Nevada Partnership for Homeless Youth:**

I just received word that Assemblyman Conklin is on his way up, and he is the one presenting this. Do you want us to wait or to go ahead and proceed?

**Chair Kirkpatrick:**

He wanted to be first.

**Kathleen Boutin:**

We will go ahead and proceed. We have our Director and two of our youth here today. We are asking for your support of A.B. 472. This is a piece of legislation that Barbara Buckley had initiated about a decade ago. It allowed youth care providers statewide, such as ourselves, West Care, and Children's Cabinet, to provide services to a very at-risk population. We are asking for an amendment nearly ten years later. It is pretty much a housekeeping matter. We call this the "Right to Shelter Law," because we have opened up shelters in different jurisdictions, whether it is Carson City, Henderson, or Las Vegas. We are adhering to a set of regulations set forth by each municipality, even including the unincorporated areas of Clark County because they have business licensing and regulations. We felt having the county provision in here that we create an additional layer of bureaucracy would be too much of a cost burden on our nonprofit partners, especially now that we are seeing such an increase in our services.

I will open it up to questions to our homeless youth if you have anything specifically you would like to talk to them about and their experiences in our programs.

**Chair Kirkpatrick:**

Do you want to say a little bit about your participation within the homeless youth program? I think that might be helpful.

**Kathleen Boutin:**

About ten years ago, before Assemblyman Conklin was elected to office, we started the organization as an effort to create a service to the system for unaccompanied minors who we did not see in our foster care systems or who had made their way into our out-of-foster care but were still experiencing homelessness on the streets. This law allows service providers to serve the youth under certain conditions if they had been assessed by a licensed professional and deemed as abused or neglected. It allows them to consent to the same exact services that a homeless adult would receive. We have done a lot. We had Homeless Youth Day here at the Legislature, and it was a great event. We have both been very involved with this movement for several years, and we will continue to do so.

**Chair Kirkpatrick:**

Are there any questions? [There were none.] I am sure the three of you would like to voice your support for this bill. Please identify your name and give us your opinion.

**Zufra Figuerou, Student, Las Vegas, Nevada:**

I am 17 years old and have been homeless for about a year now. I do not know where I would be without the partnership. My father was abusive, and I was in and out of the house. I couch-surfed for a period of time but returned because I had a younger sibling I had to take care of. One day, he kicked me out because he did not want me at home anymore. It was a huge trouble to get him to sign the release papers saying I was a minor. Thanks to the partnership, I am on track to graduate this year, and I will be attending University of Nevada, Reno (UNR) this fall. I plan on majoring in biology. I am attempting to gain custody of my younger sister. The partnership has been a big crutch for me.

**Chair Kirkpatrick:**

Are there any questions? [There were none.]

**Corbin Davis, Private Citizen, Las Vegas, Nevada:**

I am 20 years old and have been homeless since I was 16. Without the "Right to Shelter Law" or the program, I would probably still be on the streets. I would not have been able to continue my education. I was struggling to even stay in high school because I did not know where I was going to sleep or get my next meal. "The Right to Shelter Law" and program has alleviated much of that stress and has allowed me to become a semiproductive member of society.

**Chair Kirkpatrick:**

Congratulations to both of you.

**Tim Mullin, Executive Director, Nevada Partnership for Homeless Youth:**

I am in support of this bill. "The Right to Shelter Law" has helped us provide services to more than 5,000 youth since the inception of our program. I hope to see this bill passed.

**Chair Kirkpatrick:**

Are there any questions? [There were none.]

**Assemblyman Marcus Conklin, Clark County Assembly District No. 37:**

I appreciate your indulgence in bringing this bill first because it was to make sure these folks could make their flight to Las Vegas. I wanted to give the Committee the opportunity to hear their testimony. It was more important than mine.

Since I am here, I would like to reiterate that this has been a passion of mine for about 14 years. Ms. Boutin, several other citizens of Las Vegas, and I founded this organization in southern Nevada. You may be familiar with the Children's Cabinet in northern Nevada, which holds a very similar license nationally to National Safe Place, which is also very important to the First Lady of Nevada. We have been working on these issues for many years and have made great strides. This bill simply cleans up some of the language in the "Right to Shelter Law" and allows us to continue to serve what is a remarkably underserved population in the state. One of the most interesting statistics that has struck is that just over a quarter of all the homeless adults in Nevada were homeless prior to the age of 18. It is through the efforts of organizations like ours and Children's Cabinet in northern Nevada that we are able to permanently remove some of our population from the streets and the associative problems with that. We can get to them early and help them reconnect in the community and provide them a positive atmosphere from which to grow and become good citizens of our state.

**Assemblyman Stewart:**

I applaud your efforts to take care of these young folks. In section 2 of the bill, if there is a facility within the county, outside of the city, who would approve the license?

**Assemblyman Conklin:**

Could you repeat the question?

**Assemblyman Stewart:**

In section 2, line 7 of the bill, the county has been removed and the city approves it. If the facility is not in a city or town but is in an unincorporated area of the county, would the county still approve? What would be the situation there?

**Assemblyman Conklin:**

The bill is designed so that only one license is necessary. Sometimes the licenses get layered, complicated, and conflict with each other. We would like to have one scheme. I think there is conflicting opinion, and I would leave it to the Legal Division to decide for certain. We do not want shelters unlicensed. If this creates an opportunity for unincorporated Clark County, or a location that does not have a municipality as such, to go unlicensed when there is a licensing mechanism, we would be amenable to hearing how we can fix the bill accordingly. I do not have an absolute answer as to whether or not this language does that.

**Chair Kirkpatrick:**

Assemblyman Stewart, we can get that answer for you. I think this is no different than some of the group home bills we have had this session. It is making sure these facilities are just licensed one time as opposed to four or five times, as has happened to some of the homes. I am more than happy to verify that with our Legal staff.

Are there any other questions? [There were none.] Is there anybody else wishing to testify in support?

**Michael J. Pomi, Executive Director, The Children's Cabinet:**

We are in support of the bill. We are a little unique. I have my partner here, Kevin Schiller from Social Services. The Children's Cabinet actually contracts with Kevin to provide shelter care for the kids we serve on what we call our "Children's Campus" in northern Nevada. We are trying to accomplish less governmental oversight while still having licensure. We need folks to review proper care of the kids we serve.

**Chair Kirkpatrick:**

Are there any questions? [There were none.]

**Kevin Schiller, Social Services Director, Washoe County Department of Social Services:**

As a department, I want to make sure we put on record our support for this bill. We are typically dealing with about 800 kids in foster care. In addition to that,

we are consistently battling the issue of youth homelessness. This bill allows flexibility for us to continue to deliver those services.

**Chair Kirkpatrick:**

I am sure they appreciate that. Are there any questions? [There were none.] Is there anybody else wishing to testify in support? [There was no one.] Is there anybody in opposition of A.B. 472? [There was no one.] Is there anyone in the neutral position? [There was no one.] We will close the hearing on A.B. 472. Assemblyman Conklin, I am sure you told them we do not move things out the same day no matter how perfect they are.

We will open the hearing on Assembly Bill 265. We heard this earlier in the week, and it had a bunch of different amendments. It was very hard to read. The sides have worked very closely together. I do have a signed document that said they all agreed.

**Assembly Bill 265:** Revises provisions governing the rights of peace officers.  
(BDR 23-716)

**Ronald P. Dreher, representing Peace Officer Research Association of Nevada:**

You all have a copy of the amendment ([Exhibit C](#)) we reached this afternoon with the Nevada Sheriffs' and Chiefs' Association. I have Mr. Dolan sitting at the other end who will help explain this process as we go through it. What you have in front of you is an amended version of A.B. 265. If you recall, on Friday, it was a little bit contested, and we have tried to work that out. The basic bill, as you will see in section 1, will allow the witness officers to be noticed in an investigation and have representatives present. That is basically what we talked about. That was the concern we had, and it was addressed. You will notice in section 1, subsection 2, this is *Nevada Revised Statutes* (NRS) 289.060, which is the notice section of the Peace Officers Bill of Rights. In section 1, subsection 2, we added some of the wording that states, "The notice provided to the peace officer who is the subject of the investigation must include . . . ." In paragraph (b), we added peace officers being investigated, and in paragraph (d), we added the word "hearing."

On page 2 of the amended bill, our concern was over the ability to flex an officer. When he is working graveyard, he can come in on day shift. Section 1, subsection 3 would allow that to happen. In subsection 3, paragraph (c), it states, "If any evidence is discovered during the course of an investigation . . . ," which is when a witness is being interviewed, the witness would be noticed that there is a concern. The interview would be stopped; noticing there is a potential violation and go through that process. That addressed our other concern. I should point out that the only thing



different between what you received—and I am going back to the first part of section 1, where it says, NRS 289.060—we had, as a matter of compromise, put a period after the word "officer" in the last italics. The other sentence was eliminated. That is basically what we are going through. That is the only part of this bill we amended. On page 2, section 4, this states, "If a peace officer provides a statement or answers a question relating to the alleged misconduct . . . who is the subject to the investigation . . . after the peace officer is informed that failing to provide the statement or answer may result in punitive actions . . . the statement or answer must not be used against the peace officer . . . ." In subsection 5, it states, "If a peace officer is required by the law enforcement agency to attend any interrogation, hearing or other administrative proceeding . . . ." If law enforcement had a policy, it would be compensated in regard to that. On the last page, starting with section 2, we retained the existing language of NRS 289.085. There was some misunderstanding between Mr. Dolan and myself. It was never our intent to strike the original language of NRS 289.085 because that is the language that provided an arbitrator or hearing officer to discard evidence that was obtained improperly. What we did do was eliminate the portion that dealt with the civil fine. It is struck out in section 2.

Adding the new section 3, that was sort of an amendment to NRS 289.057. If you recall our testimony the other day, our concern was trying to get discovery before a predisciplinary hearing was held. As a compromise to this, we have managed to work with the Nevada Sheriffs' and Chiefs' Association over the next interim to work with all law enforcement agencies in this state in an attempt to rectify the concerns we have. A number of the departments already do this. We would like to do this. We are trying to provide due process and discovery to these officers before we went through a predisciplinary hearing.

That is the bill in itself. It does incorporate some of the concerns we had in Senate Bill No. 396 of the 75th Session. Mr. Dolan can probably clarify some of the things I may have misrepresented to you. I tried not to do that. We all tried to work together. You will notice at the top of the bill, the names are the people and agencies that have agreed with this amendment.

**Chair Kirkpatrick:**

This is in a much better form for the Committee to view. I do see that you kept some sections of the original bill, and that is helpful as well.

**Assemblywoman Flores:**

In the section you were just talking about where you got rid of the civil liability, it references NRS 289.010 and NRS 289.120. It says that evidence obtained

during an investigation concerning the conduct, which violates any provisions of these two NRS provisions, could be excluded if there are any civil actions that result. What do NRS 289.010 and NRS 289.120 say?

**Ronald Dreher:**

Those are the Peace Officer Bill of Rights. For example, an officer is not mandated to take a polygraph exam, and you cannot go through and ask him questions about his finances, unless there is some real reason. This provides the basic due process rights, the basic rights which officers have. This is specific to peace officers in the State of Nevada.

**Assemblywoman Flores:**

It is basically what would generally be evidence that is not supposed to be obtained in that manner, correct?

**Ronald Dreher:**

If someone goes outside the norm of what you are seeing in those sections, that would be a violation. That is what we would ask an arbitrator to exclude.

**Assemblywoman Flores:**

In other words, it is kind of a manner of exclusion in a criminal case in which the punitive result of obtaining something in an unlawful matter is excluded.

**Ronald Dreher:**

That is exactly right. It is like the fruits of the poisonous tree, except it is civil.

**Patrick D. Dolan, representing Washoe County Sheriff's Office:**

An operative word is there, and it is retained in existing law. It must be "prejudicial," so you will not throw out evidence on a technical violation that does not go to the merits of the matter either being alleged or defended. It maintains that appropriate balance between all parties at the table.

**Chair Kirkpatrick:**

Are there any other questions? [There were none.]

**Tim Kuzanek, Captain, Washoe County Sheriff's Office:**

I am happy to support the amendment as it has been explained to you today. We got together and tried to work out all of the issues that were creating confusion as we went through this process. It is a little earlier in the session than normal for us to be doing the closed door negotiations, but in this case, it worked out well.

**Assemblywoman Neal:**

I am looking at the Peace Officer Research Association of Nevada amendment in subsection 4, where it says, "If a peace officer provides a statement or answers a question relating to the alleged misconduct . . . who is the subject of an investigation . . . informed that failing to provide the statement . . . ." I want clarification on what that means. Why is that section in there? Can you give me some background on that section? For instance, if I come to you and tell you that you are part of an investigation. I then inform you that if you fail to provide the answers, there may be punitive action. The statement you give me after that can no longer be used. Is that an extra right that is being afforded?

**Tim Kuzanek:**

It would probably be faster and easier just to go to Pat Dolan with these technical questions.

**Patrick Dolan:**

What this seeks to do is extend the Garrity warning the United States (U.S.) Supreme Court has mandated. When an employee is asked questions narrowly and specifically related to their acts or omissions in furtherance of their duties, those compelled statements cannot be used against that individual, providing the statement or the proof thereof in a criminal action against that employee. When a witness is ordered to provide information, any statements that witness gives cannot be similarly be used against that witness in a criminal proceeding.

**Assemblywoman Neal:**

So this is dealing with the Fifth Amendment and self-incrimination.

**Patrick Dolan:**

Yes. We are extending the Fifth Amendment to a compelled statement by a witness being used against the witness. We already have a provision saying you cannot use a compelled statement against the subject. It is generally given by most law enforcement agencies I am aware of. Customarily, anytime you are compelled to make a statement, the statement and the fruits thereof cannot be used against the person testifying in a criminal proceeding. Sometimes we have parallel proceedings going on at the same time. It makes sure that protection is extended to both the subject who gives the compelled statement and the witness. If the witness gives a compelled statement that later on is used for administrative procedures, the language obtained in the compelled statement cannot be used in a criminal case.

**Assemblywoman Flores:**

Going back to section 2, on page 6 of your handout, if the evidence is excluded because it was unlawfully obtained, who would be barred from using this

evidence? If the person conducting the investigation unlawfully obtained this evidence, would the person who was harmed by the officer's wrongdoing be precluded from using this evidence? Who is precluded from using the evidence? It just says, ". . . commenced or civil action filed against the peace officer." It does not say who would be doing the filing of the case.

**Patrick Dolan:**

This section has historically been in the Peace Officer Bill of Rights, and it prevents management from violating the rights of the peace officer and then taking a punitive action. In the hearing, it is disclosed that the agency knowingly, willfully, and intentionally violated a mandate, and the mandate resulted in prejudicial evidence that was attempted to be used against that officer in the disciplinary hearing. You cannot use it in any of the steps in-between.

**Assemblywoman Flores:**

We are not talking about a civil action filed by a person who was aggrieved by something they might have done.

**Patrick Dolan:**

No.

**Chair Kirkpatrick:**

We need to move along. I do think you need to follow up before it goes to work session. Even though you all agreed, we need to make sure the Committee is comfortable with it.

**Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association:**

We worked out the agreement, and I think we are comfortable with it as it stands before you.

**Assemblyman Livermore:**

In section 1, subsection 3, which says, "The law enforcement agency shall . . . ." It goes on to say, ". . . the peace officer shall be compensated for appearing for the interrogation based on the wages and any other benefits due the peace officer . . . ." How much time is this going to include? Is it an hour interview or a half-hour interview? What are you requesting here? What kind of compensation of time?

**Ronald Dreher:**

It would be whatever his basic wage is right now.

**Assemblyman Livermore:**

I do not mean the salary. How much time are you going to ask? I cannot find my original notes, but in them, you were talking about giving somebody eight hours to prepare for an interview. Does that include all of that in this section?

**Ronald Dreher:**

The reason for the flex time was to provide for a graveyard officer. If an officer was working graveyard, but he had a hearing scheduled for 8 a.m., the time would be flexed so the officer would not be dead-tired when he had to appear. Some of the hearings I have been at take several hours. It all depends. We are just talking about flexing that officer so he can be awake when he appears.

**Assemblyman Livermore:**

Is flexing for a hearing and investigation separate?

**Patrick Dolan:**

They could be. To answer your first question, there was some language in there that said we would give either paid or flex time for preparing for the hearing. That has been removed from the bill. That was proposed in error. Second, what happens is that we generally try to schedule the interrogation. The average interrogation is from less than an hour up to an hour. The normal arbitration never goes beyond a day. Because we run 24/7 in law enforcement, it is sometimes hard to schedule somebody at night. It is hard to get an attorney to come in at 3 a.m., but we will attempt to put an officer on regular time or flex that time, so we can move it into the next day. This means we do not incur overtime or anything else. In those rare instances where management determines it is not reasonably practical to either have the subject come in during his regular shift or to flex that shift, we would then have him come in on his off-duty day and conduct the interrogation. I do not know if normally we would have the hearing on those dates. When we schedule them with the arbitrator for the grievances, we schedule them for a workday.

**Assemblyman Livermore:**

You would have to pay a replacement officer in order to flex an officer?

**Patrick Dolan:**

No. We will go under roving status or whatever. The street will be short. If we are in the jail and in a lockdown mode, we will lockdown and go into a roving status, so we can take care of the public interest of being efficient.

**Chair Kirkpatrick:**

Is there anybody else wishing to give additional testimony? Is there anybody in southern Nevada who is in support of this bill that would like to speak? If so, you can head up to the table. There is a ten-second delay.

**Chuck Callaway, representing Las Vegas Metropolitan Police Department:**

We support the amendment. This amendment was done very rapidly over the last several hours. I was actually in a hearing testifying when some of this was being done. I do have a small concern that may not have been addressed in subsection 5 on page 5 of the amendment. On the third line of that paragraph, right after NRS 289.057, it says, ". . . or by electing to contest any discipline imposed . . . ." The agency would be required to compensate or flex that officer's time. I have a concern with an officer who has been investigated and a sustained complaint has been found, and then the agency will have to pay for or flex that officer's time to grieve that finding. I believe that is a concern. I talked with Michelle Jotz briefly about it, and I think it is a minor issue with this amendment. I do not want to manage what was done with it. I think she and I can work that out fairly quickly and have a change to that language by the work session, with the permission of the Chair.

**Chair Kirkpatrick:**

That would be appreciated. I still think you guys are going to have to circle back through the Committee because we went from one extreme to another. We do appreciate you getting this cleaned up. I still think it is important to make sure the Committee is comfortable.

**Michelle R. Jotz, representing Las Vegas Police Protective Association Metro, Inc.:**

I believe Director Callaway covered it sufficiently.

**Chair Kirkpatrick:**

Does anybody have any questions? [There were none.] Is there anybody else wishing to testify in support of A.B. 265?

**Javier Trujillo, representing the City of Henderson:**

We do appreciate the work that has been done by all the parties. We share the same concern as Sergeant Callaway just shared with you. We will be supportive of the amendment once that issue is addressed.

**Chair Kirkpatrick:**

Is there anybody in opposition of A.B. 265? [There was no one.] Is there anybody neutral to A.B. 265? [There was no one.] Mr. Dreher, do you have any final comments? I think the direction for you would be to address this and

get it back to the Committee. We must have it tomorrow night because we are pushed for work session.

**Ronald Dreher:**

We do not have a problem doing that. We will get it done as soon as possible.

**Chair Kirkpatrick:**

With that, we will close the hearing on A.B. 265. Is there someone in Las Vegas that would like to testify? I will open the hearing back up on A.B. 265.

**Jackie Muth, Lieutenant, Department of Public Safety, Las Vegas:**

I need to disclose that my father sits on this Committee. He is Assemblyman Pete Livermore. Representing Director Chris Perry of the Department of Public Safety, we oppose many of the amendments changed in A.B. 265. I would like to briefly go over those.

**Chair Kirkpatrick:**

This bill is not meant to go smoothly. With that, let me clarify. You are in opposition, and let us go over your opposition.

**Jackie Muth:**

Our opposition is specific to the proposed change to NRS 289.060, section 1, paragraph 1, regarding giving their rights to witness employees, including the notice of interview, 48 hours of preparation time, and the right to have representation. This can have serious implications on the agency's ability to manage critical incidents or take immediate interventions when necessary. This can impact operations, public safety, and also the safety of agency employees.

**Chair Kirkpatrick:**

Can you clarify where you are at? Are you working off of the amendment? You are in section 1. That is existing language correct? You are opposing existing language?

**Jackie Muth:**

No, I am opposing the amended language pursuant to the revisions provided to you by Mr. Dreher, regarding providing witness employees the rights of the subject employee. This includes giving them 48 hours preparation time, written interviews, and the right to have representation during an interview process.

**Chair Kirkpatrick:**

Currently, in statute, in NRS 289.060, it talks about the 48 hours. That is current process. The proposed amendment, where it says, "Any peace officer believed by the law enforcement agency . . . ," which line within that portion of section 1 are you opposed to?

**Jackie Muth:**

I am opposing where it says the witness officers are now also entitled to the same benefits of the subject employees pursuant to the proposed changes. Historically, before this bill, the subject employee was the only employee entitled to these rights. Now the witness employee, according to the proposed changes, will also have the same rights afforded to him as the subject employee.

**Chair Kirkpatrick:**

I think that guts the entire section 1 of the amendment. What is the next piece you are opposed to?

**Jackie Muth:**

Do you want me to move on and not give you my opposition to that?

**Chair Kirkpatrick:**

I thought you just gave it to me.

**Jackie Muth:**

I am opposed to it, but if I could continue on as to what the Department's opposition is to that?

**Chair Kirkpatrick:**

Okay.

**Jackie Muth:**

Many of the internal affairs cases that we come across are due to the activity that is non-law enforcement in nature. Examples of this could include sexual harassment claims, workplace safety concerns, domestic violence, or other off-duty conduct with a nexus to the job. Based on these examples, immediate intervention could be necessary to protect the members of the agency and/or the public. Failure to take appropriate protective and affirmative protections could lead to serious liability for the agencies. Witness employees do not need representatives since their role in administrative investigations is to tell the truth. It is a fundamental element of being a police officer. By allowing witness employees to have representation, it will lengthen the time an



investigation is concluded due to potential scheduling difficulties with attorneys and/or employee representatives.

Other bills currently being heard by this Committee are trying to place restrictive timelines on the employee investigations, which will conflict with the additional rights being afforded through the proposed changes in this bill. By allowing witness employees to have representatives, it will provide insight into the subject employee before being interviewed. The employees are often represented by the same association and/or employee representatives. Therefore, the subject employee may have beneficial information based on the witness interviews that gives an unfair advantage to the investigation.

I would like to move on, specifically to section 1, paragraph 4, which is the additional protection of compelled statements of witness employees being utilized in a criminal proceeding. In the U.S. Supreme Court case, *Garrity v. New Jersey*, 385 U.S. 493 (1967), it provides the Fifth Amendment protections for governmental employees during compelled statements. If that employee is the subject of criminal action, there is no legal foundation I am aware of to support prohibiting compelled statements of employees who are not subject to criminal action and could be utilized as a witness in the criminal matter. Those employees would not be self-incriminating since they are not subject to the criminal action. Peace officers are given the authority to take people's liberties away and are granted the highest level of trust within the public system. Providing layers of protection not afforded to other citizens or employees defies the logic of this. This can only further perpetuate public opinion that police officers stick together and will not report criminal wrongdoing by each other.

**Chair Kirkpatrick:**

Are there any questions? [There were none.] Let me be clear, in section 1, subsection 1, you are in opposition to anything that concerns the witness. In section 1, subsection 4, you are in opposition to the entire section, correct?

**Jackie Muth:**

That is correct.

**Chair Kirkpatrick:**

It looks like this bill is going to be the death of me. It is all good. It was last session too, so I am good. Are there any questions? [There were none.] We will go ahead and close the hearing on A.B. 265.

We will open the hearing on Assembly Bill 406.

**Assembly Bill 406: Creates the Evaluation and Sunset Advisory Commission.  
(BDR 18-584)**

**Assemblyman Ira Hansen, Assembly District No. 32:**

The origin of my bill starts in the Spending and Government Efficiency Commission (SAGE). The recommendation is recommendation No. 17, and it has to do with the sunset commission. The commission, which was composed of seven Democrats and seven Republicans, unanimously agreed to this recommendation. It studied in its efforts to try to improve government spending and efficiency. It looked all over the nation and came across an exceptionally effective commission in the State of Texas. The Texas commission began in 1978, and since that time, 58 government agencies have been abolished, and another 12 agencies have been consolidated. During that same window, it saved an estimated \$784 million for a cost of about \$29 million. We have essentially copied the best ideas from that commission. The state commission's recommendation is to set up a sunset commission, which has one specific duty, and that is to ask a basic question: Do the agencies' functions and statutory tax exemptions, tax abatements, and tax earmarks continue to be needed? The responsibility of the sunset commission is the regular assessment of the need for any nonconstitutionally mandated state agencies and commissions and if they need to continue to exist. The State of Nevada needs a formal process and structure to review, on a rotating basis every ten years, the requirement for as well as the policies and programs of those state agencies and commissions to find duplication of other public services or programs to improve each agency's operations and activities and to examine all tax exemptions, tax abatements, and tax earmarks. It will also evaluate the economic, financial, and environmental benefits associated with these public policies.

There are three bills, and mine is A.B. 406. Senator Kieckhefer has Senate Bill 251 and Assembly Committee on Ways and Means has Assembly Bill 474. These all deal with the same issue. We will essentially set up a commission to evaluate these things. The commission will be appointed in slightly different variations in the different bills, but the purpose will be to evaluate government agencies, commissions, and tax policies to see whether or not they are still needed or if they are redundant. I have spoken with Chair Smith about this, and we are going to set up a policy review committee to work out the slight variations in these to come up with one single bill. My bill will be rolled into that bill. Senator Kieckhefer's bill will continue to go through the Senate. We will try to work out all of the differences.

The bottom line is that this is a great idea. Since it works in other states, we are going to try to model it after very successful programs elsewhere to

save taxpayer dollars and to make government more smooth and efficient. This will simply remove excessive levels of bureaucracy in the state.

**Chair Kirkpatrick:**

Does anyone have any questions?

**Assemblyman Ellison:**

The Governor has had some recommendations to combine the budget with some services. Where would that fall within this sunset commission?

**Assemblyman Hansen:**

Actually, the Governor has someone here to speak on these bills. I will allow Mr. Erquiaga to address that.

**Dale A.R. Erquiaga, Senior Advisor, Office of the Governor:**

The sunset commission theory would probably work slightly different from a traditional budgetary process. As you have correctly stated, the Governor's Budget consolidates a number of agencies, but all three of the sunset bills primarily deal with boards and commissions. Two of the bills contain a little broader language about agencies. It is our position that as these bills are put together, we would prefer they focus more closely on boards and commissions, and agencies should continue to be handled under the normal budgetary process that this body approves.

**Assemblywoman Benitez-Thompson:**

In section 5, where you talk about how the review will take place, I was wondering if you could talk to me a little bit more about the Texas model. What did they find, and what were the recommendations around tax abatements and tax exemptions?

**Assemblyman Hansen:**

I honestly do not know the answer to that. The people who handle that with the SAGE Commission gave us some broad general ideas. The very specific details, I could not answer. I do know that when the SAGE Commission reviewed it, it found substantial levels of savings. Hopefully, we will be able to cut back on some taxes that are currently being unwisely allocated to other agencies. We can convert it into things where we feel they are more needed.

**Assemblywoman Neal:**

I have a question on section 7 and part of section 5 too. Do you want a per diem allowance for the two communities, or representatives out of the general public, who are going to be a part of this? Since the term is three years, and you want them to meet not less than every other month, what is the cost?

**Assemblyman Hansen:**

In Texas, the cost is \$29 million over a 27-year window. I do not know what the dollar amount would exactly be. We do not have fiscal note detail on it yet to that extent. I can look into it and try to give you a more specific number.

**Chair Kirkpatrick:**

For the Committee's knowledge, we are going to roll some of these bills together. This Committee will pass out one bill after the policy has been determined. Within the work session, there may be portions of this bill that do not make it to Ways and Means, correct?

**Assemblyman Hansen:**

Correct.

**Chair Kirkpatrick:**

I think we should probably bring Assemblywoman Smith up or go to her bill, since we know that the committee bill from Ways and Means is going to be the avenue. We can sort of see what direction to go in. I do not want us to ask you a bunch of questions without knowing if it is going to end up in the final bill.

**Assemblyman Hansen:**

That is an excellent idea.

**Assemblywoman Debbie Smith, Washoe County Assembly District No. 30:**

I am here to talk about Assembly Bill 474.

**Chair Kirkpatrick:**

Let me open up the hearing on A.B. 474, so we have the hearing open on both bills.

**Assembly Bill 474:** Creates the Sunset Subcommittee of the Legislative Commission to review certain boards and commissions. (BDR 18-889)

**Assemblywoman Smith:**

Mr. Hansen did a great job of presenting some of my testimony because a lot of this is based on similar information. In the handout ([Exhibit D](#)) you have on Nevada Electronic Legislative Information System (NELIS) for this bill, it also refers to what happened in Texas and Minnesota. Granted, a lot of those savings took place because it was a broader scope that their commission undertook and over a long period of time. This bill is focused on boards and commissions. We worked closely with the proponents from the SAGE Commission and did a lot of work to accomplish the goal without having

to create a big new commission. I was a little bit sensitive, especially in my role during this session, about creating a big new something when we are cutting a lot of things.

I want to talk to you about how this committee would be made up and how it would do its work. The purpose, specifically in this bill, would be to review boards and commissions. This would be a subcommittee of the Legislative Commission. That is the interim commission that looks at policy. This sunset committee would be tasked with reviewing and analyzing our existing state boards and commissions.

[Continued to read from handout ([Exhibit D](#)).]

There is a common belief out there that we really do not know the status of what is happening with many of our boards and commissions. One of our colleagues told me that he has been an appointee to a particular commission for four years and has never been invited to a meeting. It has not had a meeting in four years. It makes sense that we look at what these groups are doing to see how we can be a little more efficient. We know there are at least 169 of them, and it would be a good idea for us as policymakers to know what they all do.

You have heard about the savings in the other states, and there is a case study about Texas and some of the questions from the Texas model that you can look at when you would like to review it. There is specific information, keeping in mind that it errs with a much broader scope. This sunset subcommittee of the Legislative Commission would be a nine-member committee, and it would be made up of appointees from the Majority Leader of the Senate, the Speaker, and the Governor. Each would have their appointees on that committee. It would be legislators and members of the public. Therefore, you will have members of the public and business people who are involved in board- and commission-type of work and understand the nuances and intricacies of what boards and commissions do on an ongoing basis. The chair of the Legislative Commission would appoint the chairman of this subcommittee. The subcommittee would review at least 20 boards or commissions per year. It will take a long time at this pace to get through all of the boards and commissions, but if you look at the other states, you will see that is the same way they worked. It is a big undertaking to do that review, so it will take time.

[Continued to read from handout ([Exhibit D](#)).]

It may result in some decisions or recommendations being made based on the form that comes back. If you have some that are not meeting or operating,

maybe the decision can be made to recommend a consolidation or termination of that based on the form it submits.

This subcommittee operating under the Legislative Commission would be a public body that would conduct meetings in that forum.

[Continued to read from handout ([Exhibit D](#)).]

Could the board or commission be combined with another board or commission that may make it more productive and effective? Regarding fiscal issues, are the boards and commissions functioning soundly in that manner? Over time, we hear stories about some that do not have money and some that have big reserves. We know there are many issues. The Chair has a bill that deals with properties and assets, and I think these are all things we need to get our arms around. This will give us a unique opportunity to work together with the administration to look closely at the agencies, commissions, and boards. We can make fundamental changes or say, "You are doing a great job. Keep doing what you are doing." Maybe we will find some good role models for others.

On the self-reporting from the boards and commissions, they would be required to submit certain details.

[Continued to read from handout ([Exhibit D](#)).]

For any statutory changes that are necessary, the subcommittee would be responsible for making those recommendations and prefiling those for the next legislative session.

That explains the purpose of this legislation, and I think we have a lot of support. As Assemblyman Hansen said, we are going to work together to make sure we have looked at all the bills out there, and if there are any other things that need to be incorporated, we will do that. We have been working with the Governor's Office over the last few weeks to have language it supports. We have one amendment ([Exhibit E](#)) that I can offer. We are very comfortable to submit this amendment. It makes a few technical changes to the bill.

**Chair Kirkpatrick:**

Thank you, Ms. Smith. At this time, I would probably like to invite Senator Kieckhefer up.

**Senator Ben Kieckhefer, Washoe County Senatorial District No. 4:**

I would like to testify in support of A.B. 474 as well as Mr. Hansen's bill. I have a bill that was just passed out of Senate Government Affairs Committee yesterday morning. That is S.B. 251, as Mr. Hansen referenced. It has a little bit of a broader purview. It covers more operations of state government and not just boards and commissions. I will say that in my most recent job, I was the Public Information Officer of the Nevada Department of Health and Human Services. Under my capacity there, I had to coordinate the appointments to no fewer than 55 boards and commissions. Not all of them were necessary, and I can tell you that much. I support the efforts to review these. I believe this is a good process, and I am committed to working with the sponsors of both pieces of legislation to try to create one bill that packages everything. I do believe it is also warranted to have reviews of ongoing state government programs, looking for differences and duplications in levels of government, at the federal, state, and local level. Those are some of the things my bill introduces in addition to boards and commissions. I believe it is appropriate and recommended by the SAGE Commission. I will continue to stick up for that idea.

**Chair Kirkpatrick:**

Are there any other questions?

**Assemblyman Ellison:**

I want to thank this panel for bringing all of this together. It looks like it has taken a lot of work to get to this point. You said the review will come back to this subcommittee, but will the final decision fall back to the Governor? Will it be like the appeal process? Could you please give me an overview?

**Assemblywoman Smith:**

Ultimately, any statutory changes would have to be made if you were going to consolidate or terminate a board. It would require legislation, so it would come back to the next legislative session. The legislative body would consider that, and the Governor would ultimately have to sign it. It is a very thorough process before you can take any serious action.

**Chair Kirkpatrick:**

Are there any other questions? [There were none.]

**Dale Erquiaga:**

I want to add our support and put a big "me too" in here. This really is a commitment of both Houses. Good ideas have many parents, and I think these bills are an example of that. I did want to say that we support all of the bills that have been carried. We do think A.B. 474 is a good vehicle. I want to

credit the Speaker Pro Tempore for her very clever use of the subcommittee of the Legislative Commission and the assessment to make this work possible. It is not easy to find a balance in authority between the two branches of government, and she has done a nice job with that. It is not easy to pay for something like a committee on committees, and she has also done a marvelous job putting that together as well. The Governor asked me to credit her with that.

I want to make one quick announcement. Inspired by this work and knowing your number is 169 commissions, our number is 183 commissions, so we do not even know how many commissions there are. The Governor signed an executive order to deal with committees formed by executive order. These bills deal with statutory committees, those formed by state law. In addition, by our current running count, there are 43 committees created by executive order in this state. The last time those committees were reviewed was in 1977 when Governor O'Callaghan was in office. I have that order that he signed. Today, we signed a very similar order, and we have been given a short time frame to review the advisory committees formed by executive order. We have brought back former Senators Raggio, O'Connell, and Matthews, who have given us their time for the next 90 to 100 days to review the executive orders and decide which need to be merged or consolidated. We think that will be a pilot experiment that will give the subcommittee some good guidance on how this process goes forward.

**Chair Kirkpatrick:**

Are there any questions? [There were none.] Is there anybody else who would like to come testify in support of both bills or either bill, since both hearings are open? When you testify, please let me know if it is for both or for one or the other.

**David Goldwater, Member, Nevada SAGE Commission:**

I am here as a member of the SAGE Commission that made this recommendation with my fellow commissioner, Commissioner Vilardo. In fact, on behalf of Chairman Frank Partlow, who was our executive staffer, Perry Comeaux, who also helped on staff, Suzanne Kilgore, and all of our commissioners, we support both bills. I can give you a unique perspective because Commissioner Barbara Smith Campbell and I were the subcommittee appointed to deal with this sunset commission issue. I initially was a bit skeptical about this issue, but I was brought full circle. I found it ironic that we had a commission that was going to recommend a committee to deal with commissions. I also felt like making this recommendation would be the best job creator in the state. It would be the lobbyist full employment act in perpetuity. All of these commissions and programs would be very interested, and that has



been the experience in some of the other jurisdictions. However, as a former member of this body for a decade, I know the time constraints. Technically, we have a sunset commission, and it is called the State Legislature. I can tell you it is very difficult, not just from the constraints of time, but also the political constraints, to look at the scope of work facing you. When the legislation is focused and when the Commission is focused, it gives it more weight to a more thorough study to make recommendations to limit some unnecessary redundancies in state government.

The content of the SAGE Commission's discussions were on the membership of the committee. That seems to be a very important part of all these bills to keep it as the least political as possible. After that, it is then the focus of the committee. That was the end result of the SAGE recommendation.

**Chair Kirkpatrick:**

We are the hardest working committee, so we are committed to stay as long as it takes tonight.

**Carole Vilardo, President, Nevada Taxpayers Association:**

I was privileged to be appointed to the SAGE Commission, and the recommendation was brought forth by both Mr. Goldwater and Ms. Campbell. I think there is another element to this that is important to note. It is not necessarily that you can get rid of a board or commission; in some cases there are important boards or commissions, but they are not staffed properly or may not be functioning the way they should to meet the goals and objectives of what they are supposed to do. This is not to automatically get rid of boards but to get us to where we are functioning properly. Obviously, we will wind up getting rid of some because I can see consolidation being a major part of this. With that being said, as a member of the SAGE Commission and speaking for the Association, we are extremely supportive of doing this. We think it is long overdue. I am pleased to see that we are going to take what probably will amount to the best of three bills and incorporate them into one bill. That in itself is an efficiency, not of a board or commission, but of legislative action. I commend all of the parties involved with these bills for being able and willing to consolidate and come forth with one bill that combines the best of all elements. I was asked by Tray Abney of the Reno Chamber of Commerce to advise the members of the Committee of his support for creating the sunset commission.

**Chair Kirkpatrick:**

Thank you, Ms. Vilardo. Does anybody have any questions?  
[There were none.]

**Keith L. Lee, representing Nevada State Contractors Board:**

Our boards welcome the sunset review. We have been working with the sponsors of the bills, and we will continue to work with them as we work to reach the final conclusion to this bill. I want the Committee to know that we, as two boards, support the sunset commission, and we look forward to working with them.

**Chair Kirkpatrick:**

Are there any questions? [There were none.]

**Randy Robinson, representing State Board of Professional Engineers and Land Surveyors:**

We are in support of A.B. 474. We think it is a sensible way to move forward on this issue. We look forward to participating in the working group as those bills are combined and finalized.

**Chair Kirkpatrick:**

Are there any questions? [There were none.]

**Randi Thompson, representing National Federation of Independent Business:**

Since Tray Abney has now been represented by Carole, I will not worry about that, but Liz MacMenamin from the Retail Association of Nevada would like to voice her support. We are also in support of the bill. It was a touching moment to see the bipartisanship at this table, and I applaud you for actually saying you are going to pass this out.

**Bruce Arkell, representing Nevada Senior Advocates:**

Thirty years ago, I was involved in that board and commission study that was referred to. We got rid of about 200 or some boards in one bill. I had blond hair then, and now I have gray, and that was one of the main reasons for the gray. This is a much better approach than what we took. When we got through the Assembly and went to the Senate, the Senate was proposing the sunset bill to abolish the boards that had already passed out of the Assembly. It was an interesting process, and it is one that needs to be done again. It needs to be done on a continuing basis. The boards are important and have a real role in government, but they have a tendency to grow, and that should not be allowed.

**Chair Kirkpatrick:**

Are there any questions? [There were none.] Is there anybody else who would like to testify in support of either bill? [There was no one.] Is there anybody who is in opposition of either bill? [There was no one.] Is there anybody who is neutral on either bill? [There was no one.] With that, Ms. Smith and

Mr. Hansen, do you have any final words? [They did not.] Perfect. We will close the hearing on A.B. 406. We will also close the hearing on A.B. 474. I am not sure if there is an amendment we will need.

Our next bill is Assembly Bill 371, and I will open up the hearing on A.B. 371.

**Assembly Bill 371:** Revises the manner in which a construction manager at risk may solicit bids and select a subcontractor for a public work. (BDR 28-1044)

For the Committee, let me just say this, the Committee offered a bill on this same topic last summer. This has been an ongoing issue, so those of you who are here for the first legislative session as freshmen, it is not going to go away. It is never going to be perfect. The goal of these two bills is to clean up what we can within statute to make the process better. I just want you to be aware that I believe we are probably going to need a working group Monday, but I do not believe I can start that before 8 p.m. I am sorry for that. Some may agree to disagree, but we need to be able to clean up portions of this statute with the language. We will just have to pick away at it.

Mr. Esposito, did you want to start without him? As we move forward, I will open the hearing on Assembly Bill 470 as well. I am going to have others come up, and we will try to work through the parts we can all agree on.

**Assemblyman Richard Carrillo, Clark County Assembly District No. 18:**

I am here today to present A.B. 371, which is an act related to public works. This bill revises the manner in which a construction manager at risk may solicit bids and select a subcontractor for public works. Assembly Bill 371 is intended to prohibit the unfair practice of bid shopping and bid peddling. I will let Mr. Esposito explain more in depth what this bill will do.

**Greg Esposito, representing Southern Nevada Building and Construction Trades Council:**

I want to thank the Committee for hearing this, especially at such a late hour. I want to thank Assemblyman Carrillo for bringing it forward. As you said, Madam Chair, it is an issue that has to get cleaned up, and while the sides may not agree, hopefully we can come to a middle ground and help the contracting industry as a whole.

In order to talk about these bills, I would like to set up a quick scenario of an old west mayor who the people elected. This is a Boss Hogg or Gene Hackman sort of character mayor. The people who elected him come to him and tell him they need a jail. The mayor collects taxes from all the people in the town and

allows the jail to be built. He says, "My brother-in-law has been out of work for a long time, so I will give him the project." There are a couple of carpenters in the town, and they say, "Wait a second. We paid taxes as well and want a chance to build this jail also." The mayor stands in and says, "No. You elected me mayor. I am going to choose who gets to build the jail. It is going to be my brother-in-law." I would hope that everybody on this Committee can agree that this is not quite a fair practice. It is not an appropriate use of power. Previous legislators in this Committee decided to prohibit such practices and put in place *Nevada Revised Statutes* (NRS) 338.1385, which dictates how public works contractors advertise and bids are accepted. Also put into place were NRS 338.1389 and NRS 338.147, which dictate how a contractor is selected for public works. It is an open and fair bidding practice where every taxpayer and contractor has a fair shot to win the project.

With that law being put in place, the mayor goes back and says, "Okay, I will show these people." He gets the bids from all of the contractors who want to work on the job, and he takes them back to his office and opens them all up. He sees \$100, \$120, \$140. He brings in his brother-in-law and says, "Hey, the lowest bid is \$100. If you can come in lower than that, you have the job." The brother-in-law says, "Sure, I can do that." That is a perfect and simplistic example of bid shopping. I would hope that everybody on this Committee can also agree that is not an ethical process for an elected official either.

To explain, bid shopping occurs where the contractor divulges a subcontractor's bid price to a competing bidder in an attempt to secure a lower bid. Bid shopping may lead to lower costs to the contractor, not necessarily to the public body or to the public itself. It generally results in a lower quality of work performed and strong potential for a contractor to go bankrupt because he took a job for a number he cannot afford. Most importantly, it is unfair competition. In previous years, long ago, this legislative body decided to enact NRS 338.141, which is an anti-bid shopping statute. Under the low bid method, the bidding contractors are required to identify and provide the public body with the names and bid amounts of subcontractors who will provide labor for which the subcontractor will be paid an amount exceeding 5 percent and 1 percent of the prime contractor's total bid. That is how you prevent bid shopping and how this body has prevented bid shopping and prevented favoritism in bidding.

In Clark County, the Regional Justice Center happened. It sort of set things on its ear because there were toilet bowls on top of I-beams and walls that did not meet up. It was a project where the engineers did not talk to the contractors and the contractors did not talk to the architects. About a year or so after it opened up, the County was on the hook for an extra \$35 million.

The construction industry was asked to come up with a process that would fix the problem. It came up with the construction manager at risk (CMAR) process. It is a construction delivery process that guarantees a maximum price. When the public body decides it wants to bid a job, it finds a general contractor and say, "Okay, this is what you are getting paid. If it goes over, you are responsible." It is actually a pretty good process in concept. It would do well to serve the public where the project is being built. Unfortunately, when the statute was written, certain protections against exclusive bidding and bid shopping were not inserted into the language. It was coming down to the deadline. Over the past four years it has been in place, there have been unfortunate circumstances of bid shopping where contractors have been disenfranchised and not allowed to bid on projects that were public works.

While the CMAR method may prove advantageous to a public body in certain circumstances, it has opened the door wide to exclusive bidding and bid shopping in the state, which is something NRS 338.141 was enacted to prevent. This bill is intended to prohibit these unfair practices. I will very briefly go over the different subsections of the bill to help you understand the full problem.

Subsection 2 requires the CMAR to "advertise a request for proposals for subcontractors" in a qualified newspaper to give properly licensed subcontractors an opportunity to bid on the project, thus, making it to where you cannot simply say, "I will let contractors A, B, and C bid, but I am going to exclude contractors X, Y, and Z." Subsections 3 and 4 talk about how the requested proposals need to be advertised. It must give the subcontractor enough detail concerning the requirements of the project so the bidding subcontractor can provide a responsive and meaningful bid.

Subsection 5 prohibits the subcontractor from modifying his or her bid proposal after submission. Subsection 6 requires a subcontractor's proposal to be timely and substantially responsive with the bid instructions and the design for the project. Subsections 7 and 8, on the appointed date and time, require the CMAR to open the proposals in front of an authorized representative of the public body so the bid price and subcontractor information can be compiled and provided to the body.

Let me stop briefly and give you something that actually happened on one of the public works projects in Las Vegas. One of the contractors I work with submitted his bid to the general contractor. The general contractor randomly opened it and started to make copies of it. The bids were not due for another hour. Other subcontractors submitted their bids an hour after this bid was already opened. For all anyone knows, the contractor could have been not just

copying the bid but faxing it, giving other contractors access to his bid number, which is a very odd practice for public works jobs. It is not odd for CMAR jobs. In another scenario, contractors were told they were not allowed to bid on a job. For a public works project, that is very odd. Remember the mayor's scenario. Everyone is paying for the job, so why cannot everyone bid on the job fairly?

Continuing on to subsection 9, it requires the CMAR to notify any subcontractors that he believes do not qualify to submit a proposal within five calendar days of the opening of the proposals. It also gives the subcontractor the right to appeal a disqualification, as he is currently allowed to do on public works projects.

Subsection 10 requires the CMAR to evaluate the proposals and select a subcontractor from those bidding subcontractors and then inform the public body of the name of the selected subcontractor. It is important to understand that subsection 10 does not say one has to accept a certain dollar amount. It does not say lowest bidder or highest bidder, but it simply says the CMAR will evaluate the proposals and then select a subcontractor. We do not want this to be restrictive.

Subsection 11, except for the limited exceptions set forth in subsection 12, requires the CMAR to enter into a subcontract with the subcontractor chosen for the price the subcontractor proposed. This prevents bid shopping. It will prevent a subcontractor from lowering his bid in order to beat someone else's price and get the job.

In summary, the CMAR is only authorized to enter into a subcontract with one of the bidding subcontractors whose proposal was opened on the proposal date in front of witnesses. The subcontract price must be the amount identified in the proposal of the selected subcontractor. The opportunity for exclusive bidding and bid shopping is significantly reduced. Those are the two goals of this bill. It makes it so where anyone who is qualified can bid on these projects, and once the bids are in, bid shopping cannot occur.

**Chair Kirkpatrick:**

Are there any questions?

**Assemblyman Livermore:**

You talked about a construction manager's guaranteed maximum cost. I have been involved with some projects with a design-build that has a guaranteed cost to a bid. It is someone else's plans.

**Greg Esposito:**

I am not pretending to be an expert on the bidding process, so I will give you an answer as best I can. On a design-build project, the general bids the project having listed the subcontractors they will use. There is the potential for change orders, and once the job has started and the designs are in, they can have change orders. The price they submitted can go up. With the CMAR having a guaranteed maximum price, he is part of the design process. Therefore, that top dollar amount is the most the public body is going to pay.

**Assemblyman Livermore:**

We tried to build a recreation center using a design-build. The owner told the general what he wanted, with so many square feet here and so many square feet there. In a couple of months, the general came back with a guaranteed maximum price. At that point, he did not disclose subcontractors or sub-subcontractors of the project. We were looking at design build, which eliminated change orders and eliminated the cost overruns. I do not know about bid shopping. I have never been involved, except as a local county official representing the owners—the taxpayers. Here is the money we have; how much can you build with that? How would that function? Can you give me any ideas on that?

**Greg Esposito:**

I do not think the changes we are looking to make to the CMAR statute would affect what it is you are specifically saying. I think if a public body had a set amount of money, and it contracted with a general contractor using the CMAR process, the general, once he gave his guaranteed maximum price, would have to work with the subcontractors he would use to figure out what the project is going to cost them.

**Assemblyman Livermore:**

That is true. You just said the subs he is going to use. I guess he cannot use the subcontractors unless they submit a bid or something and open the bidding up to everybody. Typically, these people had relationships through different trades, like electric, plumbing, et cetera. The costs had been provided with the quality of work and with prices that were within the market. You are saying that the construction manager will not be able to do that anymore. It is our money, so we should have the right to build it. I see some complications there.

**Greg Esposito:**

Now I hear what you are saying. Subsection 10 of this bill does not preclude a contractor from using subcontractors he feels comfortable with or he knows are qualified. It does not say he cannot choose whatever subcontractor he wants. This is not a low-bid statute. This simply states that if you are building

a public work, there must be a fair bidding process. You have to give others the chance to bid it. You do not have to accept them as the sub, but everyone must have a fair shot at it. That is all we are asking for.

**Assemblyman Livermore:**

I do not disagree with you there. There is an appeal process. Who are the subcontractors appealing to? Are they appealing to the governing body or a political subdivision?

**Greg Esposito:**

Actually, there is an amendment being proposed. If Clark County is putting the job out, and they wanted to appeal the CMAR's choice to not accept their proposal, that is who they would appeal it to. The appeals process is if the CMAR does not believe he has the qualifications to bid the work. Just because they do not get awarded does not mean they can file an appeal. However, the appeal would be to the governing body that is doing the project.

**Assemblywoman Bustamante Adams:**

I know this has been a big issue in the construction industry. My question has to do with page 2, line 17. In my experience in the construction industry, I have always been surprised as to why we still use the newspaper as the only medium to publish information, given the advances in technology we have.

**Greg Esposito:**

The only answer I have for you on that one is because it is the current standard. We are not trying to reinvent the wheel here. I would be open to eventually using the Internet or Dodge reports. I review lots of bidding sites every day. For the purposes of this, we did not want to reinvent the standard as it sits, and we did not want to reinvent that wheel.

**Assemblywoman Bustamante Adams:**

It says, the "qualified newspaper which is printed in the State of Nevada and which has a general circulation . . . ." Only because of some of the diverse subcontractors and general contractors, general circulation may not be accessed by certain groups. It is a barrier, and I have seen it be a barrier for some. I understand it has been the tradition, and I look forward to you guys exploring different options in the future.

**Chair Kirkpatrick:**

Are there any other questions? [There were none.] This is a lot to take in. Is there anybody else who would like to testify in support?



**Peter Krueger, representing Southern Nevada Fire Protection Association:**

We are absolutely in support of this bill. I think you have heard a lot of discussion, and I want to reemphasize bid shopping. That is what hurts subcontractors. They go through the process and do everything they can to keep the costs down so that particular bidding entity can go forward as part of the CMAR process and have a bid that is competitive. As you know, in this process people lose bids for just \$100. It is not in the thousands very often.

We are here supporting this because we feel that the provisions of this bill allow a continuation of a longtime tradition that this Legislature has had with legislation preventing bid shopping. The CMAR process should work, but over time, it seems that more and more subcontractors are being excluded because the bid is either opened prematurely or when it is open, there is enough time for the general to get on the phone, or do whatever he or she needs to do to shop that bid down. Some people might say that is a good deal because the public entity is going to benefit from a lower cost. Our experience is that the public entity does not benefit, but the general contractor benefits from that cost savings. For those reasons, and many others, we are in support of this bill.

**Chair Kirkpatrick:**

Are there any questions? [There were none.]

**Randy A. Soltero, representing Sheet Metal Workers Local Union No. 88:**

I want to say a "me too" on this. We agree that this is a bill that fixes a lot of things. I want you to pay attention to what Mr. Esposito and others have said about the bid shopping. That is probably the most important part of this. We find that when there are problems on a job, and I do not want to say cheating, but when things appear that are not as they should be on a project, it is generally because those bids have been shopped. I urge you to pay particular attention to that portion of the testimony. Again, we are in full support of this bill.

**Chair Kirkpatrick:**

Are there any questions? [There were none.]

**Jack Mallory, Director, Governmental Affairs, International Union of Painters and Allied Trades, District Council 15:**

[Presented written testimony ([Exhibit F](#)).] I am not going to go into any further detail about bid shopping. I think the others have spoken enough about it, and about the potential problems with it. I want to speak about a couple of other issues that exist with the CMAR process. In southern Nevada, we have had several projects that have been built with CMAR. One of the things that has happened has been a bit of a difficulty in trying to ensure the prevailing wage

compliance has been maintained on some of these projects. When you try to get copies of certified payroll reports for a specific contractor to make sure he is paying the appropriate rates, it has been very difficult. There have been a number of obstacles. Some individuals have been told they need to go to the general contractor to get the certified payroll reports. When you go to the general contractor, he sends you right back to the awarding body.

The other thing this bill does that has not been spoken about much, is that it establishes some pretty specific standards for things that must be included in the request for proposal (RFP), as well as minimum standards that those subcontractors must meet to be qualified to bid on the project. For those reasons, and some of the other reasons that have been spoken about by other individuals, we are in full support of A.B. 371.

**Chair Kirkpatrick:**

Thank you, Mr. Mallory. Are there any questions? [There were none.] If there is anyone else who would like to testify in support, please come forward now. Otherwise, I am going to go to southern Nevada. There is a ten-second delay, so you can introduce yourself as soon as Ms. Lockard is finished. I will then take questions for the both of you.

**Marlene Lockard, representing Southern Nevada Air Conditioning Association:**

I will not be repetitive. For the reasons already very ably outlined, we support this legislation. Thank you for your consideration.

**Brian Keretski, President, Plumbing, Heating, Cooling Contractors of Nevada:**

I am a native Nevadan, and I am happy to be able to come in front of you this evening. Both general contractors and subcontractors work very hard, especially in the past few years, to win the bids for the projects that allow our employees to take care of their families. Bidding a project requires an enormous investment by the contractor with an all-or-nothing return. When we lose a bid, it is very heartbreaking. It is especially heartbreaking when we have no idea why we lost the bid. When it is a public work, it is hard because we all funded it with our tax dollars. All we are asking for is a fair and transparent process when bidding public projects. We believe A.B. 371 does just that. As you can see, we have a number of contractors here today. It is a pleasure to be able to work with labor also. When someone goes bankrupt on one of these projects, it hurts everybody, from the worker, to the subcontractor, to the general contractor, and even to the public works. The project does not get done on time, and more money must be spent. It is frustrating for everyone. We support this bill wholeheartedly. We ask for your support as well.

**Chair Kirkpatrick:**

Are there any questions? [There were none.] Are you going to be staying for the next bill and testifying on A.B. 470 as well?

**Brian Keretski:**

Yes, I am.

**Chair Kirkpatrick:**

Is there anybody else who would like to testify in support in southern Nevada?

**Richard Lyle, Executive Director, Mechanical Contractors Association of Southern Nevada:**

I was there in the Legislature in 2007 when the subcontractor industry agreed with the general contractors that we would try the CMAR legislation. We gave it four years to work itself out, and we are now concerned that it is not working as well as it could. We want to support A.B. 371 that provides transparency and fair bidding and discourages bid shopping. I would also like to introduce one of my members, John Jacobs of Big Town Mechanical. I would like him to explain how bid shopping has affected his company.

**John Jacobs, Vice-President, Big Town Mechanical LLC, Las Vegas:**

Over the last couple of years, we have employed over 300 people. We currently have about 20 jobs at prevailing rate. I think it is important for this bill to pass because we bid a public works project a few months ago, and on the bid day, we found out we were low on this bid. The bid did not go quite the way the bid numbers were. A few days later, we started getting a few calls about scope of work. On bid day, we were several hundred thousands of dollars low. Not only did the first place bidder not get the job, the second place bidder did not get the job either. The fourth place bidder ended up with the project. That is why I feel like this bill is definitely necessary to be able to keep the bidding process honest and keep the bids fair.

**Chair Kirkpatrick:**

Are there any questions? [There were none.] I am assuming your entire group down there will be staying for the next bill too?

**Richard Lyle:**

Yes, we will be here.

**Chair Kirkpatrick:**

Is there anybody else who would like to testify in support of A.B. 371?

**Bob Roach, Executive Director, Sheet Metal and Air Conditioning Contractors' National Association:**

I do not want to reiterate a lot of the testimony that has gone on. We agree with the testimony you have already heard. We are very much opposed to bid shopping, and we think this particular bill will provide a fair and equitable process for bidding and awarding a job.

**Chair Kirkpatrick:**

Are there any questions? [There were none.] Is there anybody else in southern Nevada who would like to testify in support? Is there anybody in opposition in either southern or northern Nevada?

**B.J. Sullivan, President/CEO, Clark & Sullivan Construction, Sparks:**

The construction manager at risk—and I stress that, construction manager at risk, because it guarantees to the public agency that the project will be done on time and within the budget—needs to be able to use subcontractors that will ensure the job will be done on time and within budget. The general contractors are at risk, but the subcontractors are not at risk. The general contractors are guaranteeing the job.

Not all subcontractors are equal. I will give you a couple of examples. If we are bidding a hospital job, I need to have mechanical, electrical, and plumbing subcontractors who have hospital experience. In reading this bill, any subcontractor who can meet all the criteria should be able to bid the job. If the subcontractor does only shopping centers, he is not qualified to do a hospital. The bill does not differentiate.

The bill does not address if there is a discrepancy with a subcontractor or a general contractor where the sub has filed a lawsuit against the owner. As a general contractor, I do not want to be hiring a subcontractor who I have had legal problems with. There are some subcontractors who I will not do business with, and I do not think state law should mandate or force me to use that subcontractor.

If you go to page 4, subsection 7, paragraph (b), it says, "May be attended by any subcontractor who submitted a proposal." One of the things this is not taking into consideration is how bidding works when we take bids. If you have a sealed bid, it takes several days to vet the bids. No results should be posted until those results are vetted. Unless you use a bid depository, which has been used in southern Nevada but not in northern Nevada, a subcontractor will sometimes quote the job, but he does not have the full scope of work. That scope has to be coordinated so there is an apples and apples comparison.

If you go to subsection 9, it says that a subcontractor can appeal a disqualification. I guarantee you that in this bid climate, every sub who is disqualified will appeal a job. It will be an attorney's employment dream. This is going to create so many problems. Nothing will get built.

In summary, this is a bad bill for the state, and it is a bad bill for the construction industry.

**Chair Kirkpatrick:**  
Are there any questions?

**Assemblywoman Benitez-Thompson:**

I can appreciate your comments about not wanting to work with a subcontractor with whom you have had legal issues or bad experiences in the past. On a design-build project, how do you address that issue? I do not know enough of a difference between a CMAR and design-build for how one channel allows you to work with subcontractors versus not.

**B.J. Sullivan:**

With a design-build project, in essence the general contractor is more at risk than in a CMAR project. Let me go through with a design-build. In a design-build, the contractor says, "I will build your project for you, and I will take care of everything that happens so I give you a complete turnkey project." That means that if there are differing soil conditions or whatever, those are addressed. The contractor employs the design team. That is a complete turnkey project without any changes to the project. The only changes to the project would be if the end user would say he wants to add another 10,000 square feet or add something he did not ask for in the beginning. Did that answer your question?

**Assemblywoman Benitez-Thompson:**

The explanation was helpful. In the design-build process, when you submit that bid, you submit the subcontractors you are going to work with.

**B.J. Sullivan:**

In the design-build process, subcontractors are asked to design their portion of the work, so you are dealing with one subcontractor in the process. There is no bid in a design-build process. My company has done over 100 CMAR delivery-type projects. You go out to the community, and most owners want a minimum of three bids. We will take as many qualified bids as are available in that process. We must vet the bids.

**Assemblywoman Neal:**

I have a question I want you to clarify. In your testimony, you said that sometimes subcontractors bid, and they do not have the full scope of work. Why is that the case?

**B.J. Sullivan:**

They choose not to include the full scope of work. The general contractor is required to give a complete job. A subcontractor says, "I will bid this, but I am not going to include any excavation for muck plumbing."

**Assemblywoman Bustamante Adams:**

Can you go back and reference where you felt that there was verbiage in this legislation that would force you to work with a subcontractor you thought was not qualified? Can you point that out for me?

**B.J. Sullivan:**

I am more than happy to do that for you. In subsections 3 and 4, it is stating if a sub can get bonding and insurance and if he has financial stability or has not been disqualified, he is qualified to do the work. It does not say anything about if he is not qualified to do the work. It does not address that. I got into a fistfight with a subcontractor last week, and I do not want to deal with him. This bill does not address that.

**Assemblywoman Bustamante Adams:**

I guess I am confused because I do not read it that way.

**Chair Kirkpatrick:**

Let me clarify, Mr. Sullivan. What you are seeing is that this language does not give you an out if you choose not to work with that subcontractor, correct?

**B.J. Sullivan:**

That is correct. Under subsection 9, if he feels he was unjustly excused, the whole project will come to a complete halt. The whole process will stop.

**Chair Kirkpatrick:**

You are saying that because the appeal process of the disqualification would cause the project to come to a halt?

**B.J. Sullivan:**

That is right.

**Chair Kirkpatrick:**

Let me ask this. I get with the next bill that section 7 is the biggest problem of it. With this bill, it is section 7 but a lot more expanded. I will tell you that I believe bid shopping is a problem. I have been trying to fix it in another bill, and I just cannot seem to get there. I can tell you that in any kind of project, I hear from my constituents, who are the smaller guys and run the smaller businesses. Is there any way to make it a little bit more transparent once the process goes through? I want to clean up the problems we have within CMAR period. I think the next bill will do a lot of that. I believe that everybody agrees that we must have one process. We cannot have 50 million processes out there and never be working towards the same goal. I also believe this portion of the bill particularly deals with the subcontractors. Are there some transparency pieces to make it a little bit easier for them to understand? Before I put you on the spot, we are going to have a working group on this on Monday, in my office. However, I chair the subcommittee on energy, and I was informed I would be chairing on Monday, so after that I am willing to do it. I know we will never meet in the middle. I get that, and I am not trying to do that. I am trying to clear it up. I think there are some pieces that we can start to work on as we go forward. Maybe you do not have the answer now because I put you on the spot. If you would be willing to participate in our work group on Monday via paper, email, or telephone, I am wondering if you can give us some other perspectives.

**B.J. Sullivan:**

I would be more than happy to do that. You cannot just turn in a number and say, "I am the low bidder." We had a similar situation with a job we are in, and the subcontractor never walked the job. He was not qualified because he did not inspect the job. Those are the problems you run into. You are trying to solve everything very simply here, but it is very complicated. With the opening of sub bids, in a hard-bid job, we list our five-percent subs at the time of bid and the one-percent sub bids within two hours. We are working with those subs the day before and the day of the bid. We have spreadsheets with hundreds of items on them to make sure we have an apples and apples comparison. When you open up a sub's bid and read it out and say he is the apparent low, it makes no sense. We have these huge spreadsheets to do the analysis of what they have included. Have they coordinated with the electrician? You are coordinating with four or five trades. This is Disneyland and makes no sense.

**Chair Kirkpatrick:**

Mr. Hardy is here, and I believe this was his legislation way back when. He will definitely come up tonight. Let me ask you this, is there a qualified list like we use with engineers? Is there a list out there where people can stay up on the

process? I know those folks are rotated based on how that works, but is there a standing list of people who are qualified for particular jobs?

**B.J. Sullivan:**

Typically what we do when we have a job is go through them and prequalify subcontractors. That is standard procedure with most general contractors doing the CMAR process. We endeavor to get as many people involved as possible, but they have to follow the rules. If they do not follow the rules, they cannot come back and file a protest and delay the project just because they decided not to walk the job.

**Chair Kirkpatrick:**

I get that. I get how people must be qualified for different things. Mr. Hardy put this in place, and maybe this Committee can fix it somehow. Are there any questions?

**Assemblyman Livermore:**

I think that when a project starts, the very first thing that is done is the selection of the construction manager. That is the important component in this part. It is about his professional ability to deliver a project at the cost and the money that you have. That is what I asked earlier when the other gentleman was here testifying. To put restrictions on that construction manager is going to limit the amount of people you will be able to hire in order to deliver that. You are the ones at risk, and you are the ones who will be responsible to the owner for the penalties and delays of the opening of the project or the overrun cost. All of that will be borne by you. I think your presentation today is similar to what my involvement had been on bidding projects of the local government. As you described it, it is very important to get subcontractors who are reliable and do the work that is expected of them. There needs to be cooperation between the employees of all of the subcontractors and suppliers. Everything is about staging and layout of the project. It all flows together. If you are going to put a fly in the ointment where someone needs to appeal this, the application of that is going to severely restrict how many construction managers you might have.

**Chair Kirkpatrick:**

We still have one more bill.

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

We are opposed to A.B. 371. We have looked at it several times and met with its author several times. We did not meet any type of compromise, if you will. There is a lot of misunderstanding here, and I can hear it in the questions.



There are a lot of new people on the Committee. I will try to put CMAR in perspective. Traditionally, we have dealt with public works projects with a design-bid-build method, which means the owner goes out and hires an architect or an engineer. They design the project. The owner gets the engineering estimates from that design and puts the project out to bid. Under those rules, as set forth in NRS Chapter 338, he is then required to take the lowest bid offered by the general contractors. The general contractor, also under those rules, must take the lowest bid offered by the subcontractors. On bid day, and just prior to bid day, he is getting bids from subcontractors on this type of method of delivery or method of contracting. It is a real zoo. Sometimes he will take the low bid, but the scope of work is not covered entirely or portions are not covered, but he is still forced to take it. Sometimes, there is some bid shopping that comes in on this method of delivery, which we do not like either. We have worked with the Chair and others on A.B. 38, which is attempting to prevent bid shopping. The bid shopping comes in where there are bids from subcontractors. There are bids in the traditional method of delivery.

In 1997, at the conclusion of that legislative session, I was asked to chair by Ann O'Connell, who chaired the Interim Finance Committee that interim, under her supervision, a legislative subcommittee to develop the design-build method of delivery or method of contracting. We convened all the elements of the industry that were going to sit down with us, as well as all of the public works agencies, and we developed a design-build method of delivery that you now find in NRS Chapter 338. There are four major sections in NRS Chapter 338. One deals with employment practices and wages, and the others deal with traditional design-bid-build method of delivery that I have just been describing. I am going to describe just a little bit more of the problems with it. The second one is the design-build method of delivery. In 2007, we went through a very similar process and developed the language for the construction manager at risk method of delivery.

The reason we were asked to do this by this Legislature was because the traditional design-bid-build delivery system was not working properly. You would get a low bid and take that low bid as a public works agency, but then you would get a bunch of change orders. Part of the problem was in the design. If you went back and read about the Regional Justice Center in Las Vegas that hit the papers so tremendously these last few years, we have designs there where walls did not meet and there were commodes over load-bearing beams. There were air ducts going down the corridors of the jail. There were lots of problems like that. All of them resulted in change orders. There were also change orders on that project that resulted from the fact that you were forced to take a subcontractor's bid that did not cover the entire

scope of that project. This resulted in that job costing far more than the engineering estimates and the budget Clark County had. It cost far more than that low bid that general contractor gave at the start of the project.

It is these types of projects that caused this Legislature to want to look at some alternatives. As Assemblyman Livermore properly characterized, design-build is one of those alternatives. That is a partnership between the design team and the contractor, with the contractor in charge to ensure that whatever the design was, it was constructible, and you could build it without a bunch of change orders. In that process, you do not just go out and take the low bid. You have got to be able to bring in contractors who are qualified and who you can work with. You are giving a guaranteed maximum price under design-build. The same is true of CMAR. The only difference between design-build and CMAR is instead of a two-party team, you have a three-party team. The three parties under CMAR are the owner, design professional, and the contractor. They are all brought in at the start of the project. You may also bring in subcontractors at the start of the project or perhaps when only 4 or 5 percent of the design is complete. You may then want to bring in your heating, ventilating, and air conditioning (HVAC) subcontractor to help with design of those systems for this project. What are you trying to do? You are trying to design a project for that owner that meets his budget. At the end of that design, you are then required to give that owner a guaranteed maximum price that you cannot go over unless the owner requests you to go over it. You are assuming that risk. If it costs more, you are going to eat it.

In design build and CMAR, you are asking the subcontractors to do the same thing. They cannot do that when the design is only 50 percent complete because they do not know what the rest of the project is going to make. You may be bringing them in when it is only 50 percent complete. You bring in some trades early on in a CMAR project. Some trades are brought in the middle and some at the end. It depends on where you need to get them involved, not only on the construction of that project but in the design of that project. You may not even be asking them for any kind of bid but may be asking them what their fee is to help with this design.

That is why there can be no bid shopping. There are not really a lot of hard bids in either a design-build project or a CMAR project. Perhaps that is where the confusion comes. That is why it is important, as they are trying to do in A.B. 371, to make that process more transparent. You cannot worry about bid shopping in CMAR because often there are no, what you would call, bids. What you are doing is picking the best qualified applicant to work with you to reach that guaranteed maximum price.

I hope that helps clarify things, and A.B. 371 does not do that. It has some elements in it that would prevent the owner, design professionals, and the contractor from being able to reach that guaranteed maximum price. If they did, there would be change orders if you were forced to take hard bids. There cannot be any change orders when you give them a guaranteed maximum price. I hope that helps clarify the differences between design-bid-build, design-build, and CMAR. Do not get me wrong, it is important to have that transparency. That is what we have tried to do in A.B. 470, which we will be talking about later this evening.

**Chair Kirkpatrick:**

I do not want to beat a dead horse on this as far as what the issues are because I think we do have one more bill, and we can get to the crux of some of the other stuff. Once the job is awarded, is there some kind of posting that lists who all the people are?

**Steve Holloway:**

Yes, under CMAR, the general contractor is required to provide the owner with a list of all the subcontractors.

**Chair Kirkpatrick:**

I meant for the public to see. Is there a list for the public, or does it just go to the subs?

**Steve Holloway:**

Well, it can go to the subs. It is public knowledge.

**Chair Kirkpatrick:**

Maybe I did not hear you. Try me again.

**Steve Holloway:**

Under CMAR, the prime contractor is selected as the CMAR, and he is required to provide the owner with a listing of subcontractors.

**Chair Kirkpatrick:**

But is that list posted on the public website on whatever kind of job it is? It is a public job right?

**Steve Holloway:**

Not necessarily.

**Assemblyman Livermore:**

When the local government was to award the contract, all those bids of subs were a part of the awarding of the contracted as a member of local government. The department head or one individual cannot say, "That looks fine. Let us go ahead and build it." It has got to take the process of when he puts all of those numbers together and figures together, then it comes back through approval through a committee that would be set up of management and stuff like that to review the bids and make sure it meets the criteria it talks about. At that point in time, that goes to the local government for approval of the expenditures of that money. Then they sign the contract.

**Chair Kirkpatrick:**

I guess what I am asking is that part of this bill talks about it being a little bit more transparent. Is there already a process in place, and 99 percent of folks do it, and there is that 1 percent who does not? I am just wondering if that is something that can be addressed in regulation as opposed to through statute, or if it even needs to be addressed.

**Steve Holloway:**

I think the process needs to be more transparent. I think the subcontractors have a legitimate grievance in that it is not transparent enough. However, it cannot be a low-bid process. If it is not a low-bid process, then bid shopping is not really an issue.

**Assemblyman Ellison:**

I can tell you with a general contractor and subcontractor, it is a marriage on a project. I guarantee that if you have a subcontractor and a general contractor who are on two different wavelengths, you will have a wreck. I have been a contractor for 30 years. There is a lot of merit to what they are saying about bid shopping. If I go to a general right now on a project, most of the time I am bidding electrical, but I am going to exclude data. That general contractor must say, "I need somebody to come in and fill this in." Or, he must find someone to do everything. It is not one-deal-fits-all. They do not. I have been to this as a county commissioner, a city councilman, and a contractor. There are merits on both sides, and I do not know where you are going to come to in the middle. I guarantee that if you go on a project, and you have a general contractor and a sub who do not get along, look out.

**Chair Kirkpatrick:**

This Committee is the "A-Team," so we are going to come up with something.

**Assemblyman Ellison:**

That is right.

**Tim Kretzschmar, Senior Vice President, QD Construction, Sparks:**

I do not want to belabor the point. I do want to say that I am highly against bid shopping. In fact, I am in full support of Assembly Bill 38, and I hope we can get that done. I do want to comment on this bill. It is very difficult, as a general contractor on bid day with multiple bids coming in, to be able to scope all of those items. If you are strictly taking the low sub, it will be very difficult. I do want to point out that on a hard bid right now, I have the option when I am taking numbers in, to say, "I do not want to work with that subcontractor." It could be that I have had bad experiences with that subcontractor. I do agree that this bill as written would not allow a contractor to do that, which would put you in a very bad position.

**Assemblywoman Pierce:**

It seems to be that we were told you did not have to take the low bid on this bill. Can you show me where you must take the low bid?

**Tim Kretzschmar:**

In my opinion, the way it does that is that it talks about the reasons for disqualification, which there are several and none of which are overly hard to qualify for. It then goes through and explains how it must be awarded to the subcontractor, and if you choose to disqualify a subcontractor, he has the right to appeal. Other than filing for bankruptcy, breached contracts, disqualified from being awarded a contract by the state, et cetera, if I open up a bid and the sub number is low and he has these items, but I disqualify him because I do not want to work with him, it will not hold up. "I do not want to work with him" is not on this. If he has the right to appeal me, it will completely stop the process. We were trying to describe that not every bid that is submitted is necessarily low. There are many factors that go into whether that bid is low or not and what is covered in the bid or not covered in the bid. I may know that a certain subcontractor takes a lot longer to perform on a job from my experience of working with that subcontractor. I may actually save money by using another subcontractor because he will finish quicker. There are many factors that go into this that are not necessarily a low bid number.

**Chair Kirkpatrick:**

Mr. Nunez, please give a "ditto" or something because I want Mr. Hardy to give us the last interesting conversation for this bill.

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

We are in opposition of this bill. I would like to say that we share the same concerns as the proponents of this bill. The prime's contracting plan must be transparent and fair to all. Having said that, this is not the best way to obtain this goal, in my opinion. Obviously, when we get into A.B. 470, we believe it

better addresses these concerns. I would also like to remind the Committee that we have talked about the design-bid-build process. When the prime receives sub bids in this type of procurement, no one oversees that process. That comes into the office. When those bids are reviewed and scrubbed, it is only privy to that prime contractor. The only thing he has to do is list whoever he is going to use on the five-percent list, or after the bid opening, the one-percent list. In the CMAR process, the subcontracting process is overseen by the agency. We oversee the process of prequalifying subcontractors. We also oversee the bid opening. They go through the scrubbing process, which is going through to make sure the scope is complete and all exclusions and/or stipulations are taken care of. This is done so the contractor can determine what the best bid is. We participate in that process. It is overseen versus the other process where it happens in the contractor's bid room. No one oversees that. I wanted to say that because I feel the CMAR method is certainly, if properly done, superior, particularly in this area.

Some of the other things we feel are problematic are that in this bill the CMAR is only allowed to consider the qualifications of a subcontractor after he opens the proposal. The subcontractor then has the right to appeal any denial of this qualification to the governmental agency, and in this case, it would be the Public Works Board, which is pursuant to NRS 338.1381. Any appeal stays the selection of the subcontractor. This will result in a significant delay in awarding the CMAR contract.

**Chair Kirkpatrick:**

Can I ask you a question really fast? I want to get on to this other bill. I want to thank my good friend Mr. Hardy for introducing this legislation way back when. Do you not qualify these folks way ahead of time, or do you just wait until the job to qualify? I thought I heard him say that we prequalify guys or girls and there is a process. If you are prequalified, should you be able to appeal it then? Is there not a process in place? I get your concern on subsection 9 because we do not want to hold up jobs. What is that process?

**Gus Nunez:**

With respect to the process, we do have a process for prequalifying primes. In the law, there is also a process for qualifying subcontractors. Subcontractors are qualified unless they are found disqualified. With respect to A.B. 371, we have a concern regarding the prequalification process due to the fact that it does not allow the CMAR to consider the performance history of a subcontractor, the truthfulness of the application, or the consideration of any other qualifications that may be unique to the particular project. We believe this information is critical in the CMAR's determination of whether a subcontractor is qualified for a particular project and the CMAR's ultimate success in the

delivery of the project. I may say that those few items I just mentioned are part of the process that we use and are typically used for prequalifying contractors for our prequalification process for primes.

**Chair Kirkpatrick:**

Can you get that to me tomorrow in writing so I can pass that to the Committee? It needs to be simple though. We are in overload on CMAR and design-build. I am sure there will be other things that come in.

**Gus Nunez:**

You bet. There is another issue with the appeals process. Again, there will be a delay, which will be at least a two-month delay. That would be problematic in some cases.

**Chair Kirkpatrick:**

If you can get me that process for prequalification and appeals, that would be helpful.

**Gus Nunez:**

The end result in this process could be that our board decides for whatever reasons that this contractor's bid should be acceptable. The prime contractor is not in favor of that decision. We are then in the position to dictate and tell the prime contractor that he is going to use that particular sub. As soon as you do that, I believe you start transferring the risk from the prime contractor over to the owner. Our goal is to manage risk out there. We definitely would not be in favor of having a process that is going to start shifting the risk from the prime contractor over to the owner because a particular subcontractor may not perform. That becomes problematic in our opinion.

**Chair Kirkpatrick:**

I think if you just get us that qualification process, that might solve a lot of concerns. Is there anything else?

**Gus Nunez:**

No, that pretty much addresses the majority of our concerns in addition to some of the other concerns spoken about previously.

**Chair Kirkpatrick:**

Mr. Hardy, welcome to our Committee.

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

I do want to be clear that I am neutral with comments. I am trying to decipher the rules of Committee, and I got into trouble last night. The only reason I am neutral is because I have comments. I would otherwise be in support of A.B. 371. I do think I bring an historical perspective to this that might be helpful to the Committee. Where you stand on A.B. 371 and section 7 of Assembly Bill 470 depends entirely upon how you feel about the following notion. That notion is when we are expending public dollars that come to us from taxpayers, whether or not all Nevada companies should have an equal and fair opportunity to bid and be awarded that work. That is the overriding, philosophical notion here. I have only been around here for about 21 years, but in the time I have been here, that has always been an overriding philosophy that we have tried to adhere to at the Legislature. If you are funding a project with taxpayer's dollars, every Nevada taxpayer should have an equal opportunity to bid for that work. That will decide how you determine where you stand on these two proposals.

There is absolutely no question that CMAR is a proven successful procurement method. That is the reason I introduced Senate Bill No. 201 of the 74th Session. Because it is such a successful procurement process in the private sector, we felt it should be in the toolbox of the local government, but not at the expense of the opportunity of everybody to bid the project.

There is no question that in order for CMAR to work properly as intended, and as it worked in the private sector, you absolutely need to give the general contractor the ability to control his subs. There is no question about that, and I am not disputing that. What I am disputing is whether that goal is mutually exclusive with the notion I just provided. That is what we are struggling with. I will tell you what we did with that question in 2007. We punted. We had serious debate about how you give subcontractors an opportunity to participate under the CMAR, and I do thank my good friend Mr. Holloway for pointing out the weaknesses with the design-build process because they are the same. We struggled with that. At the end of the day, we did not want to stop the CMAR bill from going forward as something to be tested and tried, so we punted. We said that when selecting subs, on page 2, lines 1 through 4, you must select them in the process as set out in this section. I have remained silent on this, but if you go back and read my testimony and the comments I made to the Committee in 2007, it was our intent that all of the provisions, the applicable provisions of NRS Chapter 338 cited here, were included in that selection process. That includes low bid. I specifically said that in my testimony. In my humble opinion, that has been ignored somewhat. We have selectively chosen portions of NRS Chapter 338



dealing with prequalification and other things. I have held my tongue on that for four years, but it was my intent that it also be selected through a low-bid process.

I wanted to provide that historical background. Do we want to use CMAR? Do we want CMAR to be a tool in the toolbox of local governments and other governments to use? Absolutely, it is a great process, but not at the expense of not having everybody have an opportunity. We struggled with that and punted and said, "Let us deal with it." I am not going to tell you I have worked on it every waking moment since then, but I have worked with it. I appreciate that the Associated General Contractors of America (AGC) has really reached out to us to try to resolve this thing. The problem and struggle persists today. I want to bring us back to that overriding philosophy. That is what we are trying to accomplish today.

I think Assemblywomen Bustamante Adams and Pierce brought up a very important point. As I read the bill, they are absolutely right. Under the terms of this bill, the general contractor cannot prevent a subcontractor from bidding on the job. According to the provision on page 4, paragraph (c), once you have opened the bids and analyzed them, all you do is inform the public body which subcontractor you have chosen. That is the way I read it, and I am willing to stand corrected. I think the questions brought up before are accurate. What you cannot stop is them bidding, which in the context of a public policy discussion about being inclusionary, I think is valuable. I do not particularly like the fact that this will not be done through a low bid, but I do understand that if we choose from a public policy perspective to utilize CMAR, the general contractor has to absolutely have control over his subs. Are those things mutually exclusive? Are those things irreconcilable? I do not know, but I look forward to the meeting on Monday to try to find out. Maybe something magical will happen on Monday that we have not been able to arrive at in the last four years.

**Chair Kirkpatrick:**

Just so the Committee is clear, I am willing to work with the guys to resolve this issue. However, any Committee members that would like to show up at 8 p.m., we would be happy to have you there. Is there anybody else who would like to testify in opposition? [There was no one.] Is there anybody who is neutral?

**Ted J. Olivas, representing City of Las Vegas:**

I know that you are tired, and I will keep my comments brief. I am testifying today as neutral with some comments. I will perhaps talk a little bit about the process that I am somewhat involved with.

**Chair Kirkpatrick:**

We are processed out. Please put it in writing, and we can read it tomorrow or Monday.

**Ted Olivas:**

I would be glad to, Madam Chair.

**Chair Kirkpatrick:**

You are happy to testify, but I think that if any other person tells us the process, it is mush. At least it is for me, so I can only imagine for my Committee. If you would like to, testify neutral, but I just do not want to go through the process because I have been through it three times tonight.

**Ted Olivas:**

If you look at this bill, one of the concerns is it talks about subcontractors. That is what NRS 338.1699 is. It is the method of selecting subcontractors. If you look at NRS 338.010, subsection 19, subcontractor is defined. That definition says you have to be licensed in accordance to NRS Chapter 624. It also says that you contract with a contractor, another subcontractor, or a supplier to provide labor materials or services for a construction project. My concern here is at what level does this process start and stop. Is it first tier subcontractor, second tier, third tier, et cetera? If you look in here, it says that you advertise and put all of this in the paper. It states very clearly what we have to put in the paper. The process is very well defined. I will not talk about that. It says the local government has to attend the proposal opening, and if there is a problem, they are going to come to the local government in accordance to NRS 338.1381. Let me tell you what NRS 338.1381 says. That is the law that talks about the prequalification process. Mr. Nunez and Mr. Holloway all talked about the four different methods of procuring public works. This is one of those. We have a prequalification process, and that happens once a year. We say, "Submit your qualifications, and either you are in or you are out." We have due process, and that due process happens once a year. I will not go into detail, but it says ten days after notice of receipt, you must submit a written request to the governing body, and the governing body shall set the matter for a hearing within 20 days after the receipt of the request. We will respond to them, and the hearing must be held no later than 45 days after. At least 10 days before the date of the hearing, the governing body shall serve the subcontractor with a written notice. In conducting the hearing, they will administer an oath, take testimony, issue subpoenas, require production of related books, papers, and documents, et cetera.

**Chair Kirkpatrick:**

I was about to say you were cut off.

**Ted Olivas:**

My concern is that with all of the contracts that we have, we are going to then be adjudicating these disputes between people we do not deal with. We deal with the construction manager at risk. That is what I wanted to get on the record.

**Chair Kirkpatrick:**

If there is anybody else who wants to get on the record, now is your chance.

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

I think you have already said it. We are all going to get together on Monday, and I think our amendment ([Exhibit G](#)) speaks for itself. Mr. Livermore picked up on the idea that the appeal process should be for the person who lets the contract.

**Chair Kirkpatrick:**

Is there anybody else who would like to testify on A.B. 371? Mr. Esposito, do you have any final comments?

**Greg Esposito:**

I would like to ask what you would prefer. I have taken notes on everything that was previously said about the bill. Would you prefer that I email the entire Committee instead of taking two minutes to go over it verbally?

**Chair Kirkpatrick:**

I prefer an email, and you can actually send it to my lovely staff who has been here for 20 hours today. It will be put on NELIS.

**Greg Esposito:**

I have a rebuttal to everything that was said because there were many inaccuracies. Once again, Assemblywomen Pierce and Bustamante Adams were spot-on. Nowhere in here does it say you have to take the low bidder; nowhere in here does it say you have to work with somebody you do not want to work with. I will be happy to elaborate on that in writing.

**Chair Kirkpatrick:**

Perfect. We are going to close the hearing on A.B. 371.

[All exhibits on NELIS for A.B. 371 are part of the record, including [Exhibit H](#).]

We will open a very quick hearing on A.B. 470.

**Assembly Bill 470:** Revises provisions governing public works contracts involving construction managers at risk. (BDR 28-553)

It is a Committee bill, so I will make sure it is very quick. Here is what I would like. I would like everybody to take section 7 out of their brains because I have already deleted it out of mine, and I would like to hear from folks who are comfortable with the rest of the cleanup language. Mr. Holloway, I know I asked you to do this tonight because I wanted to stay up here so the freshmen are getting a full taste of what they have to look forward to in the future. If you could present it without section 7, that would be helpful.

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

I will certainly do that. Thank you for putting up with us at this late hour. I do have a question before I begin. We had discussed some language to add as an amendment ([Exhibit I](#)) to A.B. 470. Would you like me to go over that too?

**Chair Kirkpatrick:**

Currently, that is not on NELIS. I did not have time to put it up, but it will be on NELIS tomorrow morning. If you could go ahead and talk about it so everyone can look for it tomorrow, that would be helpful.

**Steve Holloway:**

I will do that, Madam Chair. I am not going to go into all those who have been part of the discussions for well over a year on A.B. 470 or the language the Chair has asked me to introduce to you tonight that will be on NELIS in the morning. I will simply say that A.B. 470 basically does two things. The first is that it takes the CMAR process this Legislature put into effect in 2007 from a three-step process to a two-step process for the selection of the CMAR. Sections 1 through 5 have nothing to do with the selection of subcontractors, which we will not go into at this point. Rather than detail it, I will simply say that the current process calls for a prequalification process when soliciting bids. Those who are prequalified are then required to submit a further proposal. The third step is that those who submit proposals may be short-listed to anywhere from two to five applicants. Those applicants are interviewed. Based on the interviews and scores they received during the previous process, they are ranked. The owner then negotiates with the person ranked number one on a contract for the preconstruction phase of the project. That is the design phase. We are simply shortening that process to combine the prequalification and initial proposal into one step. It is very expensive to submit these

proposals. Much of the first two steps were duplicative of one another. That is really all we are doing in sections 1 through 5 in this bill.

Before I get into talking about the amendment the Chair asked me to introduce, I would ask if you would like to ask any questions on that portion.

**Chair Kirkpatrick:**

Nope. Keep going.

**Steve Holloway:**

The group that met to put together A.B. 470 also met to make some proposed changes to *Nevada Revised Statutes* (NRS) Chapter 338. We were attempting to clean up NRS Chapter 338 as best we could. I will mention some of the groups that were there. The groups included the Associated General Contractors of America (AGC), City of Las Vegas, Clark County, Clark County School District, Nevada Department of Transportation (NDOT), Nevada State Contractors Board, Nevada Energy Center, Nevada Regional Transportation Commission, Southern Nevada Water Authority (SNWA), State Public Works Board, et cetera. There were also many contractors there. In fact, there were 24 who participated in most of those meetings, which went on for almost a year and a half with at least one meeting a month.

The revisions that are proposed to be added to A.B. 470 involve NRS 338.090 to NRS 338.365, inclusive. The purpose of these revisions is to establish reasonable time limits in which to file an investigative prevailing wage rate complaint. Right now, you have two years after the job is done to file a prevailing wage rate complaint. By that time, the records are gone, and in many instances, the people who were on that job may be in another state. This reduces the time to file a complaint to 120 days from the date of the occurrence. It gives the agency 90 days to investigate that complaint and make a determination. Once that determination is made, it gives the claimants 30 days in which to file an appeal with the Labor Commissioner. This is just to expedite the process and make sure there are people and records there to substantiate the claim.

The second change is to NRS 338.142. Right now this says that a person who bids on a contract may file a notice of protest regarding the awarding of the contract with the authorized representative designated by the public body within five business days after the date the bids were opened. This is the general contractors bidding on the contract. We want to delete "the date the bids were opened" and change it to "issuance of the recommendation to award by the public body or its authorized representative." Right now, you have people filing

bids, and they do not even know who is being awarded the contract. This would cut down on a great deal of that.

The third thing we want to add has to do with design-build. This has been debated in another bill, so I do not care what you do with it. We want to lower the threshold of design-build contracts. Initially, we said \$1 million, and it is now at \$10 million. If you decide \$5 million, that is fine with us.

The next item again applies to design-build. When the awarding body is required to rank the applicants in order of how they score, they then enter into negotiation with the most qualified applicant. If they cannot reach an agreement on the cost of design and construction at that point, they must then drop the hat and go back to the traditional method of bidding jobs. What this allows for the public body, if it is unable to negotiate that contract with the most qualified applicant, is to terminate the negotiations and undertake negotiations with the next qualified applicant in sequence until an agreement is reached or a determination is made by the public body to reject all applicants.

The final amendment ([Exhibit I](#)) you will see on NELIS in the morning has to do with the rights, obligations, and liabilities under a public works contract. I am just going to read the whole section. It is short. It is NRS 338.485, and it begins:

1. A person may not waive or modify a right, obligation or liability set forth in the provisions of NRS 338.400 to 338.645, inclusive.
2. A condition, stipulation or provision in a contract or other agreement that:
  - (a) Requires a person to waive a right set forth in the provisions of NRS 338.400 to 338.645, inclusive; or
  - (b) Relieves a person of an obligation or liability imposed by the provisions of NRS 338.400 to 338.645, inclusive; is void

We want to add a provision that will also require:

. . . a contractor to waive, release or extinguish a claim or right for damages or an extension of time that the prime contractor may otherwise possess or acquire as a result of delay, acceleration, disruption or an impact event that is unreasonable under the circumstances, that was not within the contemplation of the parties at the time the agreement was entered into, or for which the prime contractor is not responsible;

We also want to add that any contract that:

requires a contractor or a public body to be responsible for any consequential damages suffered or incurred by the other party that arise out of or relate to a public work contract, including, without limitation, rental expenses or other damages resulting from a loss of use or availability, lost income, lost profit, lost financing or opportunity, business or reputation, and for loss of management or employee availability, productivity, opportunity or the services of such persons;

This would also be void. We would also like to add, and this would not be void, that these "prohibitions identified in subsection 2 of the Section do not prohibit the use of liquidated damage provisions which otherwise satisfy Nevada law." It is all about risk. Most contracts spell out what those risks are and provide liquidated damages if those things do occur. You see that up front when you sign the contract. You know what your risks are, both as an owner and a prime contractor. The courts interpret those risks, and allow them if they are reasonable based on actual damages rather than something that is nebulous.

Those are the five amendments that you asked me to introduce.

**Chair Kirkpatrick:**

For the Committee, and those who are in southern Nevada, I apologize they are not on the Internet at this time for everyone to see. They will be on there in the morning. If you are in southern Nevada, and you would like me to send a copy directly to you, please leave your email address with my staff in southern Nevada. We will make sure we get those to you first thing in the morning. What I wanted to do was make sure we got all of this on the record, so when we meet again on Monday, everybody would have the full weekend to go through it. I wanted to hear from some of the folks in southern Nevada if they were okay with the rest of the cleanup language within A.B. 470 minus section 7. I think section 7 and A.B. 371 go hand-in-hand. We will try our best to make some changes to go forward. If we can clean up a bunch of language now that we have trouble with, now is the time to do it. You are fortunate enough to have many freshmen on this Committee, so each session, you can plug away at it. You will get really good eventually. We will get it right.

I do not want a lot of testimony because I do not think it is relevant at this hour. This Committee has been in this room since 7:40 this morning. We have to be back at 7:30 tomorrow morning. I do not know if you would make a huge impact with us.

I would like to go to southern Nevada to see if there is anybody who would specifically like to go on the record. However, I am opening my door Monday night at 8 o'clock. If you leave, make sure we have your information if you would like to do a phone conference or whatever it takes. If I can get out of the other committee sooner, I am happy to start early.

**Kathy Rainey, representing Nevada Public Purchasing Study Commission:**

I am speaking in support of A.B. 470. I do not want to reiterate what Steve Holloway testified, but I want to indicate that the shortening of the qualification process is not changing any of the qualification criteria; it is merely merging the two steps together. We have not deleted any of the qualification criteria for the CMAR. I wanted to bring that to your attention.

With regard to the amendment ([Exhibit I](#)), I have worked very closely with Mr. Holloway on the amendment, and I want to clarify a few points if I could. With regard to the shortening of the protest period, which is the five days after bid opening. What is occurring is that the time for evaluation of bids typically takes longer than five days. In local government, immediately after the bid opening, the contractors are doing public information requests for copies of the three low bidders. To protect themselves because of the way the protest law is written, they are submitting protests before they even know the outcome of the bid evaluations. This is very costly for them. If changing this language changes it to five days after issuance of a recommendation for award, it will give the local governments time to evaluate and notify them of the results. If they do not like the results at that point in time, then they still have the same time frame they have today to submit their protest. That is the reason for the change, and I wanted to bring that to your attention.

**Chair Kirkpatrick:**

Ms. Rainey, are you going to go through the whole thing?

**Kathy Rainey:**

No, I just have one other point to make with regard to the Labor Commissioner investigations. The purchasing organizations are typically the ones assigned to do those investigations. The memories of people doing those investigations make it very difficult even though we have the certified payrolls to go back and look at the people who were actually working on those jobs. I find it very difficult to do an adequate investigation. That was what was behind shortening the time in which they can submit their claim. That ends my testimony.

**Chair Kirkpatrick:**

Is there anybody else in southern Nevada that would like to get on the record? [There was no one.] Is there anybody in northern Nevada?



**William H. Hoffman, Assistant Director, Engineering, Department of Transportation:**

I will make this extremely quick. I want to make sure the Committee members received the amendment ([Exhibit J](#)). You should have received the amendment.

**Chair Kirkpatrick:**

I will be honest; I do not think we have left these chairs long enough to look for an amendment. If you have it, you can submit it to us again, and we will get it on NELIS.

**William Hoffman:**

It should be in front of you. I am hoping. I will just get to the point. Everybody who has testified this evening has made a strong point about CMAR and government agencies' ability to use CMAR as a cost savings. Right now, through state law, NDOT does not have the opportunity to use CMAR. We have worked with Steve Holloway and general contractors throughout the state to put this amendment together. Hopefully, we can work something out where NDOT can then take advantage of this project delivery process.

**Chair Kirkpatrick:**

We do have that amendment. It is on NELIS, so those following this conversation can access it.

If you want to participate in a discussion on Monday, please let her know.

I know Mr. Murphy has an amendment ([Exhibit K](#)), so let us get that out of the way.

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

Section 5 allows for the construction manager at risk to provide preconstruction services to bid on that project. Our amendment says that if they do that, the construction manager at risk has to comply with all bidding requirements.

**Chair Kirkpatrick:**

That is also on NELIS, correct?

**P. Michael Murphy:**

That is correct.

**Mike Cathcart, representing the City of Henderson:**

We proposed an amendment ([Exhibit L](#)) to section 3. There was a section added to that, subsection 1, which requires the contract forms and details to be published in a newspaper. We have proposed an amendment that we would

notice in the newspaper that those documents would be available on the Internet.

**Chair Kirkpatrick:**

Do we have that as well?

**Mike Cathcart:**

Yes.

**Chair Kirkpatrick:**

Mr. Mallory, do you have an amendment too?

**Jack Mallory, Director, Governmental Affairs, International Union of Painters and Allied Trades, District Council 15:**

It is maybe not so much an amendment as a possible concept. I had already submitted testimony ([Exhibit M](#)) for this bill electronically prior to hearing the amendment. I never would have thought this bill would be a vehicle for wholesale changes to NRS Chapter 338.

**Chair Kirkpatrick:**

It is.

**Jack Mallory:**

I can say that we are strongly opposed to the concept of removing the two-year period for trying to obtain a prevailing wage claim. I think that Monday is probably a better time. If I had a single suggestion, there are a number of problems with CMAR, and I think there are differences in opinion. I do not know that we are going to be able to build enough consensus to come up with something that will work for everyone. I wonder if it might be better to put up a moratorium on CMAR until something can be done in the interim.

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

Our board has taken action on this matter and unanimously supports this bill. I have a prepared statement. If it is all right with you, I will just give it to your staff.

**Chair Kirkpatrick:**

If you could get back to us on all of the amendments once we put them on NELIS.

**Gus Nunez:**

We will address those.

**Chair Kirkpatrick:**

Is there anybody else who would like to testify on A.B. 470? [There was no one.] Is there anybody opposed to A.B. 470?

**Greg Esposito, representing Southern Nevada Building and Construction Trades Council:**

I know you said we are not hearing section 7 right now, but I want to go on record that section 7 is the only part of it we have a problem with.

**Chair Kirkpatrick:**

Is there anybody who is neutral on this bill? [There was no one.] With that, we will close the hearing on A.B. 470. We will have a working group on Monday in my office. If you want to be part of it, please let the secretaries know tonight. With that, is there any public comment? [There was none.]

The meeting is adjourned [at 9:11 p.m.].

RESPECTFULLY SUBMITTED:

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Cheryl Williams  
Recording Secretary

RESPECTFULLY SUBMITTED:

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Julie Kellen  
Transcribing Secretary

APPROVED BY:

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Assemblywoman Marilyn K. Kirkpatrick, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** April 7, 2011

**Time of Meeting:** 6:03 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 265	C	Ronald Dreher	Proposed Amendment
A.B. 474	D	Assemblywoman Debbie Smith	Handout
A.B. 474	E	Assemblywoman Debbie Smith	Conceptual Amendment
A.B. 371	F	Jack Mallory	Written Testimony
A.B. 371	G	P. Michael Murphy	Proposed Amendment
A.B. 371	H	Greg Esposito	Written Testimony
A.B. 470	I	Steve Holloway	Proposed Amendment
A.B. 470	J	William H. Hoffman	Proposed Amendment
A.B. 470	K	P. Michael Murphy	Proposed Amendment
A.B. 470	L	Mike Cathcart	Proposed Amendment
A.B. 470	M	Jack Mallory	Written Testimony