MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-sixth Session
April 11, 2011

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 8:38 a.m. on Monday, April 11, 2011, in Room 2135 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 John J. Lee, Chair
Senator Mark A. Manendo, Vice Chair
Senator Michael A. Schneider
Senator Joseph (Joe) P. Hardy
Senator James A. Settelmeyer

GUEST LEGISLATORS PRESENT:

Senator Ben Kieckhefer, Washoe County Senatorial District No. 4

STAFF MEMBERS PRESENT:

Michael Stewart, Policy Analyst
Heidi Chlarson, Counsel
Cynthia Ross, Committee Secretary

OTHERS PRESENT:

Chris Ferrari, Nevada Contractors Association; Associated General Contractors, Las Vegas Chapter
Michael Tanchek, Labor Commissioner, Department of Business and Industry
Paitaka P. Miyahira, Maui One Excavating
Nathan Ring, Bricklayers International Trust Funds; Local 13 Trust Funds; Operating Engineers Trust Funds
Michael Urban, Bricklayers International Trust Funds; Local 13 Trust Funds; Operating Engineers Trust Funds

Kevin B. Christensen, Glaziers, Painters and Floor Coverers Trust Funds
Margi A. Grein, Executive Officer, State Contractors' Board
Richard Peel, Subcontractor Legislative Coalition
Bruce Robb, State Contractors' Board
Brian Bonnenfant, Project Manager, Center for Regional Studies, College of Business Administration, University of Nevada, Reno; Office of the State Demographer, Nevada System of Higher Education
Wes Henderson, Executive Director, Nevada Association of Counties
Lindsay Anderson, Director, Business Development and Research, Division of Economic Development, Commission on Economic Development
Robert A. Ostrovsky, City of Las Vegas

CHAIR LEE:
I am opening this Senate Committee on Government Affairs with Senate Bill (S.B.) 394.

SENATE BILL 394: Revises provisions governing the liability of a general contractor or subcontractor for certain benefit payments. (BDR 28-744)

CHRIS FERRARI (Nevada Contractors Association; Associated General Contractors, Las Vegas Chapter):
We support S.B. 394. Senate Bill 394 will protect and create jobs, keep construction companies in business and ensure the solvency of union trust funds which thousands of Nevada workers rely upon for business. This bill will ensure that workers will be afforded health care, disability, retirement and training to keep our construction labor force healthy and strong.

The Nevada Contractors Association is the largest signatory construction organization in the State. Our members are union contractors. They sign signatory agreements with other unions to perform work on construction sites. We provide high-paying union jobs and pay into trust funds for fringe benefits, including training, health, vacation, disability and retirement. The general contractors are funding an entire population's well-being.

Senate Bill 394 will allow us to continue to pay union wages and benefits, and it will clarify problems in the law. This is how it works. If I own Ferrari Construction, we will perform a job, we will have signatory unions performing on the job, we will complete the job, every worker will be paid, and we will move on to the next job. In this case, I might receive a letter two years

later from one of the union trust funds saying I did not pay into a particular benefit fund. I check rosters, I call my accountant, I furnish proof and check stubs showing I paid every penny. The union trust fund agrees I paid my part, but payment had not been received from one of my subcontractors. I am told I am responsible to pay their share. I do not agree. I should be informed of a missed payment months following a job, not two years later. This is fundamentally unfair. Senate Bill 394 will allow contractors to get bills so they can pay.

There are concerns with how the bill is written. Based on those concerns, we have provided an amendment (Exhibit C). Section 1 reads "does not receive a benefit payment for that trust within 30 days after the date it is due ... ." This time is too short for benefits to reveal themselves, so we amended the time to 60 days. Second, Taft-Hartley trust funds do not want the responsibility of notifying contractors, and contractors should notify them. We added into the amendment that contractors must provide a written request for a bill so it can be paid.

We have amended section 2, subsection 2 to read that if a letter has been requested, the liability of the contractor ends after one year. This provides trust funds one year to review books to ensure payment.

We are union contractors. We want to do what is right. We want a bill that says contractors have paid so they can move on to the next job without getting stuck with a liability moving forward.

Opponents of this legislation might say this bill will hurt working people and the viability of the trust funds and that we will be in violation of the Employment Retirement Income Security Act (ERISA), which is federal law. The opposite is true. The passage of this bill will ensure workers will continue to be afforded the health care, disability, retirement and training we provide.

Is it responsible policy for trust funds not to know money is owed to them for two or three years after a job is completed? Those dollars could be earning interest and providing worker benefits. Senate Bill 394 will make the system more efficient. We defer to the Committee's counsel and to the counsel of the Legislative Counsel Bureau to ensure the bill's intent is met without violating federal laws.

This bill will assist contractors to stay in business. It will create jobs that pay union wages and benefits to working families. We support passage of S.B. 394 as amended.

MICHAEL TANCHEK (Labor Commissioner, Department of Business and Industry):
I am also proposing an amendment (Exhibit D). I have not had time to look at the amendment, Exhibit C, by Mr. Ferrari, but it is unlikely it will interfere.

Our amendment, Exhibit D, addresses those cases where a contractor has not made a trust fund payment. I want the Office of Labor Commissioner notified. Failure to make the trust fund payments is in violation of prevailing wage law in *Nevada Revised Statute* (NRS) 338.020. If I have notification, I can take action.

We had a related case that went to the Nevada Supreme Court. The contractor took a double hit. The contractor had to pay the employees, because he underpaid prevailing wage, and he had to also pay the trust fund.

There is a case where a contractor did not make his payments to the trust fund. We did not find out until the workers came to our Office and filed a complaint because they had lost their health insurance. This is a prevailing wage violation because the payments were not made. I need to be notified in order to take action, and it is the trust funds that know they are not receiving payments.

CHAIR LEE:
Who was to have followed up to prevent those employees from losing their health insurance?

MR. TANCHEK:
In this case, it was the subcontractor. The subcontractor submitted the prevailing wage reports, but the benefit portion was not paid. The question becomes, who knows these payments were missed? There are two parties to the transaction. One is the subcontractor not making the payment and the other is the trust fund that is to receive payment. The subcontractor will not go to the Labor Commissioner and say he is not paying his people, so the responsibility has to fall on the trust fund that has not received the money.

CHAIR LEE:
The trust funds are likely to explain they do not have big accounting firms to follow individual jobs, so they cannot know. The responsibility falls upon general

contractors. Trust funds are the value, and the general contractor and subcontractor remove value from trust funds. How do you see fixing this problem?

MR. TANCHEK:
One of the amendments addresses this question. The general contractor has to ask the trust fund to notify them. The information will have to come from the trust fund. The idea that trust funds do not have big accounting firms following them to ensure payments holds no water. There are small subcontractors who do not have accounting firms following them around to ensure they are in compliance. It is a tough business. Learn how to do it and get the work done. The trust funds should know if payments are coming in, and it is their job to notify me.

CHAIR LEE:
Mr. Ferrari's amendment, Exhibit C, changes the time period of the benefit payment from 30 days to 60 days. What are your thoughts?

MR. TANCHEK:
There is an anomaly in the trust fund payments in that wages are to be reported at the time they are earned. This is through weekly payroll reports and monthly payroll records. The problem occurs because trust funds do not pay on a schedule that fits in with prevailing wage requirements. If a contractor pays quarterly into the trust fund, they are reporting after 30 days. After a month, contractors are holding the money they say they have paid because they have not made their quarterly payments to the trust fund. We tolerate this late payment because we recognize it is the nature of trust fund payments, but there is a problem if the payment is not made in the quarterly payment cycle.

It goes back to the responsibility of the trust funds to report because they are the ones who have not been paid. When a worker does not get a paycheck, it falls upon the worker to notify me. The same requirement should apply to trust funds.

CHAIR LEE:
The amendment, Exhibit C, changes the requirement from 30 days to 60 days at which time the bond can be sought. If subcontractors have not paid their portion, can a general contractor go after their bonds? Can a notification be sent immediately stating the subcontractors have been notified that they missed the

Taft-Hartley trust fund payments and the general contractor is going after their bonds? Is there strength general contractors are not utilizing to help the trust funds? I want to ensure trust funds are helped and business is conducted properly.

MR. FERRARI:
I do not know the answer, but we did hear from labor representatives that 30 days was too short. Many times, trust funds are paid in 30 days and reflect at 45 days, so 60 days is sufficient. One trust attorney recommended 90 days, and we would be amenable. The goal is to not create additional layers of bureaucracy. Show us what we owe so we can pay the bill. If one of our own is not paying, we can crack down on him or her before having to reach the point of going after a bond. We want the trust funds to get their money in a timely manner.

CHAIR LEE:
I want the general contractors involved in helping the trust funds without general contractors having liabilities two years or more down the road. I do not want to remove general contractors from liability as they should have responsibility in helping the trust funds.

MR. FERRARI:
Your comments address section 1, lines 7 and 8 in Exhibit C. The burden is upon general contractors to provide written requests for that information. If a general contractor waives his or her ability to provide a notice as outlined in the new statute, he or she would not have the liability protection afforded in section 2, subsection 2.

MR. TANCHEK:
A slight variation occurs in our case. The first place we go is after the retention on the project. The bond is also available for us if there is an adequate retention. One issue we have is if a trust fund executes on the bond and the trust fund is made whole, we have to look at the consequences of what occurred to determine whether the employees have been taken care of. For example, in the case where the employees lost their health insurance, the trust fund worked out a deal with the bonding company, and the trust fund was made whole. I am stuck with the issue of what to do about the unpaid medical bills for those workers.

PAITAKA P. MIYAHIRA (Maui One Excavating):
I started Maui One Excavating 23 years ago in southern Nevada. I am in favor of this bill and concur with Mr. Ferrari's testimony and amendments.

Maui One Excavating was notified of a delinquency in paying trust fund benefits and was fined. We had hired a traffic control company and paid the benefits to them.

Upon hiring this company, we asked if it was current with benefit payments and it said yes. Although the company was a union contractor and sent us a letter confirming it had paid the benefits, it had not. We called the Office of Labor Commissioner, which confirmed the benefits were in compliance. Four years after the job, we were notified that the benefits were not paid. The payment amount was about $4,000 but with fines, fees and auditing bills, the amount grew to about $8,500. My dilemma is I paid the benefits once, but the trust fund has the authority to come back to me and demand the owed money. This will cause me to pay twice, and this is unjust. Senate Bill 394 will provide a timely notification process. Trust funds need to do their due diligence in helping us perform our work. The notification will let us know when there are delinquencies so we can withhold money and pay the trust fund.

NATHAN RING (Bricklayers International Trust Funds; Local 13 Trust Funds; Operating Engineers Trust Funds):
Nevada Revised Statute 608.150 is important to trust funds and their ability to meet the needs of the beneficiaries of those trust funds. We have legal concerns regarding federal preemption and ERISA.

First enacted in 1931, the bill has survived for 80 years. The purpose of the bill's enactment was to protect workers from not receiving promised benefits and wages. The statute has been in the same form for 80 years. The Nevada Supreme Court has recognized over the years that protecting the workers is the foremost promise that NRS 608.150 provides.

MICHAEL URBAN (Bricklayers International Trust Funds; Local 13 Trust Funds; Operating Engineers Trust Funds):
I am here on behalf of over a 100,000 members and their beneficiaries who do receive those benefits from trust funds. I have been enforcing NRS 608.150 for almost 30 years. The answer to the question is what has happened over those 30 years. Mr. Ferrari explained how this works and that contractors want to pay

their bills. *Nevada Revised Statute* 608.150 has a three-year statute of limitations. This is three years from the event.

More important is what we have been doing with projects such as the CityCenter in Las Vegas where large amounts of people are on a job site. The trust funds get a monthly contribution report from an employer that lists the employee names and their hours. It does not say what job the employees worked on, so we have no visibility on individual jobs hours worked. The people who know this information are the general contractors. We have told general contractors to keep track of the hours on their jobs and come to the trust funds to see if the hours have been properly reported. With their help, we can verify hours and payment. We can see if trust funds have been paid before the contractors pay their subcontractors. This has been happening on the new City Hall project, the Las Vegas Medical Center and numerous other large projects in Las Vegas. The general contractors are keeping track of the hours of their subcontractors so they know how much in contributions are due. This is exactly what the Nevada Supreme Court looked at just a year and a half ago in *Hartford Fire Ins. Co. v. Trustees of the Constr. Indus. and Laborers Health and Welfare Trust*, 125 Nev. 149, 208 P.3d 884 (2009). The Court got a directive from the Ninth Circuit Court of Appeals inquiring about a notice requirement under NRS 608.150. The Supreme Court said no. The Justices did not believe a notice requirement is the answer. Having the general contractor keeping track of hours on his or her job, reporting to the trust fund and comparing the hours with trust fund contributions and payments before they are made is the answer.

This is exactly how we have been working with the general contractors for the past 20 to 30 years. I get calls from general contractors ready to pay the subcontractors, and before they pay, they go through the trust funds. If necessary, we can do an audit, which is another function trust funds do at their own expense to ensure contributions are paid properly. The trust funds do not have the information. We are third-party beneficiaries of the contract. We do not sign union contracts; we have nothing to do with the bidding or dispatching of the workers. Our job is to collect the contributions and pay benefits. We do not have job site information unless it is provided to us by the general contractors. The general contractors are the best source of information. Going from 30 days to 60 days as proposed by the amendment, Exhibit C, will not get us there. An existing statute of limitations is three years from the day of the work. General contractors and trust funds have been working.

To answer the question from Mr. Miyahira, had Maui One Excavating contacted the trust funds and asked if his subcontractor paid contributions on his job and confirmed the hours worked, the trust fund could have verified whether those benefits had been paid and could have told the contractor yes or no to releasing the remaining funds. There are always unfortunate circumstances where a contractor has to pay twice. In most circumstances, the person who has the most information is the general contractor.

We have discussed the ability of a general contractor to require certified payroll records. Mr. Tanchek might have referenced that, and it can be done to ensure hours on a job are tracked and contributions are paid.

Chair Lee, to address your question about bonds, a bond is not always present. Many jobs do not have bonds that would cover these benefits. When they are not available, NRS 608.150 comes into play.

There is a benefit of the bargain involved. The general contractor has his agreement with the property owner or public entity for which he is working. The subcontractor has his agreement with the general contractor to perform work and get paid. The subcontractor will get the benefit of their bargain. If you pass Senate Bill 394 as proposed, the burden will fall on the workers and the trust funds and they will not get the benefit of their bargain. I understand going from 30 days to 60 days is a proposal, but the Nevada Supreme Court has not said it is necessary, and in application, it has not been required.

This is a communication statute. Over the last 30 years, we have developed a communication between general contractors and trust funds to make sure that workers are getting paid their wages and benefits. This includes prevailing wage jobs where my office or the compliance trusts of several trust funds on behalf of nonunion workers make wage and benefit claims to the Office of the Labor Commissioner. The problem is a communication issue. The general contractors have the primary information to solve these problems. If they communicate with the trust funds, the problems will be solved without the amendment, Exhibit C.

The bill and the amendment are not a solution. It is in practical application. The system has been working with minor exceptions. The legislative history of NRS 608.150 dates back to its passage when Hoover Dam was under construction. The statute was put in place to enforce on general contractors the obligation to ensure their workers were getting paid so mechanics liens would

not be placed on individual property owners' property. It was a supplement to mechanics liens, and it is how it has been operating for over 80 years.

KEVIN B. CHRISTENSEN (Glaziers, Painters and Floor Coverers Trust Funds):
I am here representing the Glaziers, Painters and Floor Coverers Trust Funds, but I am also the chair of the State Apprenticeship Council, and Mr. Tanchek is my boss. The State Apprenticeship Council runs into many of the training trust funds that have been briefly described today. These are the people who receive the fundamentals of each craft or trade. They submit standards to the State that are approved by the Council. The relevant question is: how are you going to fund the training? Typical of that is trust funds. This is for the organized labor portion of training programs and open shop contractors. They often have trust funds. They say they have a mechanism established; funds come into our trust fund, and we depend upon those to provide on-the-job training and classroom training. This approach that we have had for 80 years is approved by ERISA, which underlies the federal law authorizing the creation of trust funds. Many contractors have gone out of business. The general contractor fails to pay benefits, and the training funds dry up.

We favor the collection of compensation in wages or benefits. Four or five statutes include the priority to labor. One is the statutory liens process, NRS 108. The labor priority requires wages and benefits to be paid first. *Nevada Revised Statute* 624, which is the Contractors' bond statute, has a labor priority, requiring labor claims to be paid first. State legislation for apprenticeship training in *Nevada Revised Statute* 610 gives labor priorities about wages and benefits, requiring workers to receive a reasonable wage. The Council looks at the numbers to ensure that the workers who build the infrastructure of the State are receiving a fair wage and benefits. Finally, NRS 608.150 is key. We have been utilizing that remedy for 30 years, and it has worked.

A case involving Embassy Glass is a good example of showing how NRS 608.150 successfully works. About three years ago, Embassy Glass had a dozen contracts which included many of the larger projects in Las Vegas. Over $6 million in unpaid contributions accrued. Through the use of NRS 608.150, an excess of $6 million was collected through the cooperation of the general contractors. They contacted our office and asked what they could do to ensure that the projects could be completed without residual liability. One additional tool utilized is joint checks. General contractors have the information and on-site

superintendents who track employee hours. By collating the information and providing that to the trusts, we take care of the issue through a joint check.

Most trust funds are on a three-year audit track. They track the three-year statute. It is an expensive, sophisticated audit process. Also, most trust funds have formed contract compliance trusts. These trusts have people who have the responsibility to track projects. Trust funds have a constant audit program and have contract compliance people contact general contractors and subcontractors to ensure that the reports and the payments are made. The trust funds are doing their part.

Any burden imposed on the Taft-Hartley trust funds may be preemptive of ERISA. There are resolutions to the problem. The bill's language does not get us where we want to be because the burden imposed on the trust funds is additional reporting and associated expenses. If they are doing this through the contract compliance trust, it is not required. I am also concerned about a reverse discrimination issue. Nevada is a right-to-work state. The government cannot compel anyone to be a member of a union. This creates a suspect classification. It is not that different from race, sex or national origin discrimination. This bill pinpoints a segment of the working community which is affiliated with organized labor and their trust funds and says they have additional burdens. This is not fair, and it might not be legal.

We have concern over five primary benefits: first, retirement benefits; second, welfare benefits for health and accident coverage; third, training benefits that allow workers to learn their trade; and fourth, safety training. This is a creation of the Legislature. The Legislature has required the Occupational Safety and Health Administration (OSHA) 10 and the OSHA 30 training. Vacation funds are the fifth benefit of concern. They are taxed wages that have been withheld from a check. These come through a trust fund and are remitted every six months. The State ends up paying when the benefits are not paid. If a person does not receive their retirement benefits, the State welfare rolls increase. If a person does not receive health coverage, the State welfare programs are taxed. If we do not have trained craftsmen to build Nevada, the product suffers. If we do not have safety training, OSHA 10 and OSHA 30 legislation will fail. If a person does not receive vacation benefits, the excitement planned for his or her family will be torpedoed.

CHAIR LEE:
This is a notification issue. *Nevada Revised Statute* 608.150 has a three-year statute of limitations. Why is the statute set at three years—not at two—for trust funds to collect their money? Would you not want to move quicker to catch the people going out of business?

MR. CHRISTENSEN:
The resources in a trust fund are limited. Federal law requires the funds to be primarily for the benefit of the worker. A limited portion of those funds are allocated for audits. The audits can cost as much as $10,000. They are looking at time cards, compensation records and check registers. Typically, we find errors and not intentional misreporting or failure to report; but at times, there is an intentional failure to report. The three-year cycle was established to ensure that relatively close to the due date, we will know. Contract compliance trusts are reducing risks by having an exchange of information with general contractors and subcontractors.

CHAIR LEE:
What can trust funds do to ensure that general contractors know of payment problems in a more timely manner? Should they come into a trust office, review and get a release? I want to prevent trust funds from coming back to a general contractor three years after a job.

MR. URBAN:
Communication is the answer. The trust funds are willing to work with general contractors to bring the three-year period to a finite period, and we often accomplish this end. For example, with the CityCenter project, when a phase of the project was completed, the general contractors came to us, listed the subcontractors and their hours; we verified the hours with payroll records, and that portion of the project was done with a release given on all the NRS 608 claims. The general contractors paid their contribution amounts into the trust fund, and the balance went to the general contractors' subcontractors.

Here is another example regarding a recent CityCenter project. A general contractor was owed millions of dollars, but he had a delinquent subcontractor who had not paid the Bricklayers Trust Funds. We used the certified payroll records to determine the money owed by the subcontractor. By working with the general contractor, we took that amount of money and put it aside in a joint account until we finished the fight with the subcontractor. We knew the money

amount, and we were able to give the general contractor his release so he could be paid the millions of dollars he was owed. It comes back to communication. If the general contractor is requiring certified payroll records that he can show to the trust funds, we can work together to have people paid on time, releases made and the general contractor paid by the property owner or municipality without a lien claim or a NRS 608 claim down the road.

I like the requirement of a certified payroll record. Put the burden on the general contractor to the subcontractor. Make the subcontractor keep track of his or her hours. The general contractor can verify the hours with a certified payroll record, and then go to the trust fund and get a release.

The three-year statute of limitations in 608.150 is a finite three-year period. It is two years for wages and three years for contributions unless fraud is involved.

CHAIR LEE:
Mr. Urban, the contractor putting the subcontractor's name and the name of the job would make the trust funds job easier.

MR. URBAN:
Yes. We receive a report with a bunch of names and the number of total hours. Some of the contractors work five or six jobs and we do not know where the hours are worked. If general contractors came to us with information saying they have this many people working on my job this month for this many hours, we could check that with the report and verify proper payment.

CHAIR LEE:
General contractors do not want trust funds to go under because the responsibilities will roll back to them. General contractors also pay their subcontractors. How about having the subcontractors meet with you instead of the general contractors and make that a condition of payment? The subcontractor meets with the trust fund, verifies information and brings the letter back to the general contractor. Could the trust funds move in a timely manner?

MR. URBAN:
This is how a joint check works on a regular basis. The general contractors go to the trust fund, say they are ready to pay a progress payment to their subcontractors and check to ensure the subcontractors have paid. We get

together with the subcontractors, look at their records and verify their payments. If they are cleared, we will release the progress payment as long as we get a joint check to cover the general contractors' contributions. It works.

CHAIR LEE:
I want to place the burden on the subcontractor. Subcontractors get into the business, and they get bonds. They should be running their businesses responsibly and making their payments. I am a subcontractor. If staying in business means I must meet with the trust funds, I will do it. If I do not have to, I will pass the responsibility onto someone else. We need to work on this bill so that the people who work in the State and the contractors who employ them are not held responsible for subcontractors who do not do their jobs.

The hearing on Senate Bill 394 is closed, and I am opening the hearing on S.B. 487.

SENATE BILL 487: Revises provisions relating to the award of a contract for a public work to a specialty contractor. (BDR 28-394)

MARGI A. GREIN (Executive Officer, State Contractors' Board):
The State Contractors' Board supports Senate Bill 487 with the amendment that the Board and the Subcontractor Legislative Coalition has proposed (Exhibit E). Written testimony has been submitted (Exhibit F).

CHAIR LEE:
Can you further explain this bill?

RICHARD PEEL (Subcontractor Legislative Coalition):
This bill will solve the inconsistency that exists between NRS 338 and NRS 624. *Nevada Revised Statutes* 338.139 and 338.148 apply to specific types of public works projects where a public body can contract directly with a specialty contractor who can act in the capacity as a prime contractor to do certain types of work. There are conditions under statute. The specialty contractor has to perform the majority of the work by way of his or her own license. If he or she is to subcontract work but does not have a license to perform, he or she has to subcontract it to a licensed subcontractor. The statute also says that the particular public work cannot be a part of a larger public work. We are addressing small public works not designed for the benefit to bringing in a prime contractor. It usually addresses work with heating,

ventilation and air conditioning (HVAC) and plumbing. The concern of the State Contractors' Board is NRS 624.620 subsection 4 wherein subcontractors shall not perform or subcontract for work that is more than incidental and supplemental to their license scope. It is feasible under the statute that this could happen. We have created a mechanism with the bill; the amendment in Exhibit E would allow the specialty contractor to continue to contract with a public body, but make sure the protections are provided for the public.

There are three different scenarios. The public body awarding the contract must determine whether the specialty contractor scope involves more than incidental and supplemental work outside that scope. If so, it must be determined if a certification has been issued by the Contractors' Board or whether the specialty contractor also has a Class B license. Once this is done, the body can proceed with the contract. If the specialty contractor does not have certification or a Class B license or if the contract involves more than incidental supplemental work, the specialty contractor cannot do the contract. This takes care of the concern of the Contractors' Board and takes care of the subcontractors. This is work they have been doing for the last 12 years.

CHAIR LEE:
We are addressing a project on a State property. Are you saying a landscape contractor can do the landscape work but cannot pour the concrete, or are you addressing a bigger problem?

MR. PEEL:
This is a bigger problem. From the Board's perspective, subcontractors have engaged in contracting for electrical and framing. They may hold an HVAC Class C-21 license, but they are contracting for a lot more than what is considered incidental and supplemental.

CHAIR LEE:
Are they getting State licensed contractors to do the work for them?

MR. PEEL:
In most circumstances, yes. The fix we have worked on since May 2010 and agreed to is S.B. 487. It allows specialty contractors to get certified where they have performed prior public works projects using two or more unrelated crafts or trades. The Contractors' Board would certify them so they can act in that capacity and contract for work that is more than incidental or supplemental.

They can get a Class B license. If they get the Class B license, nothing prohibits them from contracting under their Class C license as specialty contractors where they are acting in the capacity of prime contractors.

CHAIR LEE:
If they have a Class C license and you want them to get a Class B license, they would take the general contractor's license examination.

MR. PEEL:
Correct. It would be a full Class B or Class B2 license depending on what they choose, but it would allow them to contract in that capacity.

CHAIR LEE:
If I hold a Class C license for landscaping and as the specialty contractor I hire a C-licensed contractor for plumbing, I do not need to know his trade. Public works inspectors ensure the work is done properly. If they are satisfied with the subcontractor and with me, the specialty contractor, why are you not satisfied?

MR. PEEL:
We are satisfied with the law, but the Contractors' Board has a concern. We are trying to work with the Board to resolve their concern.

CHAIR LEE:
I do not understand the Board's concern.

BRUCE ROBB (State Contractors' Board):
We do not want to see one of our licensees face discipline when working for the Clark County School District (CCSD) on a project which was more than incidental or supplemental to his or her specialty contract. We have worked with Mr. Peel and CCSD to come up with language so the public can be confident that the licensee who gets the public works job is qualified and will not fight with us. The Clark County School District can hire the contractor and know that there will be no issues with the Contractors' Board. In this bill, we have a regulation proposal where the Board will identify the specialty contractor and show that he or she is qualified to do the project.

CHAIR LEE:
What is your definition of "specialty contractor"?

MR. ROBB:
A "specialty contractor" is a contractor who is not a Class A, Class AB or Class B licensee.

CHAIR LEE:
Is this bill going to stop Class C licensees from getting public works jobs?

MR. ROBB:
No. The bill will allow specialty contractors to get public works projects if they are qualified.

CHAIR LEE:
If they hire another Class C contractor, will this affect them?

MR. ROBB:
No. The Class C license holders are authorized to do the work in the bill as amended.

CHAIR LEE:
The Class C licensees will not have to get a Class B License?

MR. ROBB:
No, it is an option.

SENATOR SETTELMEYER:
Section 1, subsection 3, paragraph (b) says, "The specialty contractor has successfully completed at least one public work in the State of Nevada ... ." Can you explain this? If someone can get a job why should they be excluded? If they have to have completed one job, will this prevent new individuals from getting into the business?

MR. ROBB:
This addresses those cases where a specialty contractor is acting like the prime contractor on the project. We want the specialty contractor to show the Contractors' Board that it has previously acted as a prime on a project. This allows us to know the specialty contractor has experience and has successfully completed a public works project to satisfaction.

SENATOR SETTELMEYER:
Your response answers my question but does not address my concern. People get into businesses and try to get things going. This bill will prevent them.

MR. PEEL:
There is a disagreement as to what happened in the Seventy-first Session. We have language drafted into NRS 338.139 and NRS 338.148 that has stood for the proposition that a specialty contractor could contract directly with a public body under the three conditions I discussed. The intent of S.B. 487 is to resolve the discrepancy irrespective of how it came about. We represent all the HVACs, plumbers and a number of labor groups in Clark County who support this bill as amended. The bill is fair, and it addresses the concern of the Contractors' Board.

Section 1, subsection 1, paragraph (a) makes it clear that it is the public body or its authorized representative who must determine whether the majority of the work to be performed by the specialty contractor is work for which the specialty contractor is licensed. It would be subject to the public work not being part of a larger public work.

Section 1, subsection 2 addresses when a contract requires a specialty contractor to perform work outside of his specialty contractor's license. It requires the public body to determine whether the out-of-scope work is incidental and supplemental to the performance of his licensed scope of work, whether the Contractors' Board has issued a certification to the specialty contractor or whether the specialty contractor is also licensed as a general building contractor.

Section 1, subsection 3 allows the Contractors' Board to issue to a qualified specialty contractor and under the conditions set forth, a certification which allows the specialty contractor to contract for work outside of his scope that is more than incidental and supplemental to his license scope. The certification becomes the ticket to allow the specialty contractor to go forward and do these projects, acting in the capacity of a prime contractor.

Section 1, subsection 5 is amended by Exhibit E. It allows a specialty contractor who is also licensed as a general building contractor to self-perform work under his general building license, specifically under subsection 3 of NRS 624.215. It discusses a general building contractor and says these contractors can

self-perform work except for the four protected trades—plumbing, HVAC, fire protection and electrical—without a license. They could self-perform everything else with a Class B license.

Section 1, subsection 6 of the bill requires the Contractors' Board to adopt regulations prescribing the procedure utilized for the purposes of certification.

Section 2 in the bill pertains to NRS 338.148. The changes made to NRS 338.139 are made to NRS 338.148 as well.

Section 4 of the amendment, Exhibit E, states that the act becomes effective for adopting regulations upon passage and for other purposes on January 1, 2012. This will give the Contractors' Board an opportunity to hold hearings and vet the regulations necessary for the certification process. Once the process is complete—no later than January 1, 2012—the bill would go into effect.

SENATOR HARDY:
Section 1, subsection 3 grandfathers in the specialty contractors who have completed one public work in the State and precludes new specialty contractors unless they qualify under section 1, subsection 5 by obtaining a Class B license for general contracting.

MR. PEEL:
Correct. We cannot let the practice continue indefinitely for public works where there is a concern on the part of the Contractors' Board. The two statutory provisions were amended in 2001, whereas the practice involving specialty contractors went on before those amendments. Section 1, subsection 3 would grandfather specialty contractors who apply for a certification, who have not worked in at least one of these types of contracts would have to obtain a Class B license to contract for more than what their license allows, not taking into consideration incidental and supplemental work.

CHAIR LEE:
A Class C licensee gets a public work. In the future, he will have to hire a Class B licensee as his subcontractor to oversee portions of the job that do not fall within his scope.

MR. PEEL:
No. A subcontractor cannot subcontract to a Class B license holder. The subcontractor who contemplates submitting a bid for a public work that involves more than his or her license scope has to obtain the certification; if he or she does not qualify, he or she has to get a Class B license in addition to the Class C license. He or she would be contracting under a Class C license but because the subcontractor also has the Class B license, he or she will be entitled to self-perform work that a Class B licensee is entitled to self-perform. He or she would be free to subcontract a licensed contractor's work that is outside of his or her scope.

CHAIR LEE:
Will the contractor having a Class C license with the years of experience continue to be awarded public work projects under the new rule?

MR. PEEL:
It is the Committee's pleasure to change what we have done. But what we have before you states if contractors with Class C licenses demonstrate the ability to contract successfully with two or more unrelated trades or crafts for this type of public work, the Contractors' Board determines that indicates enough of their capabilities and the public is protected, so we will certify them. We cannot allow every Class C licensee to be grandfathered in because some will not be qualified. The Contractors' Board's perspective is to protect the public.

CHAIR LEE:
The hearing is closed on S.B. 487, and I am opening the hearing on S.B. 400.

SENATE BILL 400: Establishes a process by which a state agency may obtain certain information in county records at no charge for the purpose of assisting the economic development and population research of this State. (BDR 20-1143)

SENATOR BEN KIECKHEFER (Washoe County Senatorial District No. 4):
I am here on behalf of the Senate Select Committee on Economic Growth and Employment. I brought the idea of Senate Bill 400 forward to provide a mechanism for value-added benefit to economic development efforts.

The Center for Regional Studies provides resources to businesses looking to relocate or expand in Nevada. The Center does baseline mapping and data overlay. Nevada does not have a statewide parcel map that can be utilized for businesses. This is a shortcoming in our effort to lure economic development. Senate Bill 400 would provide a mechanism for the Center for Regional Studies to get the resources it needs to create the statewide land base for enhanced economic development efforts through the Commission on Economic Development (CED), our local governments and by individual economic development efforts.

There is a mock-up amendment (Exhibit G). Each county assessor maintains parcel map data for the county. It is important to have these individual parcel maps digitized to create the statewide resource for baseline mapping and data overlay. The amendment allows the State Demographer to collect a digital parcel database annually from each county assessor. The parcel databases are public documents but are difficult to collect. The Center for Regional Studies has an ongoing relationship with the State Demographer, so it is a good mechanism to transmit data. The State agencies can request the data from the Demographer for specific purposes. We envision the data to be utilized for the enhancement of economic development efforts.

BRIAN BONNENFANT (Project Manager, Center for Regional Studies, College of Business, University of Nevada, Reno; Office of the State Demographer, Nevada System of Higher Education):
The Center for Regional Studies assists the Office of the State Demographer with mapping, database and GIS support. Senate Bill 400 proposes a formal and uniform process to what is an informal, laborious and confusing process of collecting county assessor files and digital parcel bases from all jurisdictions by a centralized State agency. Written testimony has been submitted (Exhibit H).

The State Demographer needs these databases to provide population estimates to counties, cities and unincorporated towns on an annual basis. Every ten years, the population is benchmarked with the decennial census at the census block level. Through the decade after the census, it is the role of the State Demographer to estimate populations at the county, city and unincorporated town levels.

Every year, the Center for Regional Studies uses the assessors' data and the parcel bases to update demographics for every census block county by county.

In the year 2015, U.S. Census data from 2010 is five years old. We use the assessor data to get updated demographics at the census block level. This allows us to compare areas in Clark County, such as Summerlin versus Anthem Hills or Spanish Springs versus Damonte Ranch in Washoe County. We can also look at areas the State Demographer does not report on, such as Dayton Valley in Lyon County. We also use the assessor datasets on a parcel basis to map layers of information such as employment data, retail sale data, traffic counts, and residential and commercial construction data. The value-added data with the assessor data and the parcel bases is a sophisticated tool for economic development.

The proposed data collection does not put an unnecessary burden on the counties because the counties that do not possess and maintain digital parcel bases are not required to comply. For counties that do not maintain digital parcel bases, we will research funding opportunities to help them take their paper parcel maps and make them electronic through funding opportunities such as those from the Federal Emergency Management Agency. We see the process opening up a conduit with the counties. Information will flow back and forth between the counties in regard to their limitations and needed resources to help build the statewide land base.

There are additional benefits. Information we can produce from the datasets is largely bought from third-party commercial vendors outside the State that do rough estimating. Many State and local agencies buy expensive data that is not accurate. The vendors use inferior modeling routines based on county growth rates. They do not have access to the assessor parcel data down to a parcel we would use.

Parcel datasets provide rich and accurate information and can be used by various grant writers. It provided Washoe County the Neighborhood Stabilization Program and allowed us to get $21 million for the Reno Housing Authority (RHA). We had the information in-house and we maintain it, allowing us to quickly write the grant for RHA.

The bill also requires that State agencies that access information report back to the CED and to the counties on how they applied information. This enhances communication between the counties, the Office of the State Demographer and CED on how the information is used. For example, if Lander County maps

employment data, it can come to us and get county comparisons because of the reporting.

CHAIR LEE:
Will the Center for Regional Studies sell the data for profit?

MR. BONNENFANT:
No. We do not buy third-party data, and we will not sell the collected data. The challenge is that many agencies use third-party commercial data. The option is to purchase this available data or develop the data internally using much more accurate information. We use local government information for our datasets.

CHAIR LEE:
How does it work if the Office of the State Demographer is called for data?

MR. BONNENFANT:
The Office charges, and there is a significant lag time for receiving the information.

CHAIR LEE:
How much does the Office charge?

MR. BONNENFANT:
The assessor data is about $300 per request, and the digital parcel base runs between $2,500 and $5,000 per county.

CHAIR LEE:
The idea behind this bill is to get information from the counties annually?

MR. BONNEFANT:
The State Demographer provides population estimates every year for the Governor's certification series to allocate taxable sales.

CHAIR LEE:
You made a ten-year reference in your testimony.

MR. BONNEFANT:
The ten-year reference was to the U.S. Census data from the decennial census. We need updated information in between the Census to help us update

demographics. By providing our own data, we can tell Dayton Valley what its population is in 2015 rather than wait until 2020 for the next U.S. Census.

WES HENDERSON (Executive Director, Nevada Association of Counties):
We have minor concerns with S.B. 400. We want to ensure that the language in the bill says the counties can apply. We have concern that smaller counties might not be able to comply with the requirements.

SENATOR SETTELMEYER:
Would you like a monetary limit on this legislation? I generally do not vote for unfunded mandates passed onto the counties. Do you have a concern?

MR. HENDERSON:
Our concern is with the ability of the smaller counties to comply. There might be a cost of providing the data if there is a data collection cost. If they have the information, it should not be a burden for the counties.

LINDSAY ANDERSON (Director, Business Development and Research, Division of Economic Development, Commission on Economic Development):
We are in support of S.B. 400. Having access to accurate and timely data for companies interested in relocating to Nevada is paramount. Information about the market availability or other information that can be provided by this value-added service is critical. One point of contact where we can get information would be helpful and allow us to respond to queries in a timely manner. The application of our Community Development Block Grant program could use the data to enhance the ability to apply for block grants from the federal government.

CHAIR LEE:
The hearing is closed on S.B. 400. We will move into a work session. The first bill is S.B. 392. This bill creates the Nevada Advisory Committee on Intergovernmental relations as a statutory committee.

SENATE BILL 392: Creates the Nevada Advisory Committee on Intergovernmental Relations as a statutory committee. (BDR 19-169)

MICHAEL STEWART (Policy Analyst):
Senate Bill 392 creates the Nevada Advisory Committee on Intergovernmental Relations as a statutory committee consisting of 13 members representing the

Nevada Legislature, local governments and the Executive Branch of the State. This legislation was a recommendation by the Legislative Commission's Committee to Study Powers Delegated to Local Governments, and Chair Lee chaired this Committee. There were no amendments (Exhibit I).

CHAIR LEE:
This legislation will take this interim Committee and make it a statutory Committee. The Committee worked well and recommended this legislation to allow representatives of the Legislature, local governments and the Executive Branch to continue meeting on issues.

SENATOR HARDY MOVED TO DO PASS S.B. 392.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR LEE:
The second bill in work session is S.B. 393.

SENATE BILL 393: Revises provisions relating to annexation of territory by certain unincorporated towns. (BDR 20-228)

MR. STEWART:
Senate Bill 393 provides that when an unincorporated town in Clark County annexes territory, the territory annexed and its inhabitants and property are subject, beginning on the fiscal year following the effective date of annexation, to all debts, laws, ordinances and regulations in force in the annexing town. The territory and inhabitants are entitled to the same privileges and benefits as other parts of the annexing unincorporated town. There was one amendment (Exhibit J).

The amendment discussed relates to the term "municipal taxes" set forth in the bill on page 2, line 2. The amendment would add a definition of "municipal taxes" for the purposes of S.B. 393 to provide that such taxes are those associated with the annexing unincorporated town.

CHAIR LEE:
Land was annexed and the library district money did not move with it. Seeing no further discussion, I will call for a motion.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED S.B. 393.

SENATOR SETTELMEYER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR LEE:
The third work session bill is S.B. 396.

SENATE BILL 396: Changes the governmental entity entrusted to administer and distribute the additional funds generated by the special license plates for the support of the natural environment of the Mount Charleston area. (BDR 43-919)

MR. STEWART:
Senate Bill 396 changes the governmental entity entrusted to administer and distribute additional funds generated by the sale of special license plates for the support of the natural environment of Mount Charleston. Under the bill, the funds would be administered by the Mount Charleston Town Advisory Board rather than by the Division of State Lands. The bill does not alter the permissible uses of the funds generated to support the natural environment of Mount Charleston. There are two amendments (Exhibit K).

The first amendment was proposed by Clark County to shift the administrative authority set forth in the bill over the funds generated from the sale of Mount Charleston special license plates to the Board of County Commissioners of Clark County rather than to the Mount Charleston Town Advisory Board. Testimony indicated that since the Mount Charleston Town Advisory Board serves in an advisory capacity to the Board of Commissioners, it might be more appropriate to provide such fund administration to the Clark County Board of Commissioners. The amendment in Exhibit K stipulates that the funds generated

shall be distributed as set forth in Nevada law by the Commission "with the advice of the Mount Charleston Town Advisory Board."

The second amendment was brought forth by Shaaron Netherton of Friends of Nevada Wilderness who expressed concern about the status of current and existing projects funded or about to be funded by the license plate proceeds. Clark County Commissioner Larry Brown shared the same concern and said the County does not want to impact or impede outstanding reimbursements for projects underway or impact recommendations for awards being considered.

The proposed amendment would clarify that ongoing grant agreements associated with the Mount Charleston license plate program shall continue to be processed and administered by the Division of State Lands. Current projects and grant awards would be completed under the current administrative structure. New applications and awards occurring after passage and approval of this bill would be administered as set forth in the first amendment by the Clark County Board of Commissioners, Exhibit K.

SENATOR MANENDO:
To address license plates in general, the City of Las Vegas has a plate. Does the Las Vegas City Council control those funds? License plate funds are not typically controlled by a municipality. Is this new territory?

CHAIR LEE:
In regard to the Mount Charleston plate, the Division of State Lands administers the fund for purposes of ecology at Mount Charleston. The Mount Charleston Town Advisory Board wanted more control over the money, so the fund will shift to the Clark County Board of Commissioners, and the Advisory Board will provide the Commission with recommendations on how to use the money.

SENATOR MANENDO:
License plate funds typically go to the people who brought the plate forward, correct?

CHAIR LEE:
The Mount Charleston Advisory Board originated this bill, but the Board was unable to provide the needed structure. The Clark County Board of Commissioners wants to help the Advisory Board and be the administrating agency.

ROBERT. A. OSTROVSKY (City of Las Vegas):
To answer Senator Manendo's question regarding how the funds flow regarding the City of Las Vegas license plates, there is the Historic Preservation Commission. The money is set aside for historic preservation projects within Las Vegas city limits. The Preservation Commission members are appointed by the City Council, giving the Council ultimate authority. The Preservation Commission receives the funding and expends the money with the support of City staff. In most cases, funds from license plates go to nonprofit groups.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED S.B. 396.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR LEE:
The fourth bill in work session is S.B. 439.

SENATE BILL 439: Makes various changes relating to fire protection. (BDR 42-1203)

MR. STEWART:
Senate Bill 439 merges the State Board of Fire Services and the Fire Service Standards and Training Committee and restructures the State Board of Fire Services to a ten-member board, of which one member, the State Fire Marshal, must serve in a nonvoting capacity. The restructured Board is charged with similar duties of the original State Board of Fire Services and shall also make recommendations to the State Fire Marshal and to the Legislature concerning necessary legislation in the fields of fire fighting and fire prevention. There are no amendments (Exhibit L).

CHAIR LEE:
Senate Bill 439 was flagged by Mark Krmpotic, Fiscal Analyst of the Senate Committee on Finance. If we pass this policy bill, I was asked to rerefer it to the Senate Committee on Finance for review.

SENATOR SETTELMEYER MOVED TO DO PASS AND REREFER S.B. 439 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR LEE:
The last bill in work session is S.B. 271.

SENATE BILL 271: Provides for withdrawal of the State of Nevada from the Tahoe Regional Planning Compact. (BDR 22-988)

MR. STEWART:
Senate Bill 271 provides for the withdrawal of the State of Nevada from the Tahoe Regional Planning Compact (Exhibit M). There are no amendments.

CHAIR LEE:
This bill is moving forward and discussions are taking place here and among our U.S. Representatives in Washington, D.C. Amendments are getting drafted. If the bill passes out of Committee, we want to amend S.B. 271 before it reaches the Assembly.

SENATOR HARDY MOVED TO DO PASS S.B. 271.

SENATOR MANENDO SECONDED THE MOTION.

SENATOR SCHNEIDER:
I understand the impetus to move this bill, but we have a Committee meeting on Friday morning, the day of the committee passage deadline. If talks are taking place with representatives in Washington, D.C., I encourage this Committee to wait until Friday to process this bill. If not, I will be voting no on this bill. We will be cutting off our relationship with the state of California. I understand our frustration with California, but the state has a new governor. The Tahoe Regional Planning Compact worked for years and worked under California's returning governor, Governor Jerry Brown.

California has two-thirds of Lake Tahoe, and they have the lead. The state has driven the auto industry for the world. When California says it wants cars to meet certain gas mileage and safety standards, the world listens and changes are implemented. Porsche had to change because they sell more cars in California than the rest of the world combined. California writes the environmental laws for our Country. Recently, it had legislation placed on the state ballot which would have lessened air quality standards, and the citizens emphatically said no. Californians drive the Western grid. They only want to buy renewable energy. This is why Nevada is emphasizing renewable energy. Nevada is frustrated and mad at California, but this is no reason to leave the Compact. When the wind blows from the west to the east, it blows on us. If a wildfire starts on the west side of the Lake Tahoe Basin, it will burn the entire Basin. The fire will not stop at the State border. We have to remain in the Compact and work smarter and harder with California. We also need to get our Congressional Delegation involved with California's congressional delegation.

CHAIR LEE:
I am not going to hear this bill twice. Nevada does not need to acquiesce its state rights to California. California is not completely responsible for our discomfort, and we share the same environmental concerns. It was clear in the bill hearing that the League to Save Lake Tahoe controls Lake Tahoe. The two state governments and the League need to communicate responsibilities and what the compliance needs will be for Lake Tahoe.

THE MOTION CARRIED. (SENATOR SCHNEIDER VOTED NO.)

* * * * *

CHAIR LEE:
Seeing no further business, the Committee on Senate Government Affairs is adjourned at 10:31 a.m.

RESPECTFULLY SUBMITTED:

Cynthia Ross,
Committee Secretary

APPROVED BY:

Senator John J. Lee, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 394	C	Chris Ferrari	Proposed Amendment
S.B. 394	D	Michael Tanchek	Proposed Amendment
S.B. 487	E	Margi A. Grein	Proposed Amendment
S.B. 487	F	Margi A. Grein	Testimony
S.B. 400	G	Senator Ben Kieckhefer	Proposed Amendment
S.B. 400	H	Brian Bonnenfant	Testimony
S.B. 392	I	Michael Stewart	Work Session Document
S.B. 393	J	Michael Stewart	Work Session Document
S.B. 396	K	Michael Stewart	Work Session Document
S.B. 439	L	Michael Stewart	Work Session Document
S.B. 271	M	Michael Stewart	Work Session Document