

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

**Seventy-sixth Session
February 25, 2011**

The Senate Select Committee on Economic Growth and Employment was called to order by Chair Ruben J. Kihuen at 12:07 p.m. on Friday, February 25, 2011, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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

COMMITTEE MEMBERS ABSENT:

Senator Greg Brower (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1
Assemblyman John Ocegueda, Assembly District No. 16
Assemblywoman Debbie Smith, Assembly District No. 30

STAFF MEMBERS PRESENT:

Kelly Gregory, Policy Analyst
Bryan Fernley-Gonzalez, Counsel
Leslie Sexton, Committee Secretary

OTHERS PRESENT:

Greg Esposito, Plumbers, Pipefitters and Refrigeration Locals 525 and 350

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

Jack Mallory, Executive Secretary-Treasurer, Southern Nevada Building and Construction Trades Council; International Union of Painters and Allied Trades District Council 15

Peter Krueger, Subcontractors' Legislative Coalition

Patrick Sanderson, Laborers Local 872

Miles Dickson, Las Vegas Chamber of Commerce

James Patrick Pusich, Building Jobs Coalition of Nevada

Max Hershenow, AIA, American Institute of Architects Nevada

Randy A. Soltero, Sheet Metal Workers Local 88

Mike Murphy, Clark County

Gus Nunez, P.E., Manager, State Public Works Board

Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO

Chuck Alvey, President/C.E.O., Economic Development Authority of Western Nevada

Ray Bacon, Nevada Manufacturers Association

Warren B. Hardy II, Ex-Senator; Associated Builders and Contractors of Nevada

Steve Holloway, Associated General Contractors, Las Vegas Chapter

Ted Olivas, Director of Administrative Services, City of Las Vegas

Frank Hawkins, President, National Association for the Advancement of Colored People, Las Vegas Branch 1111

Leonard Hamilton, Nevada Minority Business Enterprise Center

Stephen Munford, Clark County Democratic Black Caucus

Yvette Williams, Clark County Democratic Black Caucus

Roosevelt Thompson, Clark County Democratic Black Caucus

James Gamble, Clark County Democratic Black Caucus

Jo Cato, National Association for the Advancement of Colored People, Las Vegas Branch 1111

Dennis Toles, Clark County Democratic Black Caucus

Carlos Gomez, Latin Chamber of Commerce

Danny Ayala, National Association for the Advancement of Colored People, Las Vegas Branch 1111

Cleandrew Threats, Clark County Democratic Black Caucus

Michael Tanchek, Labor Commissioner, Office of Labor Commissioner

CHAIR KIHUEN:

Today we will conduct a hearing on Assembly Bill (A.B.) 144.

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

ASSEMBLYMAN JOHN OCEGUERA (Assembly District No. 16):

My remarks are summarized in pages 2 and 3 of a 10-page document which I have provided to you ([Exhibit C](#)). We have record unemployment in Nevada at 14.5 percent. This is the highest rate in the Nation. Most of the unemployment is in the construction industry. Approximately 60 percent of all construction jobs in Nevada have been lost in the last few years. This equates to approximately 91,700 jobs. We have the highest home foreclosure rate in the Nation at five times the national average. In the third quarter of 2010, 54 percent of all home sales resulted from foreclosures. Property values continue to decline.

Many states, including Nevada, provide a bidder's preference for contractors. In Nevada, a contractor has to pay sales taxes for five years to be eligible for the preference. This bill expands the bidder preference on State and local public works jobs and provides a means of enforcement. This bill does not require additional funding. This bill gives an advantage to Nevada businesses that invest in Nevada. At a recent new legislative speakers' conference, I learned that each of the 22 new speakers in attendance had pending legislation similar to this bill. We are all trying to keep dollars in our states.

ASSEMBLYWOMAN DEBBIE SMITH (Assembly District No. 30):

This bill protects the Nevada construction industry and its ancillary businesses, suppliers, designers and architects, who have been struggling for the last three years to stay in business and keep their employees working in Nevada. This bill will assist them in their ability to stay in the State.

The portion of the workforce that we do not hear a lot about is the large group of people who have had to leave Nevada to work while waiting for economic recovery to take place in Nevada. For example, my son-in-law has had to work in five different states in the last three years to support his family. When those workers are working out of state, they live as meagerly as possible to send their money back home. I am sure that out-of-state contractors who bring their employees here send their earnings back to their homes. They do not spend those dollars in Nevada. These are our tax dollars, used on public works projects, leaving Nevada. The remainder of my remarks is contained on pages 4 and 5 of [Exhibit C](#).

ASSEMBLYMAN OCEGUERA:

The balance of my remarks is summarized on pages 6 and 7 of [Exhibit C](#).

ASSEMBLYWOMAN MARILYN KIRKPATRICK (Assembly District No. 1):

We worked very hard on A.B. No. 147 of the 75th Session. That bill included provisions on State purchasing, public works, even commodities purchasing. It was passed by both Houses and vetoed by ex-Governor Jim Gibbons. That veto was sustained in both houses. We have received countless requests since that time to introduce a bill strengthening protections for Nevada businesses and workers.

Today, I offer three amendments to the bill ([Exhibit D](#)). This document outlines language and intent of the amendments. The first amendment will facilitate compliance and enforcement of the purchasing requirement by basing the required 25 percent to come from suppliers located in Nevada. Since the bill was originally drafted, we realized that there would be unintended consequences based on the value of the materials. The 25 percent relates to the number of suppliers. We are working with the Purchasing Division to develop a simple reporting process.

The second amendment clarifies the apportionment of responsibility for payment of liquidated damages in cases where the breach of contract is shared by contractors and subcontractors or specialty contractors. The intent is to make that apportionment the result of negotiation between the parties when their contracts are negotiated.

The third amendment requires reporting to the Legislative Commission so that the Legislature can monitor the implementation of the bill. Adjustments could be made at future Legislative Sessions.

I have also submitted proposed forms for use in compliance and record keeping: Affidavit ([Exhibit E](#)), Workers Employed Report ([Exhibit F](#)), Project Vehicle Report ([Exhibit G](#)), Materials Purchased Report ([Exhibit H](#)), Weekly Wage and Hour Report ([Exhibit I](#)), Statement of Compliance ([Exhibit J](#)) and Design Professional Report ([Exhibit K](#)).

There is another concern regarding minority business, and A.B. 144 is not the best place to address this. We cannot violate interstate commerce laws or interrupt business. Our legal counsel has thoroughly studied this issue, looking

at case law and laws in other states. We believe this bill can be defended with the amendments we are offering. We do not want to see any part of this bill challenged in court and risk losing the entire bill and the required 5 percent preference. That would be another unintended consequence which would hurt our local contractors. The issue of minority business should be taken up in a separate bill. This bill is specific to public works jobs. At least three other bills are pending in the Assembly in which the issue of minority businesses can be addressed.

Other issues have been raised by the State Public Works Board, utilities representatives and groups concerned about communications and fiber optics. As late as this morning, we consulted with legal counsel to ensure this bill will address their questions.

There have been concerns about the validity of using driver's licenses and state-issued identification cards for residency verification. Because requirements for obtaining these forms of identification require proof of residency, the documents issued by the Department of Motor Vehicles are the best form of identification we can require. If a new resident of Nevada owns and drives a car in Nevada and fails to properly register that car in Nevada, other mechanisms are in place to enforce that requirement.

ASSEMBLYWOMAN SMITH:

Utah, California, Idaho and Wyoming already have this type of legislation in place. Washington has a pending bill of this type. Many other states have statutes like A.B. 144 that are much more onerous than this. We have a practical and reasoned approach to this.

Since the 75th Legislative Session, this issue has become increasingly important. In his State of the State Address this year, Governor Brian Sandoval stated: "Roughly 80 percent of new jobs will be created by local businesses, and we need every one of them to put Nevadans back to work. We should shop Nevada first."

The 25 percent provision is an important part of this bill because it will positively affect related businesses. The Commission on Economic Development said long-term economic development is most successful if based on the development of new enterprise within state borders. Senator James Settelmeyer said we have to get more jobs; that is the key to

everything. The Sparks Chamber of Commerce said by keeping money in our community, we improve our quality of life, improve our schools and build a better and stronger northern Nevada. This will help us across the State with doing just that.

ASSEMBLYMAN OCEGUERA:

In closing, this bill will strengthen Nevada's local economy, support Nevada businesses, diversify Nevada's economy, decrease unemployment and support our economic development goals.

SENATOR MANENDO:

With so many unemployed construction workers in Nevada, why does the bill only require 50 percent Nevada residents?

ASSEMBLYWOMAN KIRKPATRICK:

Of course we would like to see more Nevadans employed. According to our legal counsel, this is the best defensible position to avoid constitutional challenge.

SENATOR MANENDO:

For Nevada workers, it does not seem right to allow half of the jobs they could do to go to out-of-state workers.

ASSEMBLYMAN OCEGUERA:

The percentage for Nevada workers is not as high as Legislators would like to see in the bill. Other states have different constitutions. In Nevada, the 50 percent is the highest we can go to avoid challenges under the Nevada Constitution.

SENATOR WIENER:

Why was the threshold of \$25 million used in section 3 of the bill?

ASSEMBLYWOMAN KIRKPATRICK:

We worked with the contractors. We studied legislation in other states. These are best suited to our State.

ASSEMBLYWOMAN SMITH:

This is a graduated penalty process. This makes sense when you consider the size of contracts now in effect.

SENATOR LEE:

I see this bill as a good tool, but it also has the potential to lead to unjust enrichment by local governments by encouraging them to find ways to catch an employer, even though that employer is trying to do everything correctly. The public body may try to use this action to cut the bottom line cost at a disadvantage to contractors. If liquidated damages are charged, and if there is a civil action, it makes sense not to have the money go back to the entity but to the Clark County School District, Nevada System of Higher Education or something similar. There is an inherent threat of the public body taking the amount of the liquidated damages off the bill in their own self-interest instead of going to court. We can address this issue in our work session.

ASSEMBLYWOMAN SMITH:

We will definitely work on that. We did consult with legal counsel about that. We were trying to be consistent with other places and statutes that deal with similar issues. We clearly have an appeals process in the bill. If a contractor or subcontractor can clearly demonstrate, with required documentation, he was not at fault, he has the ability to appeal a liquidated damages assessment. We will further work on that issue.

ASSEMBLYWOMAN KIRKPATRICK:

That issue is one reason we have the forms [Exhibit F](#), [Exhibit G](#), [Exhibit H](#), [Exhibit I](#), [Exhibit J](#) and [Exhibit K](#) before you. These will enable contractors to regularly submit information to avoid the problems of which you spoke. These forms were developed in consultation with legal counsel, local government and contractors.

SENATOR KIECKHEFER:

I have a concern over the security of information contained on driver's licenses and the potential for identity theft. Section 5 provides that the documentation record of that information be open to inspection by the public body awarding the contract.

ASSEMBLYWOMAN KIRKPATRICK:

Assembly Bill No. 600 of the 74th Session requires local governments to redact all of that information so it is not available to the public. That is also being done with certified payroll records on public works jobs now.

ASSEMBLYWOMAN SMITH:

If you look at a certified payroll on a public works job, you can no longer see the personal information of the workers on the jobs.

SENATOR KIECKHEFER:

The only thing expanded under this bill is verification of a Nevada driver's license. Is that correct?

ASSEMBLYMAN OCEGUERA:

Yes.

SENATOR KIECKHEFER:

Are there potential regional challenges in ensuring materials are purchased from an in-state provider, especially in areas near State borders?

ASSEMBLYWOMAN KIRKPATRICK:

I did rework this language many times, and it is much weaker language than others states use. Other states do require 75 percent to 100 percent of materials and supplies purchased be manufactured and produced within the individual state. The provision in this bill that 25 percent of the suppliers of materials must be located in Nevada is reasonable. Those materials would include fuel, uniforms and safety vests from suppliers known to be in Nevada.

ASSEMBLYWOMAN SMITH:

If we are looking at economic development and recovery, this requirement will help a contractor look for new suppliers and encourage not only development of new business relationships but perhaps new businesses.

GREG ESPOSITO (Plumbers, Pipefitters and Refrigeration Locals 525 and 350):

We are in full support of A.B. 144. This bill has been needed for a long time. Our members and training school graduates have been disheartened for a long time when they drive by building sites and see many out-of-state license plates. As part of my investigation of these sites, I go to the location listed as the company's home location, only to find locked doors. When people come to the door, we ask if they are taking applications for employment, and we are told we must go to their out-of-state locations to apply. Further investigation of compliance reports reveal all of their workers are from out of state. Our members cannot accept the fact they have lived, trained and worked in Nevada

and do not have the same opportunity as workers from other states. This bill will correct problems with statutes.

PAUL MCKENZIE (Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada AFL-CIO):

We also support this legislation. It is troublesome to see the millions of dollars that leave Nevada with out-of-state contractors and workers. Under law, many of those contractors are getting a bidder's preference solely by paying sales tax in Nevada for five years, and they do not even have an office in Nevada. They do not employ anyone from Nevada. Their vehicles are not licensed in Nevada. This bill will fix a major problem we have had with transient contractors taking advantage of being considered a Nevada contractor solely by the sales tax requirement.

JACK MALLORY (Executive Secretary-Treasurer, Southern Nevada Building and Construction Trades Council; International Union of Painters and Allied Trades District Council 15):

We support this bill.

PETER KRUEGER (Nevada Subcontractors' Legislative Coalition):

I represent a coalition of national and local employer groups. We solidly support this bill as the best way to put our workers back to work in Nevada.

PATRICK SANDERSON (Laborers Local 872):

We support this bill. Nevadans need jobs. Nevadans have been suffering; whatever we can do to lessen that suffering is a good thing. This bill will have a positive impact beyond construction workers because their earnings will go back into the Nevada economy in our local neighborhoods. Every business will improve as a result of this bill. This bill offers a glimmer of hope to those unemployed workers that they will not have to leave the State to survive.

MILES DICKSON (Las Vegas Chamber of Commerce):

We certainly support Nevada Jobs First. It is consistent with our programs to get Nevadans back to work and spending money in the State.

JAMES PATRICK PUSICH (Building Jobs Coalition of Nevada):

We support this bill. It is a step in the right direction by helping unemployed contractors and design professionals to get back to work.

MAX HERSHENOW, AIA (American Institute of Architects Nevada):

We support this bill. We are grateful design professionals have been included in this bill. Design professionals include architects; civil, structural, mechanical and electrical engineers; and surveyors. All of these professions in Nevada have been adversely affected by out-of-state workers.

RANDY A. SOLTERO (Sheet Metal Workers Local 88):

We support this bill. I also share Senator Manendo's concern that the 50 percent requirement is too low. The training programs conducted by various organizations in Nevada are training excellent people who can, without question, do the jobs.

MIKE MURPHY (Clark County):

We support this bill. In October 2010, the Clark County Board of Commissioners passed a resolution regarding preference in hiring for Nevada workers and Nevada companies.

GUS NUNEZ, P.E. (Manager, State Public Works Board):

Until we put Nevadans back to work, our State's economic problems will continue. We support the goals of the bill. My comments today relate to our ability to enforce the provisions of the bill. After consulting with legal counsel, we have some concerns and recommendations to strengthen this bill. Those concerns and recommendations are outlined in a statement ([Exhibit L](#)).

I will read from *Bruner & O'Connor on Construction Law*:

The crucial question regarding enforcement of liquidated damages clause is whether the stipulated amount is a reasonable precontract estimate of actual damages or is an illegal penalty. The restatement approach which enforces stipulated amounts that are reasonable in light of the anticipated or actual loss caused by the breach and the difficulties of proof of loss leaves much to the judicial interpretation and has resulted in widely unpredictable application of the law.

We recommend that you consult legal counsel and treat liquidated damages in the same manner as we treat prevailing wage violations. That process involves a complaint, an investigation, an appeals process to the Labor Commissioner and assessment of penalties where approved. There is no debate in court about reasonable estimates of actual damages or consideration of legal cases on liquidated damages. It would be easier for us to enforce "penalties" than

"liquidated damages." If the term "liquidated damages" is used, civil litigation is required to enforce payment. "Penalties" can be recovered by a simple negative change order.

CHAIR KIHUEN:

Have you consulted with the author of the bill in the Assembly about these concerns?

MR. NUNEZ:

We have not talked in detail yet.

CHAIR KIHUEN:

I urge you to do so before this Committee discusses Assembly Bill 144 in a work session.

SENATOR LEE:

I do not want liquidated damages deemed to be owed going back to the public body that awarded the contract. I want them to pay the court costs and the attorney fees. I have seen too many instances where the awarding body uses these tools to get other things and threaten retention money. When one threatens retention money to force the issue, one really hurts others because the contractor does not pay payroll taxes, any of the state taxes, suppliers or subcontractors. Is it possible to make awards to local school districts after attorney and court costs are paid if liquidated damages are ever awarded?

MR. NUNEZ:

My suggestion is to make it just a penalty, not liquidated damages. In the collection of liquated damages in our current contracts for time deadline failures, we find it is a good hammer to have but very difficult to enforce. In the ten years I have been with the Public Works Board, we have collected liquidated damages once. That is why we are recommending you use the term "penalty."

SENATOR LEE:

I can understand your point.

SENATOR KIECKHEFER:

What percentage of the contracts the Public Works Board awards is based on the 5 percent preference?

MR. NUNEZ:

We can provide that information. From my recollection, at least 99 percent of the bidders have that 5 percent bidder's preference certificate.

SENATOR KIECKHEFER:

Do you have any idea of the percentage of the bidders who have been awarded bids would have been disqualified by this bill over the past three years if it had been in effect?

MR. NUNEZ:

Under this bill, going forward, we would not be able to compute a percentage until after the work is substantially completed when we review the records. Violations of the law would be discovered then, while we still have the contractor's deposit money. We would rather collect penalties out of those funds than to have to go to court to recover liquidated damages after we have returned the deposit money.

DANNY THOMPSON (Executive Secretary-Treasurer, Nevada State AFL-CIO):

We urge passage of this bill. This is not just a construction bill. It impacts literally everyone in the community. Two years ago, I met with members of the American Institute of Architects. They told me it would not be long until all of them were out of work. After CityCenter in Las Vegas, the bridge over Hoover Dam and several other projects were completed, there is now no work. The Legislature is struggling with budget problems that are not solvable unless it solves the unemployment problem first. Unemployed people, many with significant medical problems, lost medical insurance and have become dependent on Medicaid. Because they had to let their medical coverage lapse, they are further burdened with preexisting conditions which will make it impossible to get medical coverage, thus extending their reliance on Medicaid. This bill must be passed or you will never balance the Medicaid budget. However, if you do not have adequate enforcement measures in this bill, passing this bill will be a waste of time. The people who cheat on prevailing wage are never punished, so they keep doing it. Every other state that has legislation similar to this bill has enforcement mechanisms, so it is in Nevada's best interest to do so too. And it is the right thing to do for the community. It is adding insult to injury when you allow workers to come from Arizona or, in the case of utilities, Florida, to take jobs Nevadans can do.

CHUCK ALVEY (President/C.E.O., Economic Development Authority of Western Nevada):

We support this bill. There are several pending major construction jobs. We have to keep these people here.

RAY BACON (NEVADA MANUFACTURERS ASSOCIATION):

We are neutral on this bill from a policy standpoint. We understand the need. As written, we want to make sure we do not do something crazy. The requirement for Nevada-manufactured products adds a level of complexity you do not want because of record-keeping problems. For example, there is only one cement plant in Nevada and it is in northern Nevada. It does not make sense to ship cement from northern Nevada to southern Nevada. This needs to be handled with a mode of common sense and logic. Purchasing materials in Nevada is fine because most of the materials will come through a distributor. It would be wonderful if they were using Nevada-manufactured products as much as possible. We are not sure you really want to impose that. I assume the cost-benefit analysis requirements in State statute would continue in place so we avoid building something we do not need.

CHAIR KIHUEN:

For the record, Mr. Bacon and Mr. Nunez are neutral on this bill.

SENATOR MANENDO:

Passed last year in California, Senate Bill 967 requires contractors to prove 90 percent of workers on state projects are California residents. Those contractors get a 5 percent bid preference. We can do more here to increase the 50 percent provision.

MR. THOMPSON:

The law now says one must use Nevada workers, but it is not constitutional. The authors of the bill have used 50 percent because it is legally defensible under the Nevada Constitution.

WARREN B. HARDY II (Ex-Senator; Associated Builders and Contractors of Nevada):

I speak in favor of the bill. For the record, I thank the sponsors of the bill, especially Mrs. Kirkpatrick, for careful consideration of the concerns we have raised with the bill as it was being drafted. I appreciate her clarification of the

indemnification process for subcontractors and general contractors who are not found in breach of this statute. We will continue to work with her.

We suggested at the last committee hearing in the Assembly that perhaps one way to address that would be to simply extend the concept of bidder's preference to the subcontractors and the general contractors. I have subsequently heard back from some of my members who think that is a good idea, and some who have concerns with the concept. I apologize we have not yet fully vetted it internally. We are in the process of doing so now.

STEVE HOLLOWAY (Associated General Contractors, Las Vegas Chapter):
We support this bill.

TED OLIVAS (Director of Administrative Services, City of Las Vegas):
We support this bill. I have an outline of my remarks today ([Exhibit M](#)) plus a submittal ([Exhibit N](#)), entitled "Resolution of the City of Las Vegas to Support the 'Creating 100,000 Nevada Jobs' Report by the Building Jobs Coalition To Put Nevada's Construction and Development Workers Back To Work."

FRANK HAWKINS (President, National Association for the Advancement of Colored People, Las Vegas Branch 1111):

I speak in opposition to the bill. My comments today apply to *Nevada Revised Statutes* (NRS) 338 and 408. This bill excludes minority small businesses. It excludes the minority business enterprise (MBE). Some of the language in this bill is protectionist. Our State Constitution says it is for the benefit, protection and security of Nevadans. We want equity and equality for all. One of the sponsors has suggested we could push this issue into other bills. This has happened for far too long. I am a native Nevadan. I continually hear from the City of Las Vegas and other government entities that anytime you want to do something for minority businesses, you need a disparity study. There are laws on the books right now that encourage employment opportunities for women and minorities; but in Nevada, local governments are not held accountable. When I hear the overall unemployment rate in Nevada is 14.5 percent, I know among African-Americans and other minorities, it is far higher than that.

LEONARD HAMILTON (Nevada Minority Business Enterprise Center):

There is a pattern of past and continuing racial discrimination against MBEs. There is disparity in the availability and use of these MBEs in Nevada. This

Committee should find it is in the best interest of Nevada to rectify this pattern of discrimination and disparity. Based on statistical data, the Legislature should provide race-conscious and gender-conscious remedial programs to ensure minority participation in the economic life of this State. Additional language should be added to the bill under consideration to accomplish this.

STEPHEN MUNFORD (Clark County Democratic Black Caucus):

Assembly Bill 144 seems to be a preference law. I cannot support that law if it does not include language to address minority participation in business opportunities. I own my own business. When I travel to other states in the course of my business, I see programs other states have implemented to facilitate minority participation in business opportunities. Earlier, you were told this bill is similar to laws implemented in other states. That is not completely true. Recently, in Texas, I learned the Dallas/Fort Worth International Airport has a project worth approximately \$2 billion. The Dallas area alone has approximately \$8 billion in public works projects about to begin. They are aggressively going after minority businesses. They have a policy of making sure these public works programs are hiring Texas firms. Minority participation there is at least 35 percent. At Los Angeles International Airport, minority participation is at least 25 percent. Southern California Edison and Pacific Gas and Electric are mandated by California to have 35 percent minority participation on all of their contracts. The NV Energy has no such mandate. Approximately 80 percent of my business is outside of Nevada because these mandates are in place there. This bill is supposed to put Nevadans back to work. Some estimates of unemployment in minority populations are as high as 30 percent. If this bill does not have language to include minorities, it should not be supported because it does not represent minorities.

YVETTE WILLIAMS (Clark County Democratic Black Caucus):

This bill offers the opportunity to put Nevadans back to work. We support that goal wholeheartedly. Unfortunately, African-Americans struggle to be counted on construction jobs in Nevada with an average of 1 percent of the workforce. Approximately 94 percent of construction jobs go to two ethnic groups. We strongly support a statewide diversity plan and respectfully request the language of this bill be modified to provide that the bidder has an employment diversity policy or a plan with a proven track record. This can be included in regular reporting required by the bill. I ask you to review information about the successful Nevada Department of Transportation (NDOT) diversity program, which is a voluntary program where language is included in the contract bid. We

have worked with Assemblyman Joseph M. Hogan, Assembly District No. 10, who introduced this concept and worked with NDOT to make this program a reality. We have seen an improvement in that workforce.

With the current economic conditions, many local small and minority-owned businesses have suspended operations until the economy recovers. This will prevent many of them from seeking designation as local businesses with the current five-year sales tax requirement. Your goal is the same as ours: to improve the quality of life for all Nevadans. We look forward to continued discussions on diversity and inclusion issues in upcoming legislation.

ROOSEVELT THOMPSON (Clark County Democratic Black Caucus):
We support the concept of the bill but not the language. The bill must address diversity.

JAMES GAMBLE (Clark County Democratic Black Caucus):
I am a civil engineer and an environmentalist. I have been unemployed for more than one year. This is a good bill, but the language needs to include minorities and diversity in the workplace.

JO CATO (National Association for the Advancement of Colored People, Las Vegas Branch 1111):

I am a small business owner. This is a good bill, but the language needs to be changed regarding a minority component. One of the sponsors of the bill stated two other bills are being considered which could include the minority component. For too long, we have been pushed and pushed and pushed. If the MBEs are not included in this bill, then there should not be a preference component for contractors. I support all Nevadans going back to work. Everybody should be included, not just a special subset.

DENNIS TOLES (Clark County Democratic Black Caucus):
I am speaking against this bill. I have a master's degree in public administration. I am a senior professional human resources manager. I am here as a friend of the process. I have worked at every level of government: federal, state and local. I have worked on major public works projects in the human resources management field. Other federal and state laws require compliance with diversity provisions. Discussions about hiring quotas at this time would be counterproductive.

This bill appears to set preferences for large organizations and unions. These preferences do not include MBEs. I question the need for preferences if such preferences do not include MBEs. You are failing to acknowledge federal law requiring a public assessment of racial and gender demographics that needs to be made when public funds are spent on public works projects. This bill needs to conform to federal law. You have been told by many testifiers from these large organizations that including MBEs would be unconstitutional. They are not qualified to give legal opinions.

Mr. Nunez discussed the advisability of using penalties as opposed to using liquidated damages in cases of breach of contract. If there is a \$500,000 limitation for liabilities or penalties, you need to think about the actual cost of whatever problems a potential contractor might cost you. Our own leadership is paralyzed with fear that if they increase the 50 percent requirement to hire Nevada residents, it will not be legally defensible. It is time for us to go into those issues with the right kind of information. Without that information, we are not ready to move forward with this bill as it stands.

When we heard people talking about their personal feelings when they see license plates of people coming in from other states to work construction jobs, they know how minorities feel when they go to jobs and are not represented. We need to be strong on this issue and in compliance with federal law.

We need a cost-benefit analysis of requiring goods and services to be purchased from suppliers located within the State. I posit a theory to you. The roles of these large corporations and the unions they represent are shrinking. Their money is problematic for them. If Legislators say this is what we want and these are the rules when you come to Nevada, they will have to conform. We need to stand up and be strong. A proposed amendment to the bill says suppliers of the materials used for the public work will be located rather than purchased in Nevada. If you require such things be done in this State, you will actually stimulate the development of your economic infrastructure because if they cannot do business with the State from outside of this State, they will likely locate business entities in the State. That will give you what you need.

CARLOS GOMEZ (Latin Chamber of Commerce):

The language in this bill does not include MBEs. In all of the State agencies and records there is close to 0 percent participation from minorities. We support Nevada First. We need to include MBEs.

DANNY AYALA (National Association for the Advancement of Colored People, Las Vegas Branch 1111):

This bill excludes minorities and women. For this reason, we oppose this bill.

CLEANDREW THREATS (Clark County Democratic Black Caucus):

I speak in opposition to this bill in its current form because there is no diversity provision in it. There is a distinct lack of diversity on construction projects in Las Vegas even though many receive federal funds. This is the time to put enforceable diversity provisions in this bill.

MICHAEL TANCHEK (Labor Commissioner, Office of Labor Commissioner):

We are neutral on this bill. The people in my office have seen the impacts of the recession in the lack of jobs and the decreasing dollar amount of the contracts. I was once a contractor in the timber industry along with five or six others. We were eliminated by out-of-state contractors who undercut our costs and avoided the laws we had to observe. I am sensitive to this issue.

From the agency's perspective, we need to protect against an unexpected consequence relating to the reporting requirements of section 5 of A.B. 144 by requiring the driver's license number to appear on certified payroll reports. Those numbers are currently used to verify workers are paid proper wages for the work they are doing. This bill would expand the use of the certified payroll reports to determine whether or not residency requirements are met. This is an increasing enforcement opportunity for our office. Because this information would be in certified payroll reports, this data would be required from every contractor and subcontractor working on an individual project.

I anticipate complaints coming from NRS 338.060, subsection 2, which requires my office to take action against a contractor or subcontractor who submits an inaccurate or incomplete payroll record. I am not sure the author of the bill anticipated this would happen by placing this requirement in that section.

SENATOR MANENDO:

Do you actually enforce the penalties levied against contractors who violate prevailing wage laws?

MR. TANCHEK:

Yes. We rely primarily upon the forfeitures built into NRS 338.060. Over the past six months, we have assessed approximately \$150,000 in forfeiture

penalties against contractors. That works out to be about one-third of the amount of wages we have recovered. Normally, the percentage would be higher, but there are many contractors or subcontractors who walk away. If we can find the subcontractor, we will pursue collection. When a subcontractor cannot be found, the agency attempts to collect wages due the employees from the contractor through the forfeiture provision. That really punishes the contractor for the failing of the subcontractor and expects the contractor to collect from the subcontractor, even though we know he will be unable to do so. Generally, these prime contractors have been allowed to clean up the mess and that satisfies us. The Labor Commissioner does not generally issue fines. We rely more on forfeitures. We do get asked why we do not disqualify contractors from working on future public works projects for a period of time when they have violated the prevailing wage laws. That would not serve a good purpose.

SENATOR KIECKHEFER:

Does a worker have any recourse if his employer or the local government who receives the payroll records releases his personally identifying information?

MR. TANCHEK:

The certified payroll reports are public record. Several years ago we did stop requiring employee name, home address and social security number on the payroll reports. The statute only requires name of the worker. [Exhibit I](#) is a blank payroll report from our office. The format is not mandatory, but the information it requests is mandatory. Some contractors submit their own formats based on their own software. We also accept electronic reporting systems.

SENATOR KIECKHEFER:

If this bill requires the driver's license number on the certified payroll report, you cannot amend that certified payroll report. That report is a public record on its face under State law.

CHAIR KIHUEN:

We will hold this bill until next week when we can discuss it further in a work session. The hearing on [A.B. 144](#) is now closed.

We will now open the hearing on [Senate Bill 192](#), and work session document [Exhibit O](#).

SENATE BILL 192: Makes various changes relating to job creation within the Nevada construction industry. (BDR 18-935)

SENATOR WIENER:

There was an overwhelming level of support for this bill at our last hearing.

SENATOR WIENER MOVED TO DO PASS S.B. 192.

SENATOR MANENDO SECONDED THE MOTION.

SENATOR KIECKHEFER:

I have concerns about unintended consequences. No fiscal notes are filed on this bill because governments have not had the opportunity to review it. The City of Reno estimates the funding of depreciation will cost \$5.5 million and the anticipated property tax revenue is \$600,000. This will lead to an unfunded liability of \$4.9 million. Washoe County estimates fully funding depreciation would cost \$8 million and revenue provided by this bill only covers \$2.4 million for an unfunded liability of \$5.6 million. The fiscal state of local governments is just as bad, if not worse, than Nevada's fiscal condition. The bill also creates an approximate \$30 million deficit in the Governor's recommended budget. For those reasons, I will vote against this bill and reserve my right to change that vote on the Senate Floor if issues can be worked out by then.

CHAIR KIHUEN:

You do have the right to change your vote on the Senate Floor.

SENATOR GUSTAVSON:

I agree with the sentiments and concerns of Senator Kieckhefer. We are trying to get a State Budget worked out without raising taxes. If this bill will hurt the counties, I am opposed due to the unfunded mandates resulting from passage. I would like to do further research and reserve my right to change my vote on the Senate Floor.

SENATOR LEE:

In the Governor's proposed budget, this 9 cents diverts to the Nevada System of Higher Education. Senator Kieckhefer, I would like to hear your information again.

SENATOR KIECKHEFER:

This bill requires cities and counties to fully fund their depreciation schedules for their infrastructure and to budget for those annually. That is neither required in statute nor something the State does. That additional mandate is an expenditure the counties have not budgeted.

SENATOR LEE:

As Chair of the Senate Government Affairs Committee, no one has ever raised this issue with me. I have not had anyone approach me with late information.

THE MOTION CARRIED. (SENATORS GUSTAVSON AND KIECKHEFER
VOTED NO.)

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CHAIR KIHUEN:

The meeting is adjourned at 2:15 p.m.

RESPECTFULLY SUBMITTED:

Leslie Sexton,
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	Assemblyman John Ocegüera, Assemblywoman Debbie Smith,	Nevada Jobs First
A.B. 144	D	Assemblywoman Marilyn Kirkpatrick	Proposed Amendment to A.B. 144
A.B. 144	E	Assemblywoman Marilyn Kirkpatrick	Affidavit
A.B. 144	F	Assemblywoman Marilyn Kirkpatrick	Workers Employed Report
A.B. 144	G	Assemblywoman Marilyn Kirkpatrick	Project Vehicle Report
A.B. 144	H	Assemblywoman Marilyn Kirkpatrick	Materials Purchased Report
A.B. 144	I	Assemblywoman Marilyn Kirkpatrick	Weekly Wage and Hour Report
A.B. 144	J	Assemblywoman Marilyn Kirkpatrick	Statement of Compliance
A.B. 144	K	Assemblywoman Marilyn Kirkpatrick	Design Professional Report
A.B. 144	L	Gus Nunez	State Public Works Board Statement
A.B. 144	M	Ted Olivas	Testimony Supporting A.B. 144
A.B. 144	N	Ted Olivas	Resolution of the City of Las Vegas
S.B. 192	O	Kelly Gregory	Work Session Document