

**MINUTES OF THE
SENATE SELECT COMMITTEE ON ECONOMIC GROWTH AND EMPLOYMENT**

**Seventy-sixth Session
June 5, 2011**

The Senate Select Committee on Economic Growth and Employment was called to order by Chair Ruben J. Kihuen at 1:39 p.m. on Sunday, June 5, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Ruben J. Kihuen, Chair
Senator John J. Lee, Vice Chair
Senator Valerie Wiener
Senator Mark A. Manendo
Senator Don Gustavson
Senator Ben Kieckhefer
Senator Greg Brower

STAFF MEMBERS PRESENT:

Kelly Gregory, Policy Analyst
Bryan Fernley-Gonzalez, Counsel
Riley Sutton, Policy Analyst
Debra Carmichael, Committee Secretary

OTHERS PRESENT:

Steve Holloway, Executive Vice President, Associated General Contractors, Inc.,
Las Vegas Chapter
John Madole, Associated General Contractors, Inc., Nevada Chapter
Pat Sanderson, Laborers International Union Local 872/AFL-CIO
Heidi Gansert, Chief of Staff, Office of the Governor
Mendy Elliot, City of Fernley

CHAIR KIHUEN:

I open the hearing on Assembly Bill (A.B.) 574.

ASSEMBLY BILL 574 (1st Reprint): Revises Assembly Bill No. 144 of this session. (BDR S-1309)

STEVE HOLLOWAY (Executive Vice President, Associated General Contractors, Inc., Las Vegas Chapter):

Unfortunately, there are unintended consequences with A.B. 144. Fortunately, A.B. 574 will fix them. I have submitted two letters, the first one on behalf of Aniello Insurance Agency (Exhibit C) and the second one on behalf of Payne Financial Group, Inc. (Exhibit D), addressing the performance and payment bond for construction projects. The State law says on any public work the prime contractor must provide a performance and payment bond for 100 percent of the contract. The surety companies say they will not bond if the prime contractor or subcontractor takes advantage of the bidder's preference. This is the opposite effect of what was intended on A.B. 144, which was to encourage local contractors to get these jobs and to ensure local people are hired. If the contractors and subcontractors can get bidder's preference, the insurance goes out the window.

ASSEMBLY BILL 144 (1st Reprint): Makes various changes relating to bidder preferences on state and local public works projects. (BDR 28-64)

According to the surety companies, the penalty was too great and it would be difficult to apportion. For example, if there was a \$20 million contract for public works and the subcontractor's part was \$50,000, but the subcontractor caused a material breach, he or she would be liable for the 10 percent or \$2 million. The penalty would probably bankrupt the subcontractor and would be nearly impossible to collect. That is the basic problem; the surety companies will not insure for a penalty of 10 percent, and they do not know how to recover the money based on the confusing language in A.B. 144 as it pertains to apportionment.

Because Assemblywoman Marilyn Kirkpatrick and Legislative Counsel Brenda Erdos called the surety companies and grilled them thoroughly, we were able to make changes to A.B. 144 in section 2, subsection 6, as seen in section 1 of A.B. 574 on page 4 of the first reprint. The penalty is reduced to 1 percent, and the language makes it very clear the person responsible for the material breach will incur the penalty. The primary contractor who has a breach will lose his bidder's preference for up to five years and will be banned from

bidding on any public works projects for one year, which is in addition to paying the liquidated damages.

There are many public works projects where the equipment and materials are sole source. Many times the equipment and materials are built outside the State, and it is impossible to have 25 percent of the equipment and materials purchased within the State. On page 2 in A.B. 574, section 2 of A.B. 144, subsection 1, lines 32 through 34 have been amended to read: "unless the public body requires the acquisition of materials or equipment that cannot be obtained from a supplier located in this State."

SENATOR KIECKHEFER:

In A.B. 574, section 2, subsection 6, page 4, lines 24 through 30 state the party is liable to the public body for liquidated damages in the amount of 1 percent of the cost of the largest contract to which he or she is a party. Is that correct?

MR. HOLLOWAY:

Yes. For example, if a subcontractor, who had a \$50,000 subcontract within the \$20 million prime contract, caused the material breach, the subcontractor would not be liable for the prime contract because the subcontractor is not a party to the prime contract.

SENATOR KIECKHEFER:

Will the 1 percent penalty come off the contract between the contractor and the subcontractor?

MR. HOLLOWAY:

Yes.

SENATOR KIECKHEFER:

Does it not come from any contract the subcontractor has with anybody? I read that differently. The language does not specify that it is from the public work project. I interpret it to be any contract the subcontractor has.

MR. HOLLOWAY:

That is not the intent of this.

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SENATOR KIECKHEFER:

Could our legal counsel indicate whether I am reading that incorrectly?

BRYAN FERNLEY-GONZALEZ (Counsel):

The context of the section indicates it is the contract with the public body.

SENATOR BROWER:

I was focused on the same thing. I am glad Senator Kieckhefer raised it and we have it on the record. Shortly after A.B. 144 passed, I received a telephone call from Leon Mead who said there might be an issue. The next thing I knew, we have A.B. 574. This is an example of the system working, discovering a problem and fixing it before it is too late.

JOHN MADOLE (Associated General Contractors, Inc., Nevada Chapter):

I support A.B. 574 and what Mr. Holloway said.

PAT SANDERSON (Laborers International Union Local 872/AFL-CIO):

We support A.B. 574. We thought A.B. 144 was a terrific bill to create Nevada jobs and hire Nevada workers and contractors. We are glad these issues were brought up and a fix proposed.

CHAIR KIHUEN:

I close the hearing on A.B. 574.

SENATOR KIECKHEFER MOVED TO AMEND AND DO PASS AS AMENDED A.B. 574.

SENATOR LEE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR KIHUEN:

Before you is the work session document ([Exhibit E](#)) for A.B. 449.

ASSEMBLY BILL 449 (1st Reprint): Revises provisions relating to economic development. (BDR 18-726)

RILEY SUTTON (Policy Analyst):

The Speaker of the Assembly, John Oceguera, and Governor Brian Sandoval have come to a workable consensus on the amendments ([Exhibit F](#) and [Exhibit G](#)). The crux of the matter is whether it will be a strictly local government entity or a nonprofit private entity that is eligible for the operating funds to be a regional development organization. It is realized the market could figure it out. Both entities are eligible to receive the operating funds. Whoever has the best proposal gets it, and whoever does the best with it will continue to get funding. If it is a private nonprofit entity, it must work with a local government in the application for the Catalyst Fund to ensure the local governments are not kept out of the loop. If the organization is a local government entity, it can forward the application.

Bullet Point 1, [Exhibit G](#), speaks to the request for proposal process. The language in the parentheses references the proposed new conceptual amendments ([Exhibit H](#)) from yesterday, which remove the amount of the Catalyst Fund from the bill and clarify the administrative and operating expenses. Bullet Points 7 and 8, [Exhibit G](#), change the threshold for any monies distributed by the executive director to \$100,000 and clarify the Knowledge Fund dollars are not meant to be equal between institutions but competitively awarded on the best application for funds.

The Office of Energy, Office of the Governor, proposes a clarification that it will be the first point of contact. The Energy Office will consult and work with the Office of Economic Development and the executive director to ensure the abatements are working.

HEIDI GANSERT (Chief of Staff, Office of the Governor):

We concur with Riley Sutton's comments and appreciate there will be a competitive bidding process to make sure we get the best entities providing services for economic development whether they are government or public-private partnerships or private entities. We have reached a great agreement to lead the State forward in economic development. We also concur on the energy abatement programs going through the Energy Office and working with the new Office of Economic Development.

CHAIR KIHUEN:

Mr. Sutton, do you propose to have the other bullet points, [Exhibit G](#), included in the amendment?

MR. SUTTON:

Yes. They are minor clarifications.

MS. GANSERT:

The Office of Economic Development does not exist yet, so the funds will continue to be distributed as they are now for at least the first six months. There is a block grant program for the competitive bidding, and the applicants will go through the Interim Finance Committee. We have money in the budget that will allow us to continue with the program until the Office of Economic Development is up and running.

MENDY ELLIOT (City of Fernley):

Are the local governments able to choose who—especially those that can work with more than one regional development authority—they want to work with?

MR. SUTTON:

Our intent is to have local governments choose the one they like if there is more than one entity. The Catalyst Fund grantees have to go through local government first to ensure local government is kept in the loop and approves of the work being done.

SENATOR LEE:

The last time this bill was heard, Douglas County stated it did not want to be included in this bill. I would like to talk to Douglas County and Ms. Gansert before there is a vote. I am not prepared to vote on this bill right now.

MS. GANSERT:

I would like to make a clarification about choosing economic development authorities. There have been issues with counties trying to designate one authority and have a hard time crossing the line. We want to make sure it is collaborative. The counties do not have to designate one authority. They can work with whomever will help them get the business there.

SENATOR KIECKHEFER:

I respect Senator Lee's opinion. The proposed amendments have addressed many of those concerns that we heard during the hearing two days ago. I support the bill with the amendment as proposed.

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CHAIR KIHUEN:

Senator Lee still has a concern. Out of respect for him, we will hold the bill until after Senate Floor session today or have a behind-the-bar vote during the Senate Floor session.

The hearing is closed on A.B. 449 and the meeting is adjourned at 2:04 p.m.

RESPECTFULLY SUBMITTED:

Debra Carmichael,
Committee Secretary

APPROVED BY:

Senator Ruben J. Kihuen, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 144	C	Steve Holloway	Letter From Aniello Insurance Agency
A.B. 144	D	Steve Holloway	Letter from Payne Financial Group, Inc.
A.B. 449	E	Senator Ruben J. Kihuen	Work Session Document
A.B. 449	F	Riley Sutton	Proposed Amendment
A.B. 449	G	Riley Sutton	Conceptual Amendments
A.B. 449	H	Riley Sutton	Proposed New Amendments