

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON TRANSPORTATION**

**Seventy-Sixth Session  
March 17, 2011**

The Committee on Transportation was called to order by Chair Marilyn Dondero Loop at 3:18 p.m. on Thursday, March 17, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/76th2011/committees/](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 Dondero Loop, Chair  
Assemblyman Jason Frierson, Vice Chair  
Assemblyman Kelvin Atkinson  
Assemblywoman Teresa Benitez-Thompson  
Assemblyman Richard Carrillo  
Assemblywoman Olivia Diaz  
Assemblyman John Hambrick  
Assemblyman Scott Hammond  
Assemblyman Joseph M. Hogan  
Assemblyman Randy Kirner  
Assemblywoman Dina Neal  
Assemblyman Mark Sherwood  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Steven Brooks (excused)

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Jennifer Ruedy, Committee Policy Analyst  
Darcy Johnson, Committee Counsel  
Janel Davis, Committee Secretary  
Sally Stoner, Committee Assistant

**OTHERS PRESENT:**

R. Scott Rawlins, P.E., C.P.M., Deputy Director, Chief Engineer, Nevada Department of Transportation  
Raymond P. Herweg, P.E., Nevada Area Manager, Parsons, Transportation Group; and representing American Council of Engineering Companies  
David N. Bowers, P.E., P.T.O.E., Acting City Engineer, Department of Public Works, City of Las Vegas  
Jeanette K. Belz, representing Nevada Chapter, Associated General Contractors of America  
Chris Ferrari, representing Nevada Contractors Association  
Paul McKenzie, representing Building and Construction Trades Council of Northern Nevada  
John Russell, Field Representative, Local 169 Laborers' International Union of North America  
Greg Esposito, Business Representative, Local 525, United Association of Plumbers and Pipefitters  
Louis F. Holland, Senior Deputy Attorney General, Transportation Division, Bureau of Government Affairs, Office of the Attorney General

**Chair Dondero Loop:**

[Roll was called. Rules and protocol were stated.] Welcome. We will hear one bill today, Assembly Bill 69. I will open the hearing on A.B. 69.

**Assembly Bill 69:** Authorizes the Department of Transportation to contract with a construction manager at risk for certain projects under certain circumstances. (BDR 35-486)

**R. Scott Rawlins, P.E., C.P.M., Deputy Director, Chief Engineer, Nevada Department of Transportation:**

I am here to present Assembly Bill 69, which will allow the Nevada Department of Transportation (NDOT) to utilize another alternative project delivery method known as construction manager at risk, but more commonly known in the highway construction industry as construction manager general contractor. The

amendment you have in front of you ([Exhibit C](#)), changes the name from construction manager at risk (CMAR) to construction manager general contractor (CMGC). Louis F. Holland is here today from the Office of the Attorney General. He was our legal counsel who helped develop the proposed language. He is here to answer any questions as far as structure or intent of the language. The Committee has a copy of my presentation ([Exhibit D](#)) and a one-page sheet ([Exhibit E](#)) that gives more detail on what CMGC entails.

I would like to go over what the Department has done over the last year and a half to investigate and develop this piece of legislation. I would like to also talk about what is happening at the federal level to advance and support the use of CMGC across the country. Finally, I would like to talk about the advantages the Department sees with the use of CMGC in addition to the highlights of A.B. 69.

What is CMGC? It is an alternative project delivery method similar to design-build with a few nuances. With CMGC, a construction manager or contractor is selected based on a qualification selection process to assist the public agency in the design development of a project. When a development of a project is sufficiently designed in detail, the construction manager submits a guaranteed maximum price bid. If the agency accepts the bid, the construction manager becomes a general contractor and builds the project. If the public agency does not come to agreement with the construction manager, the public agency can advertise the project for a low-bid solicitation.

Involving the contractor early on in the design development has many benefits, some of which are reducing project risk and expediting project delivery. The Federal Highway Administration has a national initiative called Every Day Counts. It is focused on identifying and deploying innovation aimed at shortening project delivery, enhancing safety, and protecting the environment. Construction manager general contractor is one of 15 national initiatives under Every Day Counts. The Federal Highway Administration is working with local governments and other transportation agencies across the United States to advance and support the use of CMGC because of the benefits seen with this project delivery method.

Over the past year and a half, the Department has worked with the Associated General Contractors of America and the American Council of Engineering Companies to form a task force of several contractors and engineering consultants from around the state of Nevada to investigate CMGC. They looked at its uses, benefits, and whether or not it would be a useful tool for delivering projects in Nevada. The answer was an overwhelming "yes."

As part of that effort, we conducted a survey of what other states and local agencies around the country are doing and their use of CMGC. We gathered best practices on all aspects such as contractor selection, the interaction of the contractor and the agency during design development, the process for getting to a guaranteed maximum price, and the overall benefits those agencies have realized from the use of CMGC. We have taken all of this, in coordination with our contracting community, and have developed guidelines for using CMGC. We have also put together criteria about when it is most appropriate to use CMGC versus design-build or design-bid-build.

The Department sees some advantages with the passage of A.B. 69: it allows for a qualification-based selection process for hiring a contractor to match the complexities of a particular project; it allows for greater cost certainty early on in the project development; it allows for the contractor to play a vital role in the development of a project to improve constructability because it reduces risk, it costs time and money during construction; and it allows for greater opportunity for innovation. Early contractor involvement can also accelerate various phases of projects such as ordering of materials that have a long lead time, which shortens the overall project length and minimizes the impacts of the traveling public. It also improves our coordination efforts and our partnering with the construction industry as well as delivering projects, which can have a positive impact on quality.

As for highlights of the language in A.B. 69, it authorizes NDOT to use CMGC. It talks about the qualifications for a construction manager and allows for a one- or two-step procurement process based on the complexities and size of a project. It allows for flexibility of scoring the proposals based on complexities. It talks about how the guaranteed maximum price is submitted when the project design is sufficiently complete, and it allows for the design-bid-build delivery if the guaranteed maximum price cannot be agreed upon. It also requires that the construction manager or contractor perform 30 percent of the overall project cost, and that is similar to statutes for design-bid-build projects. The language spells out how the construction manager is to identify subcontractors.

In summary, A.B. 69 should be incorporated into statutes and used by the Department because it does three things: speeds up project delivery, lowers project risks, and improves collaboration and partnering, all of which have a positive impact on the delivery of projects. This bill will put us in line with the federal initiatives for the use of CMGC because of those benefits and project deliveries.

**Chair Dondero Loop:**

Are there any questions from the Committee?

**Assemblyman Hogan:**

In your research from other states and people overseen by the federal government, did you find patterns of what type of projects were particularly selected, either in terms of the cost range or in terms of complexity or unusual features? Is there a pattern we should be aware of when it is used, how often it is used, and what people have found over the time it has been available?

**Scott Rawlins:**

It varies. There is not a consistent pattern; it depends on the type of project. We have seen a \$2.6 million project in Colorado that used CMGC. We have seen it down to a landscape project in Utah. We have seen a signal system for an intersection done with CMGC. It is about matching up the benefits with what you want on a project, their complexities, and marrying the two.

**Chair Dondero Loop:**

Thank you. Are there any other questions? [There were none.] We will now hear testimony in support of the bill.

**Raymond P. Herweg, P.E., Nevada Area Manager, Parsons Transportation Group; and representing American Council of Engineering Companies:**

I am here to show support for A.B. 69. I am the Nevada Area Manager for Parsons Transportation Group, but I am speaking on behalf of the American Council of Engineering Companies in Nevada. As we know, our economic times in Nevada have significantly impacted the continuation of transportation improvements. They are both necessary and critical to both urban and rural communities. The Nevada Department of Transportation has been very successful in its administration of projects over the years through the process of design-bid-build and design-build. It is to be commended for their effectiveness. [Continued to read from prepared testimony ([Exhibit F](#)).]

**Chair Dondero Loop:**

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

**David N. Bowers, P.E., P.T.O.E., Acting City Engineer, Department of Public Works, City of Las Vegas:**

We are here today in support of NDOT and their ability to achieve the use of CMGC. Scott and Ray both gave good presentations explaining the process of CMGC. The City of Las Vegas currently uses this process and has used it in past projects. We have four projects using CMGC now. We found that CMGC promotes a stronger owner-contractor relationship that results in fewer contractor claims and errors in the plans. Due to the contractor selection criterion that is based on more than lowest price, but quality and past

performance as well, we have found that contractors have actually worked better on all projects, not just the CMAR projects.

We support this process; we found it is a good tool and will ultimately save the state money. There is a small concern with the use of *Nevada Revised Statutes* (NRS) Chapter 408 as opposed to NRS Chapter 338. We will work with NDOT to find out why this language, more or less, is duplicated in a separate NRS section.

**Chair Dondero Loop:**

Are there questions from the Committee?

**Assemblyman Frierson:**

Since you work on projects for the city and have experience with it, could you explain how it happens now versus how this bill proposes to make it happen? The introduction talked about what this bill proposes, but not necessarily what it changes.

**David Bowers:**

The typical process that most of you are aware of is called design-bid-build. It is where a consultant, or engineer, comes in and designs a project through 100 percent. There will be design reviews through the public entity or whomever they are working with to ensure the design is as good as possible. It then goes out to contractors' bid, and typically the lowest bid is awarded. The CMGC process would allow a contractor to come in at approximately a 30 to 70 percent level, work with the consultants, join the design process to do the review, and give them input and better ideas on how the project could be done based on his field experience. Often times, it saves a considerable amount of money and shortens the schedule. I think you are also familiar with the design-build process, where a contractor and designer work together through the entire process.

**Jeanette K. Belz, representing Nevada Chapter, Associated General Contractors of America:**

We are also in support of this bill. As Scott mentioned, we have been part of a lot of conversations over time relative to this as a tool for NDOT. However, it is only another tool that does not get used if there is not funding for highways.

**Chris Ferrari, representing Nevada Contractors Association:**

Our members are some of the largest and most well-respected construction companies building schools, roads, and large buildings in the state of Nevada. We are here in support of A.B. 69 for the reasons previously mentioned.

To answer Mr. Frierson's question, the primary purpose of the bill is to allow the contractor to be involved in the initial phases of design for the project. He can determine what is being called a "constructability" to make sure there are less changes along the way and more efficient use of taxpayer dollars to get those projects streamlined and moving on behalf of your constituents.

**Chair Dondero Loop:**

Is there anyone else in support of A.B. 69? [There was no one.] Is there anyone opposing the bill?

**Paul McKenzie, representing Building and Construction Trades Council of Northern Nevada:**

We are opposed to this legislation for very simple reasons. The CMAR process, as written in NRS Chapter 338, is broken. To expand that into another section of the statute creates another broken method. Currently, NDOT has tools, which people have previously attested to: the design-build and the design-bid-build get them the same place they want to go with CMAR. The only difference is that they have established selection and proven selection methods that do not discriminate against Nevada contractors. The language has been interpreted by the State Public Works Board, and several other agencies that have done CMAR projects to claim that a contractor, to qualify to do a CMAR project, has to have accomplished a CMAR project prior to the one he is trying to get.

As this is a fairly new process, we have recently seen in northern Nevada that known Nevada contractors were unable to qualify to do a CMAR project because they had never gone to Arizona and done one. The only people qualified to do CMAR projects in these instances had a state public works job at the University of Nevada, Reno (UNR) medical building and journalism facility. Local contractors were disqualified because they had never done a CMAR project before, and it was claimed that the provisions of the law required that. Recently in Douglas County, our local contractors were disqualified from a CMAR project. A contractor from Las Vegas who had done work in Arizona got that project instead.

The problem with importing these contractors is that they import their subcontractors. This law allows them to establish criteria of how to select a subcontractor. This is not allowed anywhere else in the NRS, the prequalification of a subcontractor. If it is a state public works project, there is a provision. If it is a local project, he is a licensed contractor and is qualified to do the work and bid. This process allows a contractor to establish his own criteria. It can become quite overburdening to the subcontractor. I believe there are people in this body who can speak better to that than I can, as they

have had personal relationships with contractors who were tasked with a burden.

When it becomes too onerous for the subcontractor to do the paperwork and prequalifications, and he does not do it, we keep Nevada contractors from doing the work, and they bring their subcontractors from where they did the CMAR process before. This is what occurred on both projects at UNR. A large number of subcontractors were brought from California and Arizona by a contractor based out of Arizona.

We are opposed to the process as it is now in NRS Chapter 338, and we would be opposed to the process being expanded in NRS Chapter 408 unless we can do some rewriting of the entire process. We submitted a document to NDOT voicing our concerns prior to this hearing. I have yet to receive a call back as to their position about our concerns. We would be more than willing to help repair the process so that Nevada contractors can work. Short of that, NDOT already has its "arrows in the quiver." It has design-build and it has design-bid-build, which are both tried-and-true processes. If there needs to be some work done to make sure those projects are used more often—as we testified on Assembly Bill 212—we are willing to support that. We are not willing to support the expansion of a broken process.

**Chair Dondero Loop:**

Thank you. Are there any questions from the Committee?

**Assemblywoman Benitez-Thompson:**

I was hoping you could help me find the provision within the language that prevents people who have not previously been awarded a CMAR project from being eligible.

**Paul McKenzie:**

The language does not actually say that they have to have completed a CMAR process in the past. The state public works and some of the public entities in Nevada have interpreted it that way based on the interpretation the state public works system has provided. After having a discussion with a contractor in the hallway, I understand that Clark County did not make that distinction. There are two provisions that are aimed at the prequalification.

**Assemblywoman Benitez-Thompson:**

I was wondering if the provision was on line 19 in section 5, subsection 3(a): "An explanation of the experience that the applicant has with projects of similar size and scope." Is that it?



I would imagine many of the contractors have done projects of similar size and scope, but I would like to get down to where that interpretation is coming from so we can work on that because we do not want to prevent Nevada contractors from getting jobs.

**Paul McKenzie:**

We originally did not read that distinction into this law from NRS Chapter 338 when it was amended in the 74th Legislative Session (2007). It was in 2008 when we started seeing a lot of projects being done this way. We saw a lot of state public works projects being done after the 75th Legislative Session (2009) when the state public works exempted themselves from certain provisions from NRS Chapter 338, under the argument that it needed to facilitate expenditure of our funds. While the counties and cities were tied to the provisions from NRS Chapter 338, the state public works got certain exemptions from those provisions, so it could move them forward faster. Based on what its changes from NRS Chapter 338 were, this may be where the distinction was made that this interpretation has gone down to other agencies.

We never had a CMAR project in northern Nevada prior to the state public works getting to change the law in 2009. Since then, we have had an increase in them, and it has been a prevalent argument by the public bodies that they disqualify contractors because they have not had the experience. In addition, they have a sliding scale of rating. Some put a heavier weight on certain things than others. It is clearly stated on page 5, lines 44 and 45 that when you come to the final list, a list of performance history concerning other recent similar projects must be provided and completed by the finalists. This is another place the bill says, "similar project"; it means a CMAR project. Those are the two areas that seem to be where they are getting the distinction that we have to have experience with the CMAR project. Did I confuse you?

**Assemblywoman Benitez-Thompson:**

No, that is perfect. That is what I was trying to understand. To be clear, it is located on page 5 in section 7. Madam Chair, can we get clarification from the bill sponsor on what "similar project" means?

**Chair Dondero Loop:**

Let us allow Mr. Russell to speak, and then we will let our bill sponsors give us more information.

**John Russell, Field Representative, Local 169 Laborers, International Union of North America:**

Mr. McKenzie went over most of our issues with the bill. The subcontracting and the selection process are big concerns of ours. There is no set selection

process, and it seems to be different with every entity. We have big problems with NRS Chapter 338, and bringing it over to another section of NRS Chapter 408 is big concern.

**Chair Dondero Loop:**

Are there any questions for Mr. Russell?

**Assemblyman Sherwood:**

It sounds like your biggest issue is that the general contractor has too much control over how he employs his subcontractors. Is that your biggest concern?

**John Russell:**

No, that is not our biggest concern. It is the entire process, from the selection of the prime contractor and how the subcontractors are going to be chosen, all the way down to the bidding. It is the entire process from NRS Chapter 338, and A.B. 69 almost exactly mirrors that language.

**Assemblyman Sherwood:**

The state has exemptions that the counties and cities do not, and the state has testified that this has been very helpful, cost effective, and you can build 20 more miles of a road, hire more people, et cetera. The other way you can look at this is, "Why not extend those same exemptions to the counties and cities?" Then the argument that the county does not have the same advantages as the state goes away. This was toward something that Mr. McKenzie mentioned.

Can you give us a case where someone came in with a lower bid and did not get the job?

**Paul McKenzie:**

He does not get an opportunity to put in a lower bid because he is disqualified before he gets to the money process. The way this process works is the contract manager at risk (CMAR) is selected to design the project. Once he has designed the project, there is no money attached to it until the design project gets to a certain point. I heard someone testify that it is 70 percent. That is not clear in this legislation and not the point at which he is supposed to do this. After he has a large portion of the design, he negotiates the price. If they cannot reach a negotiated price, it goes out for bid. Nobody gets a chance to bid on the design-build process or on the CMAR process because there is no money value attached to it until after the design has been started. This is only fair because the individual investing the money in the design process should have the opportunity to build the project first.

**Assemblywoman Neal:**

Earlier in your testimony you were talking about how public works created an exemption for the American Recovery & Reinstatement Act (ARRA) funds. Obviously, ARRA was not going to last forever. So was there a sunset in the law for that?

**Paul McKenzie:**

Those exemptions expire June 2011. When this legislation goes into effect, those exemptions will be gone.

**Assemblywoman Neal:**

If they are going to expire in June, the reason they started applying the CMAR framework to everything will go away. You will have a stronger argument to stick with what NRS Chapter 338 says, which is having prior experience doing work, not a particular kind of work. Is that correct?

**Paul McKenzie:**

The distinction made in this selection process is going to stand, regardless of the change, because of the wording proposed in the two sections talked about with Assemblywoman Benitez-Thompson. Those two sections are going to be in NRS Chapter 338 as well as in this bill. There has been an interpretation that public agencies have accepted as fact. They are going to continue to apply this law the same way, short of a change in the way that the law is written. If there is not a distinction inserted into the law, they will continue to look at that language and say, "This is the way we did it before. The language has not changed, so the Legislature did not intend for us to change our process."

It will stay the same unless we change the language to clarify we are talking about a contractor who has the experience in designing and building similar projects, not that they have a similar-type project. I think the "type" is where everybody is thinking about construction manager at risk. That may be where the interpretation lies that you must have experience with CMAR.

**Assemblyman Hogan:**

I know that NDOT and other state agencies have had successful recent experiences with some of the newer methods such as design-bid-build and design-build. Do those methods not present this problem? Or have they been administered in such a way as to avoid excluding subcontractors?

**Paul McKenzie:**

The design-build process has minor differences. The design-build process requires that the contractor come to the public body with a team already in place. They have their design personnel and major components of their job in

place when they come before the public body. Therefore, the public body gets to look at the entire team. I will give you an example: the train trench in Reno was built under a design-build process. Granite Construction built the train trench and did so ahead of schedule, brought the project in under budget, and did a great job under the design-build process.

When they showed up at the table, there was a team in place. They had a process to make sure that Nevada workers worked on that job, and they made sure an established safety program was in place. That was all part of what they gave the City of Reno and why they were selected above the other two contractors who were finalists in that process. That process is much more open; the decisions are made in a public meeting, and the rating process is discussed in the open, but none of that is done with CMAR.

**Assemblyman Frierson:**

I want to simplify your concern because some of us are only familiar, or are recently becoming familiar with these projects. Is your concern that these kinds of projects are not competitive because they are not open to all contractors; therefore, they do not have a fair and equal opportunity to compete to get these jobs? Would that also include non-Nevada workers and contractors? Is that the main concern?

**Paul McKenzie:**

We believe that the process presented in this bill is not transparent. If you look at how this bill is written, there are so many different areas with absolutely no distinction of how the criteria are going to be established or how the project is going to be graded. It is arbitrary how the contractors are to be evaluated and their qualifications to be weighed from project to project and public body to public body.

One of the issues in the bill is that there has to be a safety program, but it does not address the fact that the safety program has to be working. If I have a safety program that is working, then I would be able to provide a record that shows I do not have Occupational Safety and Health Administration (OSHA) citations, or injuries on my jobs, and I do not harm anyone. But that is not asked for in this bill. It may be assumed to have a safety program, but it is not asked. All of that is arbitrary and can be interpreted and applied differently from public body to projects.

We would like to see this be a transparent process that requires the same criteria for every project, short of the specialty skills that are required to do the project. For example, a person that is putting a culvert in would not be expected to have the same skills as the guy building the Galena Creek Bridge.

We can see those criteria as being different, but criteria and qualifications to do the work, whether he is a responsible and safe contractor, should all be written into the statute, so it is transparent and the same for every job.

**Assemblyman Sherwood:**

It seems that the state knows what they need. We had the term yesterday "flexibility efficiency," so by your own admission, you said it works with the other issues. Why would it not work with this? People who use design-build now will tell you it works better and costs less. So what is the issue?

**Assemblywoman Benitez-Thompson:**

In section 6, it talks about how a panel of at least three members coming together to rank the statements of qualification and assign weight. Are those weights already prescribed, or are they standardized? This pertains to the bottom of page 4.

**Paul McKenzie:**

I do not recall there being a scoring system with the design-build projects that I have worked. It was a total plan system. The team that had the best plan, in its entirety, was the team that was selected. The selection of the finalists was probably done with a scoring system to get the best finalists, but I was not involved in part of that process on any of the design-builds that were done in our area.

I was around when they did the final selection process and listened to the discussion about the process. The plan was not a weighted plan, and the design-build process does not talk to a panel or contain weighted criteria. I may be mistaken about that. I have never seen a score sheet in the final selection process. One of the problems is that the panel members do not have construction experience, so you question their decision.

**Assemblyman Hambrick:**

My colleague from northern Nevada just read a portion from section 6. Do you believe this statement is an error?

**Paul McKenzie:**

I believe that the Department of Transportation will live up to this law as it believes it is intended to be utilized. Whether we will always agree that what it believes is the way it is supposed to be utilized or how we believe it is to be utilized is up for discussion at a future date. The Department of Transportation is going to live by any law that you pass to the best of its understanding to follow that law. It is not going to ignore the laws this Committee will pass out of the Legislature.

**Chair Dondero Loop:**

Are there any other questions? [There were none.] I would like to call Mr. Esposito to the table. He is signed in as neutral.

**Greg Esposito, Business Representative, Local 525, United Association of Plumbers and Pipefitters:**

The reason I signed in as neutral on this bill is because it is roadwork. I am a plumber and pipefitter; I am not going to speak against NDOT wanting to get a project delivery system in their "quiver" as it has been said. But we have similar problems with the CMAR delivery process. Our concerns are more with the subcontractors. Right now, under the CMAR process, the contractor who is selected does not have to meet typical standards that he does on normal public works projects when selecting his subcontractors. The bill states he has to submit a subcontractor selection plan. After that, the subcontractors have to meet qualifications as far as their contractor's license and their ability to do the work. The bidding process, standard to public works, is not in the CMAR language as it sits right now. We hope to be introducing a bill to fix the CMAR language to be fairer to the subcontractors.

If I can address Mr. Sherwood's question as to whether or not a contractor has ever been selected who was not the low bidder. Yes, I have an example. The low bidder for a plumbing contract was not chosen because, during the de-scope after the bids were open by the general contractor, money was added to the bid. The general contractor felt that the bid had not caught everything. The bid went to somebody who was not the low bidder. On top of that, there is no open qualification process as to who can bid. The CMAR is able to select who he wants to bid on this project. If he has his favorite three or four contractors, he can allow only those favorite three or four subcontractors to bid, potentially leaving others out in the cold. On one of the city projects that Mr. Bowers spoke about, that is what happened to one of my contractors. He was not allowed to bid by the contractor who was chosen as the CMAR.

We are not opposed to NDOT being allowed to use the delivery system, but using it as it is written right now, with the flaws in regards to the selection process and the qualification process of subcontractors, is what we are opposed to.

**Assemblyman Kirner:**

You say they are not subject to all the same rules for other public works; all public works are doing prevailing wage, right? [Mr. Esposito nodded yes.] So they are not talking about those kinds of rules. All public works have requirements such as the safety program, so that is not the issue. What I am hearing you say is how a contractor goes about selecting his subcontractors.

My understanding of this program versus a design-build program is the contractor guarantees a price that will not go up. The contractor is at risk for delivering a product at a certain price regardless of what may happen. It seems that it is a fair exchange to say, "I have subcontractors who I am confident in, and I know they will deliver a product because I worked with them before." Does that not seem right to you?

**Greg Esposito:**

I completely understand that a selected general contractor has guaranteed a maximum price. I can understand that those contractors have working relationships with a small handful of subcontractors. The nature of current public works bidding laws is to allow for a fair bidding process for all of the contractors in the municipality or the state who are also taxpayers. It is a taxpayer-funded job, and everyone should have the fair right to bid on it. My issue is the CMAR is allowed to limit that. What about the rights of those contractors left out?

Go back 100 years to when a mayor elected a town and had to build a jail. The mayor said, "My brother-in-law is a contractor. Let him build the jail." What about the other two contractors in town who would have loved to have a shot at that work? The same sort of analogy goes for the CMAR getting to pick who he likes, which cuts other contractors out of the bidding process. There has to be a selection process that allows for the general contractor to feel comfortable while still giving everyone a shot at it.

**Assemblyman Kirner:**

I hear your argument, and I appreciate that. With regards to the subcontractors, because of Assembly Bill 144 that we passed earlier, those subcontractors would also be Nevadans. Would you say that is a fair assumption?

**Greg Esposito:**

Assembly Bill 144 deals with bidder preference. It deals with being able to have a preference on the job. The CMAR issue is an entirely separate issue. Yes, hopefully after A.B. 144 is passed, they are Nevada contractors, but it still does not fix the fact that you should not be able to limit who gets to bid on the project.

**Assemblyman Hammond:**

I am going to go back to your example about the low bidder because I was confused. You had mentioned that you know of somebody getting a contract that was a low bidder who added more to the price. Maybe I am confused. Did they not get contracted? Did they go to someone else? Was that person the second lowest bidder?

**Greg Esposito:**

Yes. The second lowest bidder was somebody that the general contractor wanted to deal with. I will not speak to the specifics of the case because I heard many sides of it, and I do not want to imply that one side was right and one side was wrong. For example, the lower bidder came in at \$100,000; the next low was \$140,000. The low bidder had \$60,000 tacked onto his bid because he "missed" something during the de-scope process, and the contract was awarded to the \$140,000 bidder.

**Assemblyman Hammond:**

In this case, the second lowest bidder became the lowest bidder, and they got the contract?

**Greg Esposito:**

Yes.

**Chair Dondero Loop:**

Mr. Rawlins, would you like to return? I understand we also have an amendment on this bill from NDOT?

**Scott Rawlins:**

Yes. I submitted the amendment ([Exhibit C](#)). The amendment is simply changing the name from construction manager at risk to construction manager general contractor (CMGC). There are numerous instances through the legislation stating that.

**Chair Dondero Loop:**

Why?

**Scott Rawlins:**

There are several reasons why. The highway construction industry is used to the terminology CMGC; it is a federal initiative that is being pushed from the Federal Highway Administration. It clearly gives a distinction that the language in NRS Chapter 408 is our highway construction and NRS Chapter 338 is more for the vertical construction in public works projects.

**Chair Dondero Loop:**

Thank you for the clarification. Are there any other questions?

**Assemblywoman Benitez-Thompson:**

In section 7, subsection 2(b), the language reads "similar projects." What does this mean exactly? Should people know it to mean other CMAR experience or projects?



**Scott Rawlins:**

No. It means similar types of construction projects. We are hiring a construction manager that has the construction experience to provide constructability, to look at these projects, and to provide innovation of how these projects are constructed out in the field. We have our own internal forces to do the design work. We are not asking the construction manager to do the design. We are asking him to provide innovation and constructability sense as we develop the project. There is a great synergy that helps deliver the project faster and reduce project risks.

**Assemblywoman Benitez-Thompson:**

I have a new question about subcontractors. Section 7, subsection 2(d) talks about subcontractors being selected through a competitive process. What do you imagine that competitive process being?

**Scott Rawlins:**

I will let my legal counsel clarify some of the language if needed. The intent of a quality selection-based process is a team put together, and we are picking the team based on the individuals' qualifications. If, through the design development, there are elements of a project that need additional subcontractors, then the statutes or proposed legislation requires them to use this competitive process as is referenced in NRS Chapter 338.

**Louis F. Holland, Senior Deputy Attorney General, Transportation Division,  
Bureau of Government Affairs, Office of the Attorney General:**

The statute in section 7 is describing those things that a proposer must submit with his proposal. One of those things is his plan for how he is going to provide the competitive bidding process for subcontractors. If you refer back to section 13 on page 10, it talks about how to be eligible to allow a subcontractor to perform work on the job. That subcontractor has to be selected through a competitive process, either through the process of competitive bidding described in NRS 408.323 through NRS 408.387, or another competitive process that is approved by the Department.

**Chair Dondero Loop:**

Thank you. Are there any questions?

**Assemblywoman Diaz:**

On page 5 of the bill, in section 7, it states that a panel is going to look over the qualifications of bidding contractors. I want to know who comprises this panel. It only states that three people are going to be selected, but it does not state the selection criteria. Since we are using monies that stem from taxpayers,

I would like to know how these people are selected, and whom these projects are going to be dished out to.

**Scott Rawlins:**

It will be similar to the design-build selection process, which is an open and transparent process. We will have committees from internal NDOT employees and from local agencies that have construction and design experience and understand the nuances of the particular project. They will be part of the review and selection process.

**Assemblywoman Diaz:**

Are these NDOT employees, or are they contractors you are using from outside agencies?

**Scott Rawlins:**

They would be NDOT employees and local agency employees.

**Chair Dondero Loop:**

Are there any other questions from the Committee? [There were none.] Is there anyone else wishing to testify on A.B. 69? [There was no one.] I will close the hearing on A.B. 69. Is there any public comment? [There was none.] Meeting is adjourned [at 4:24 p.m.].

RESPECTFULLY SUBMITTED:

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Janel Davis  
Committee Secretary

APPROVED BY:

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Assemblywoman Marilyn Dondero Loop, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Transportation

**Date:** March 17, 2011

**Time of Meeting:** 3:18 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 69	C	R. Scott Rawlins and Louis F. Holland	Amendment
A.B. 69	D	R. Scott Rawlins, NDOT	Presentation
A.B. 69	E	R. Scott Rawlins, NDOT	Details on CMGC
A.B. 69	F	Raymond P. Herweg	Prepared Testimony