MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

Seventy-Seventh Session
June 2, 2013

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 1:24 p.m. on Sunday, June 2, 2013, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at nelis.leg.state.nv.us/77th2013. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman David P. Bobzien, Chairman
Assemblywoman Marilyn K. Kirkpatrick, Vice Chairwoman
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblywoman Olivia Diaz
Assemblyman John Ellison
Assemblyman Jason Frierson
Assemblyman Tom Grady
Assemblyman Ira Hansen
Assemblyman Cresent Hardy
Assemblyman James W. Healey
Assemblyman William C. Horne
Assemblyman Pete Livermore
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Pat Hickey, Washoe County Assembly District No. 25
Senator Justin Jones, Clark County Senatorial District No. 9

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Matt Mundy, Committee Counsel
Leslie Danihel, Committee Manager
Julie Kellen, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Donald Lomoljo, Utilities Hearings Officer, Public Utilities Commission
Daniel Jacobsen, Technical Staff Manager, Bureau of Consumer Protection, Office of the Attorney General
Terry Care, representing Leading Builders of America
Joshua J. Hicks, representing Coalition for Fairness in Construction
Leon Mead, Board Member, Associated General Contractors of America, Las Vegas Chapter; National Construction Alliance
Craig Marquiz, representing Coalition for Fairness in Construction; Nevada Subcontractors Association
John Griffin, representing Nevada Justice Association
Charles Dee Hopper, representing Nevada Justice Association
Barbara Deavers, Private Citizen, Reno, Nevada
Debra Gallo, Director, Government and State Regulatory Affairs, Southwest Gas Corporation
Randi Thompson, State Director, National Federation of Independent Business

Chairman Bobzien:
[Roll was called.] We may have people coming in and out during the hearings because there are bill presentations in other meetings. I have one to make in a little while. We will open our work session and begin with Senate Bill 479.

Senate Bill 479: Revises provisions governing credits against the insurance premium tax. (BDR 57-1200)

Kelly Richard, Committee Policy Analyst:
Senate Bill 479 was heard in Committee on May 29, 2013. The bill authorizes an insurer to carry forward credits against the premium tax paid for its policies of industrial insurance. [Read from work session document (Exhibit C).]

Chairman Bobzien:
This was a very recent hearing. What is the pleasure of the Committee?

ASSEMBLYMAN DALY MOVED TO DO PASS SENATE BILL 479.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN ELLISON VOTED NO.)

We will move to Senate Bill 123 (2nd Reprint).

Senate Bill 123 (2nd Reprint): Revises provisions relating to energy. (BDR 58-106)

Kelly Richard, Committee Policy Analyst:
Senate Bill 123 (2nd Reprint) was heard in Committee on May 27, 2013. It was sponsored by Senator Atkinson and Mr. Bobzien. The bill requires certain electric utilities to file with the Public Utilities Commission (PUC) a comprehensive plan for emissions reductions from coal-fired electric generating plants and for the replacement of such plants with increased capacity from renewable energy facilities and other electric generating plants. [Read from work session document (Exhibit D).]

Chairman Bobzien:
Certainly, this bill has been the subject of a lot of work, focus, and attention. I think we can have a bit of a discussion before we go ahead. I want to kick it off by saying I think it is important to remember the public policy goal we are trying to achieve, and that is the retirement of coal assets. With all of the moving parts with this bill, I hope the emissions reductions plan gets moving very quickly. That is where the biggest win is here, and that is what I want to see happen quickly so we can move forward. Members of the public may be aware of a bill we are presenting shortly in the Senate Committee on Commerce, Labor, and Energy. That is Assembly Bill 428 (1st Reprint), which is now including a Legislative Committee on Energy.

As it moves forward, that committee will be watching all of the moving parts with this bill, S.B. 123 (R2). With that, we will open it up to polite onversation. Mr. Hansen, do you have an amendment you wish to present?

Assemblyman Hansen:
This has been a very interesting bill to be involved in. I have learned a great deal. For the policy side of it, I have no problem with the idea that we should slowly be moving away from coal. One of your goals was to see we had a diversification of fuels to help ensure the ratepayers were not stuck with one, and that is still a concern. The bigger concern was between NV Energy and the ratepayer, where the only real protection for the rank-and-file people who pay the bills is the PUC. I met with the Consumer Advocate. I met the staff at the PUC. They were very concerned. They felt the hearings previous to our first hearing were inadequate and the needs of the ratepayers have not been addressed in this bill. I met with several other people who raised substantial, legitimate concerns. After meeting with the staff, I requested these amendments, which are based on the recommendations from the PUC. I will bring up one of the staff members to help with the reasoning behind what they are trying to do in this bill.

As a policy for our state, if there is any question or doubt as to which side we should come down on when it comes to the ratepayers versus an energy company that is a monopoly, I think we should always land on the side of caution in protecting the consumer. That is what the amendment is trying to ensure.

Chairman Bobzien:
I will invite up Mr. Lomoljo. I think it is important to note the PUC staff have definitely been a part of this process. I appreciated talking with them early on when the NVision concept was rolled out. I know that on the Senate side, the work that was done on this bill and some of the changes that were made were in response to concerns that PUC staff raised early on. I also think it is important to note that the Commission has not taken a position on this current reprint of the bill. As such, this is neutral testimony at this point. Certainly, clarification on technical concerns and issues you want to have addressed is appropriate.

Assemblyman Hansen:
I would point out that in the testimony in our first hearing, they also testified in neutral. They should be very comfortable coming before a committee like this to testify. Their job is to help protect the ratepayers. I think there has been a tremendous amount of pressure to try to keep them from being in front of a group like this. I would state that a United States Senator actually criticized them in public for daring to come and participate in neutral.

Chairman Bobzien:
Mr. Hansen, I appreciate that, but I think at this point we should go to technical concerns rather than the broader political considerations. Did you have specific things you want Mr. Lomoljo to walk through in your amendment? He is not technically presenting the amendment.

Assemblyman Hansen:
For the edification of the Committee, I think it would be wise because he is a person in the field who understands this. I am not. I am uncomfortable trying to explain the specifics of why the PUC staff would like to have these amendments.

Donald Lomoljo, Utilities Hearings Officer, Public Utilities Commission:
I want to be clear as to the genesis of the amendment. Mr. Hansen did invite Anne-Marie Cuneo and me to his office last Thursday to talk about S.B. 123 (R2). Mr. Hansen did express some concerns about the bill, and we listened to those concerns. He asked how those concerns could be addressed. We offered him several options. We were not involved in the actual drafting of this amendment. Mr. Hansen showed us the amendment last week, and I did pull up the work session document this morning (Exhibit D). This is not a staff amendment. We addressed Mr. Hansen's concerns and offered him options on how to address those concerns.

I can speak to the effect of Mr. Hansen's amendment. If you look at the changed language that he suggests on page 3, section 7, subsection 2, paragraphs (c) and (d), and also in section 7, subsection 3, the effect there is to remove the reference to the 550 megawatts of replacement capacity and related facilities. Also, the hedging component would be related to any natural gas buildout. On the next page, there is a continuation of deletions regarding the 550 megawatts of replacement capacity. In section 9, the deletion and addition of language there would result in Commission discretion over carrying charges, which is interest that would be included in any regulatory asset that would result from this bill.

On page 15 of the proposed amendment, there is another proposed deletion, and that would delete section 17, subsection 6, which would relate to the 550 megawatts of replacement capacity. The effect of the deletions regarding replacement capacity would be to place any and all decisions regarding any necessary replacement capacity within the existing integrated resource planning process as it would normally be taken up.

Chairman Bobzien:
Mr. Hansen, do you want to give us the policy intent by doing this? That is certainly the technical walk-through. Can you sum up what you believe this amendment achieves?

Assemblyman Hansen:
I think the amendment achieves keeping the PUC in the regulatory position they need to be in and makes sure they have the authority to protect the ratepayers as this process moves forward. My understanding is this is somewhere between a $750 million and $1 billion decision, and for us as legislators, with our very limited time and understanding of these issues, to make these kinds of decisions and remove these sorts of decisions from the people who have the staff, understanding, and capability to do it—as well as the mandate to make sure the ratepayers are protected—that is my concern. After meeting with them, that is the purpose of these deletions. They felt if these areas were removed, this bill would allow the policy of removing coal to go forward and allow the needed additions to energy plants, but it would also make sure, in the process, the ratepayers would be paramount in the decision-making process. That is the purpose of this amendment.

Chairman Bobzien:
While we have PUC staff, and making it clear this is Mr. Hansen's amendment and not the PUC's, do we have any questions for Mr. Lomoljo?

Assemblywoman Carlton:
I did not see this as removing the PUC. I think they will still be involved. It may not be at the same level. I think the biggest concerns we heard were not from the PUC but from the Consumer Advocate. It was very appropriate the Consumer Advocate would come to us and share the concerns so we get all sides of this story. I think the PUC as the regulator has been very fair and honest in answering all of the direct questions we have asked them. I would never want to put a regulator in a position of either support or opposition, because their job is to implement the policy this Committee sees is best for the state and our constituents. I appreciate the hard work they have done and the position they have been put in on this. It can be very difficult. I am glad the Consumer Advocate's office came forward and shared their concerns.

I also know, as we move forward in this new era of energy, things are going to have to be done differently. One of the things that I heard was, "Well, if you just push this off for a couple of years, there should not be an issue." It takes two to three years to get one of these things geared up and ready to go through the whole regulatory process. If the energy is not needed now, it will definitely be needed in the next two to three years. If we do not act proactively to do something about this, our people will be left holding the bag the way they were in the Enron power crisis of 2000-2001. The last thing I want to do is have that hit our constituents again, because we were held hostage on the spot market for electricity.

It is going to be a new world, and people are a little apprehensive of this, but I think enough protections have been put in with the legislative oversight committee and all of the other energy bills we have done. I think we have accomplished our mission on this. There are probably a few more things I would like to add, but I am not going to do that. I will leave it alone. I think we still have the oversight and involvement that will be needed to protect our constituents on this.

Chairman Bobzien:
Are there additional questions for Mr. Lomoljo while we have him at the table?

Assemblyman Hansen:
I do not have any more questions for him. The Consumer Advocate was involved in this, and I would like to get his opinion on this amendment, if it is okay.

Chairman Bobzien:
We can call up Mr. Jacobsen. Mr. Lomoljo, do you have any additional items you want to get on the record?

Donald Lomoljo:
I wanted to clarify the Commission's role in regulating utilities, and that is to balance the interests of shareholders and ratepayers. We are not there to simply protect ratepayers. I want to make that clear.

Chairman Bobzien:
Absolutely, that is the nature of regulated energy 101.

Assemblywoman Kirkpatrick:
I want to be clear. There is still a regulatory process we have to go through, and the Legislative Commission will see a lot of these regulations, correct?

Donald Lomoljo:
I believe regulations would be necessary to implement S.B. 123 (R2). That would come before the Legislative Commission.

Assemblywoman Kirkpatrick:
I think there is another bite of the apple with the statutory committee work oversight that does continue to keep the process alive and well. We have been around and around in this, and I was most concerned about section 11. That is where it talks about mitigation. I feel comfortable knowing we can come back next session and make some changes if necessary. I am worried about what happens after June 2018. I think there is an opportunity for us to have this statutory committee on an ongoing basis three to four sessions to keep in the forefront of this discussion of the new way we do energy in our state. There are a couple of sessions before 2018, so I believe this issue will not go away as much as we need to stay on top of what is going on. That is why I believe the statutory committee and regulations will be able to make sure the intent of the legislation was put out there. I have worked with both of you about ratepayers. I want to make sure there is a balance because, at the end, we cannot have people having to choose not to pay their power bills.

The one section you had crossed out is on page 3, line 34. I am wondering how taking that provision out helps ratepayers.

Donald Lomoljo:
As I stated earlier, the effect of the deletions on page 3 is to remove any mandatory reference to 550 megawatts of replacement capacity. The Commission would not have a choice in approving that replacement capacity under this bill. This places that decision completely within the resource planning process.

Assemblywoman Kirkpatrick:
On page 2, section 7, starting on line 29, it breaks it down into 100 megawatts, 100 megawatts, and 100 megawatts so there are time frames in there so we can come back during the session to monitor that piece. Is that correct?

Donald Lomoljo:
The references on page 2, section 7, subsection 2, paragraph (b), are related to renewable energy requests for proposals (RFP).

Assemblywoman Kirkpatrick:
I understand that, but the 550 megawatts is what we are trying to replace. Would they replace it with this?

Donald Lomoljo:
The 550 megawatts, as stated in the bill, is intended to replace the coal capacity that would be retired. The question there, on a technical basis, is whether all of that capacity is needed to replace that retired coal capacity.

Chairman Bobzien:
We have Mr. Jacobsen here. Mr. Hansen, do you have a quick technical question to raise with him?

Assemblyman Hansen:
As a matter of fact, I do. I had gone over this proposed amendment with him, and he was comfortable with it. I also have a potential conceptual amendment that he brought to me and which has not been released on the Nevada Electronic Legislative Information System (NELIS). We could possibly go over that one. I would like his take, since he is with the Consumer Advocate, on the need for these amendments. Mr. Jacobsen, are you comfortable with the amendments? Do you see them as a necessity in your job of protecting the consumer?

Daniel Jacobsen, Technical Staff Manager, Bureau of Consumer Protection, Office of the Attorney General:
I would agree that the amendment you have proposed goes all the way to ensure the Commission has the full flexibility to decide what is needed in terms of replacing coal. Your amendment would say to the company that they need to go into the Commission with a full filing, with all of the information they normally submit to try to justify what kind of replacement is needed. I think that would be very consumer protection-oriented. It would be very helpful.

It was mentioned that we had submitted an amendment, and I would be happy to contrast that amendment with what you have proposed here if that would be helpful.

Chairman Bobzien:
We have an issue here. We have an amendment that is not on NELIS. With apologies to Mr. Jacobsen, Mr. Jacobsen and I had discussed that amendment, but it was not submitted for the work session today. Now we have a challenge. If we could discuss something in concept, you can present that, but we do not have an amendment on NELIS to discuss in addition.

Assemblyman Hansen:
I would like to make sure the record reflects that in the best interest of the consumer, this amendment I proposed is what Mr. Jacobsen thinks this Committee should go forward with.

Chairman Bobzien:
Mr. Hansen, I am going to step in here to try to clarify what the Consumer Advocate's role is. I have spent a lot of time on this particular issue. Mr. Jacobsen and I have had long conversations about their statute. If you have not seen it before, I really recommend it. I do not have the exact citation, but there is broad discretion and latitude on behalf of the Consumer Advocate to a represent the public interest, which is much broader than particular consumer classes. That is another issue, but there is a broader public interest that is represented by the Consumer Advocate as well.

Assemblyman Hansen:
Combined, I think they do represent a very broad and specific public interest.

Chairman Bobzien:
Mr. Jacobsen, do you want to give us a quick heads up on that?

Daniel Jacobsen:
I think it is helpful to think of it this way. The amendment you have proposed is pretty aggressive. Essentially it says, while the Legislature is adopting a policy to close the coal plants and add a certain amount of renewables, the Legislature is not adopting a policy that says the company will get to build 550 megawatts, likely of natural gas, although it does not specify that. So your amendment would say the Legislature is going to stop at the retirement of the coal plants and addition of renewables, and let the company come in through the normal process, through the PUC, to make their showing about what else is needed.

A less aggressive approach, and one that is perhaps more consistent with the deal that was constructed in the other house, would be to allow the policy from the Legislature to say, "Okay, there will be 350 megawatts of renewables to replace coal, and there will be 550 megawatts of something else, likely natural gas." You could specify the Commission gets to determine the timing. A major power plant will probably be built. The last time they built one, it was a $700 million investment. From a policy perspective, I think it is your task to decide which approach you want to use.

Chairman Bobzien:
Do we have any additional technical questions on this matter? Again, we are not rehearing this bill. This is a work session. If we have specific questions as to the bill and policy implications, we can cover those.

Assemblyman Horne:
After much debate, it seems that Senator Atkinson and you worked tirelessly on this issue. The number of stakeholders you have on board is impressive. I would make a motion to do pass, if you would entertain that motion.

Chairman Bobzien:
I will accept that motion.

> ASSEMBLYMAN HORNE MOVED TO DO PASS SENATE BILL 123 (2ND REPRINT).
>
> ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

Is there any discussion on the motion?

Assemblyman Ellison:
I still have concerns with the bill. I did meet with some people right before the meeting. I will follow up with some of the information I am still trying to obtain. I am going to vote no, but I want to reserve my right to change my vote on the floor. I know we are going the opposite direction, but I still have concerns pertaining to section 11 on rates.

Assemblyman Livermore:
I too am going to vote no on this bill. I believe it is like buying a $10 million life insurance policy. Unless the company makes you have a medical exam, you will likely not buy it. I do not believe this has been vetted thoroughly yet. I believe the PUC should have more oversight on the replacement plan and, of course, the resource needed. When we had the hearing, we spent a couple of hours on this, but the proponents had the majority of that testimony. I do not think we gave the public a full opportunity.

Chairman Bobzien:
Mr. Livermore, I take some offense at that. We had a very long, in-depth hearing, and we heard a lot of testimony on all sides of this issue.

Assemblyman Livermore:
That is my reason for voting no. I will reserve my right to change my vote on the floor.

Assemblyman Hansen:
Of course, I will be a no vote. I was wondering if the Chairman will entertain the conceptual amendment proposed by the Consumer Advocate.

Chairman Bobzien:
We have a motion, so no.

Assemblyman Hansen:
I want the record to reflect that I think pressure was put on the PUC where they were literally threatened. Having their power reduced was absolutely uncalled for and had a chilling effect on what should have been an open, free, public discussion on this. I think that needs to be part of the record.

Chairman Bobzien:
Do you have some specifics on that?

Assemblyman Hansen:
I will read it into the record. Here is exactly what I am talking about:

> The PUC has been critical of the legislation, arguing it puts too much risk on ratepayers to shoulder the cost of constructing the plants and limits the commission's ability to oversee the plan. That opposition riles [U.S. Senator Harry] Reid, who has pushed for years to eliminate coal-fired power plants from the state. "They raised hell here because it was taking away their power," Reid said . . . "Well, I think we need to take more power away from this little bureaucracy that I think has done a lot to hinder the development of renewable energy rather than help it."

Chairman Bobzien:
Can you cite the title of the article and media outlet?

Assemblyman Hansen:
This is "Harry Reid lambastes PUC for standing in the way of NV Energy bill" by Anjeanette Damon. I believe it was in the *Las Vegas Sun* on May 29, 2013.

Chairman Bobzien:
Do we have additional discussion on the motion? [There was none.]

> THE MOTION PASSED. (ASSEMBLYMEN ELLISON, GRADY, HANSEN, HARDY, AND LIVERMORE VOTED NO.)

With that, we will close the work session. We will open the hearing on Assembly Bill 504. We welcome the Minority Leader, Mr. Hickey, to the Assembly Committee on Commerce and Labor.

Assembly Bill 504: Revises provisions relating to constructional defects. (BDR 3-1247)

Assemblyman Pat Hickey, Washoe County Assembly District No. 25
Thank you to those who have made time on a Sunday to participate in this process. We have representatives from the Coalition for Fairness in Construction, Builders Association of Northern Nevada (BANN), Southern Nevada Homebuilders, Nevada Subcontractors Association, Leading Builders of America, and others. All told, they represent about 1,700 companies with over 13,000 employees in Nevada. To a discussion we had earlier in the Assembly Committee on Ways and Means, probably only the coalition members are actually general contractors but they represent a wide range of people in the industry, like myself, who are subcontractors.

Today we are here to discuss Assembly Bill 504, which takes important steps to fix a flawed law. I think everyone, regardless of where we come down on this issue, agrees there is a problem with our current construction defect law. We may not all agree on exactly how to fix it, but I have not spoken to a single legislator who does not acknowledge that we have a problem. We as citizen legislators all came into this session concerned about things like the homeowners' association (HOA) scandals that seemed to be in the news far too often. I think everyone here was also aware of needed changes in what many consider a broken law. I do not think any of us expected the wakeup call that came with the University of Nevada, Las Vegas (UNLV) study [later submitted as Exhibit E] that identified just how unique our law was. It has created such an unlevel playing field that it has made us a negative example nationally when it comes to this matter. I also do not think there is anyone who expected that academic study would be able to quantify the way the law is currently written and how it is hampering our ability to gain more than 100,000 jobs, as suggested by the study. Those jobs are very needed.

That nonpartisan study by a respected professor should serve as catalyst for bipartisan reform. In a world of partisan bickering, this kind of commonsense reform should rise above. I could not be more pleased today than to see former Senator Terry Care to my left. In 2009, Senator Care helped build a bipartisan coalition to pass construction defect reforms in the Senate; one bill, Senate Bill No. 349 of the 75th Session, was passed by a vote of 19 to 1 with strong support from both parties. Unfortunately, that legislation died in this body, and we should not make that same mistake again. Here were are today on day 119 out of 120 in a legislative session without any needed changes so far.

Certainly, we owe it to our constituents and to every out-of-work Nevadan, especially in the construction industry, to find a way to fix this broken law and begin creating jobs again. I know some of the advocates for reform wanted a lot more than this bill proposed. I know some of the opponents may not be fully happy either. Sometimes that means you are coming up with a piece of good legislation. Make no mistake, my bill does not fix everything that should probably be addressed, but it will stop the bleeding. This bill contains minimal but meaningful fixes. It helps clarify a vague definition of constructional defects that has led to long litigation instead of rapid solutions, primarily for homeowners. It encourages quick, responsible resolution to problems instead of rewarding litigation. It would also help to make Nevada competitive again, not only regionally but nationally. We simply cannot afford to be put on a competitive disadvantage and expect to recover from a sagging economy.

This bill is not perfect. I would like for it to do a lot more, but I would far rather take a positive step this session than to kick the can down the road by inaction. The problem has progressively gotten worse, and another two years of inaction is not something we should accept. It creates a lose-lose situation. Without meaningful change, we will continue to lose jobs, reward litigation over resolution, and leave homeowners vulnerable to those willing to prey on them for personal financial gain.

I am eager to hear the testimony today. I will close with something I think is important to say. Passing this bill could unite us as Republican-Democrats because it fixes a law that virtually everyone agrees has problems. It encourages solutions, and it reduces the opportunity for abuse. Let us hold builders and lawyers accountable and focus on creating an environment that rewards those who do good work and play by the rules instead of rewarding those willing to take advantage of a poorly written law. I encourage this Committee and all of my colleagues to support and consider this bipartisan solutions-driven bill, A.B. 504.

Terry Care, representing Leading Builders of America:
I do not practice in the area of *Nevada Revised Statutes* (NRS) Chapter 40. I never have, and I do not have any plans to. My exposure to NRS Chapter 40 largely came in my experience as a legislator, as NRS Chapter 40 was crafted before I ever walked into this building in February 1999. The issue came up in sessions along the way, primarily in 2009 and again in 2011, when I was not in the Legislature. It is a subject that seems to come up with some frequency.

To give the Committee some background, in 2009 there were actually two bills. One was S.B. No. 349 of the 75th Session, which would have redefined what constitutes a construction defect. It contained the affidavit provision that is

similar to what is now contained in A.B. 504. It adopted the American Rule of removal of attorneys' fees. That is to say, each party bears his or her own fees and costs unless there is a contractual provision that is contrary, or if there is something in law that spells that out. The second bill, Senate Bill No. 337 of the 75th Session, dealt with statutes of repose. It shortened what you might refer to as statutes of limitation.

I will concentrate on the first bill, S.B. No. 349 of the 75th Session. I chaired the Senate Committee on Judiciary in 2009. The bill came out of the committee after multiple hearings. We even had a subcommittee with multiple hearings. It came out of committee unanimously. I think it is safe to say it was not viewed as any sort of partisan bill. It was an educational process for the members of the committee. When it came to the full Senate, as Mr. Hickey pointed out, it passed almost unanimously. There was one vote opposed to the bill. We never had the hearing on this side. That is basically what happened in 2009.

We have had two other such bills this session. There was one in the Senate, Senate Bill 161, and one in the Assembly, Assembly Bill 184 (1st Reprint). [Bills mentioned; no jurisdiction.]

Senate Bill 161: Revises various provisions relating to constructional defects. (BDR 3-480)

Assembly Bill 184 (1st Reprint): Revises provisions governing construction defects. (BDR 3-649)

Let me talk about how A.B. 504 measures up to the other bills. It is a good bill and offers a reasonable approach without the provisions we had back in 2009. First, it does not disturb in any way the issue of attorneys' fees. That was a big subject of the conversation in 2009. I think it is fair to say that one of the drivers of construction defect litigation is attorneys' fees, which in this state, statutorily, is a component of the damages. There have been bills in 2009 and in this session to take that away and adopt the American Rule. I want to point out that this bill does not disturb the current statutory scheme regarding attorneys' fees as a component of damages.

Second, it contains a provision addressing indemnification between the general contractors and subcontractors that recognizes the freedom to contract. I should point out that I not only do not practice in this area but also am not a builder, general contractor, or subcontractor. We have people in Las Vegas who can testify as to how this would work in the real world. That provision had not been in the previous bills.

Third, it defines what constitutes a construction defect. It is a commonsense approach. Reasonable risk of injury to a person or property alone is a defect under this bill. That is existing law. Nobody would dispute that, and this would not change that. A defect could be workmanship not completed in a good and workmanlike manner. That is in violation of the law and proximately causes damages. This goes to the incidents back in 2009 where you might have a builder who does not strictly comply with code, but you still have a solid product. If you are supposed to have studs 12 inches apart, but they are 13 inches apart, that would not be the basis for a suit in construction defect under A.B. 504, as I read it. This also provides a definition of good and workmanlike manner. There has been a discussion on what that means. This would attempt to give the parties, and everyone, some guidance as to what we mean by that term.

Fourth, it contains a consumer protection provision with a requirement of an affidavit. This was in the legislation we had in 2009 and is in the subsequent bills. Basically, it would require that a claimant has to be notified of the provisions of NRS Chapter 40 before any action can be taken. You probably all know that if your house is the subject of construction defect litigation, you have to disclose that to a subsequent buyer. Some people might think twice before entering into litigation if they knew that. In the case of an HOA or common-interest community, that affidavit would have to come from somebody who has responsibility for the HOA noting that the owners have been notified of the provisions of this chapter. Again, there has to be disclosed to a subsequent buyer, and as Mr. Hickey mentioned, we have had scandals involving HOAs in the Las Vegas area.

I have walked the Committee through the bill and what it would do. Again, I cannot answer questions specific as to how this works in real life, but we have people in Las Vegas who can certainly address those issues.

Chairman Bobzien:
I want to let everyone know what our time constraints are today. We are hoping to get to the floor at 3:00 p.m., so I would like to give a half hour to support and a half hour to opposition. Mr. Hicks, do you have some testimony? We will then open it up for questions to the panel.

Joshua J. Hicks, representing Coalition for Fairness in Construction:
I do not think I could articulate the issues any better than the prior speakers, so I will not try.

Chairman Bobzien:

Do we have questions from the Committee?

Assemblywoman Kirkpatrick:

Mr. Hicks, we talked about some of this, but this is probably the first time I have seen this particular language. The way I read section 1, line 3 through 18, the general cannot let the subcontractor out of anything until it is too late. I thought that was one of the issues we have been trying to discuss. Everybody gets brought into the process and then ends up having to settle out of court. When we look at the piece that says, "shall not seek indemnification from a subcontractor," that is basically saying you are in, and you are going all the way to the end with me. On line 6, it says, "or any other person providing a service for a development project for the sole negligence . . . ." When does that happen? When you define "controlling party," that, in my mind, is protecting the person at the top, where you said this is about fixing the whole problem. I want to understand that on page 3, section 3, subsection 3, why you might want to clarify that the codes are based on what has been adopted by the State Contractors' Board. I am not understanding that one piece. I do not understand the importance of the affidavit. I have not been able to process that because I thought there was already something put on the lien. I want to understand that. I am no construction defect person, but I would like to see it resolved. I am tired of hearing about it. I want to understand how in section 1 everybody gets a fair shot.

Joshua Hicks:

I will attempt to go through those. I may lean on Mr. Mead in Las Vegas for a few comments. What you see in section 1 is an attempt to codify the current state of the law in Nevada. This is based on the case *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc.*, 127 Nev. Adv. Op. 26, 255 P.3d 268 (2011). What we are trying to do is start the conversation about what an anti-indemnification type of statute should look like in Nevada. Mr. Daly has a similar indemnification prohibition but goes significantly further in Assembly Bill 367 (2nd Reprint). [Bill mentioned; no jurisdiction.]

Assembly Bill 367 (2nd Reprint): Revises provisions relating to constructional defects. (BDR 3-670)

The wording from that is taken from that Supreme Court case. That is what we were trying to get to. The "controlling party" language is the same language that Mr. Daly has in A.B. 367 (R2). We tried to mirror that so there were some similarities in the scheme of this. What this section is saying is that for the first time in Nevada law, there will be some prohibitions on a general contractor who asks a contractor for indemnification. That is what it is saying in essence. If a general contractor were to ask a subcontractor for complete global indemnification under any and all circumstances, it would have to be clearly and

expressly stated in the contract and bargained for by both parties. That is the net result of that. It would ban otherwise indemnification clauses that did not have that clear language in it, with the representation that the parties look at this as a stepping stone.

I should mention this comes from the Coalition for Fairness in Construction and all of its members you heard Mr. Hickey mention. Anti-indemnification statutes are very complex. There are many stakeholders who are at issue, and the Coalition for Fairness in Construction has pledged to work together to look at this as a starting point and to come back next session with a more comprehensive anti-indemnification statute to make sure everyone is being reached. We have had discussions with legislators about this issue in other states, and we feel the best path is to go through the interim and put together the details for a Nevada-specific solution. That is why we look at this as a starting point.

Assemblywoman Kirkpatrick:
I guess that is my frustration. Construction defect is at the top of the list next time when we have many other issues. It becomes the priority discussion instead of fixing policy. I know you represent some national builders and subcontractors. Is there not some language out there they live by in other states? We cannot be the only state that has construction defect issues.

Joshua Hicks:
There are other states that have anti-indemnification clauses, and they do it in a variety of ways. Not all of them are limited to residential contracts. They can be broader. Some will be very broad in what they apply to, while some will not. One of the issues with a Nevada-specific indemnification is that with a very broad definition of a defect, if you narrow the indemnification ability, you can put a lot of the weight on just a few people who get sued in these cases. That is why they go hand in hand to do a definitional change in Nevada and an indemnification change.

Assemblywoman Kirkpatrick:
My last point is that I thought we were changing the definition in section 3. If they go hand in hand, you would think there would be some relative implication. I thought the whole point was to change both of them at the same time, but this really does not change anything. I would bet this is probably like having five children, where four of them agree but one does not. To find the balance, which I think is the issue in this building, how does not changing section 1 affect section 3? I know there was big news about home building being up 17 percent in Nevada, and that is a good sign. That means there are permits coming that we have not seen in a long time. I want to understand that

for myself. The Assembly Committee on Commerce and Labor does not usually receive construction defect bills but rather the Assembly Committee on Judiciary.

Joshua Hicks:
We view this anti-indemnification language as a good first start at putting anti-indemnification on the records in this state. When I say they go hand in hand, a narrowing of the definition reduces the number of claims that come out, which also makes it a lot more palatable for the parties in a construction defect case to work on an indemnification clause that works out between them. You will not necessarily have pressure on some builders who want to have very broad indemnification clauses, because the definition of defect is so broad that they want to give themselves some protection that way. If you have a more reasonable definition, you also have more willingness to narrow these indemnification clauses. That is what we are trying to do. When I say they go hand in hand, that is what I mean.

I think the statement made in the prior hearing about taking a bite of the apple on construction defect reform reflects the way we look at this. We have taken the fees out of this, we have taken the statutes of repose out of this, we have a definition we think is workable to help narrow that, and we have also taken a bite of the apple by putting in the anti-indemnification provision on the books in Nevada. That allows us to come back and make some changes to that as we have other stakeholders and everyone else at the table to work on a more comprehensive solution. You have the Coalition's pledge to do that during the interim if we get this bill passed.

Assemblyman Hansen:
I worked extremely hard on construction defect, but you will notice my name is not on this one. The reason it is not is specifically this so-called "anti-indemnification" language, which is anything but. This does not change a thing. What Mrs. Kirkpatrick was saying is absolutely correct. I would love to hear how you can explain this as anti-indemnification language, because it says, "unless such indemnification is expressly and explicitly stated in a contract or subcontract." It is always expressly stated in a contract or subcontract. That is why all these contractors throughout the state get dragged into these things endlessly. Please explain how this is anti-indemnification clause.

[Assemblywoman Kirkpatrick assumed the Chair.]

Joshua Hicks:
This is a codification of the state of the law in Nevada. Most indemnification clauses, including the indemnification clause in *Reyburn v. Plaster*, are

boilerplate types of indemnification clauses. In that case, the general contractor was seeking to bring in a subcontractor even though the subcontractor had negligible or no real responsibility in the case. The subcontractor prevailed in that case because the court said these boilerplate kinds of clauses are not sufficient. If you are going to take that tactic of a very broad indemnification clause, which not all general contractors do, it has to be very clear and bargained for, and the subcontractor has to know that is what he or she is agreeing to. That is the state of the law, and that is what we are trying to get to. It is a limitation on the indemnification clauses. It is actually the first time we will have an anti-indemnification clause in these kinds of residential construction contracts in statute in Nevada. As I said, we acknowledge this is not the perfect solution. It makes sense to go further than this. With all of the stakeholders, it would be a better idea to at least take the interim and make this a starting point. We would be happy to get your input and try to get something that goes a bit further but still makes sense for the landscape in Nevada.

Assemblyman Hansen:
That sounds nice, but in reality, this does not change a thing. I do have to say the rest of the bill is excellent. If they want to push this forward and drop section 1, lines 3 through 18, I would love the bill. I want to get that on the record. Normally, this would absolutely be something I would be charging for, but in this case, because of that clause, I think it is a backhanded slap at all of the subcontractors and general contractors who are typically under the control of a controlling party.

Assemblywoman Carlton:
It seems to be construction defect day. In every committee, construction defect keeps popping up. Mr. Hicks, you mentioned something about codification. Are we talking about codification of the court case? Is that what you were implying?

Joshua Hicks:
Yes. It was a case called *Reyburn v. Plaster*. It is a Nevada Supreme Court case from 2011.

Assemblywoman Carlton:
Who was the prevailing side on that?

Joshua Hicks:
The subcontractor, Reyburn Lawn and Landscape.

Assemblywoman Carlton:

Out of my own short legislative experience compared to some of the people I worked with on some of these issues, one of the lessons I learned was that if something is in a court case, it is a very nice, safe place for it to be. Once you codify it, I can come back and change it. Be careful what you wish for because once it is in statute, it is in our purview. When it is in a court case, we cannot touch it because it stands independent of us. It is a different branch of government. If you put this in the statutes, it may not stay the way you intend it to be because we cannot tie the hands of future legislators. I just want to put that on the record. A lot of people ask us to codify things, and that is not always the best way to handle an issue once a court has opined on it.

Assemblyman Frierson:
I have a couple of questions. The first one involves section 1. As a general premise, why would we allow somebody to put into contract that you are responsible for something you have absolutely nothing to do with?

Joshua Hicks:
I suppose that is a big policy question. Legislatures throughout the country have taken that up. This body took that up earlier this session in other contexts as well. It is a very fair question to ask. As I said, that is why we wanted to have this kind of language as a starting point to get to that discussion. Again, we do not view this as the end result. I take Assemblywoman Carlton's comments to heart. It is something we have thought about long and hard. We do not have an anti-indemnification statute at all on the books in Nevada for residential construction. This would be the start of that. We would participate in trying to take that further into something that makes sense. You and I have had discussions, and I think some of the issues we have discussed and some of the examples we have looked at make great sense. To us they make sense if it is in the context of some other changes made to NRS Chapter 40 as well, so they could be together in something that is workable for the building industry. Your comment is very fair. I think we agree with you that it makes sense to do something on that. We put this down simply because in our broad coalition, with all of these members, we have had discussions, but we have not gotten to a point where we have internal agreement on exactly what the right way to do this for Nevada is; however, we are pledged to try to do something on it.

Assemblyman Frierson:
If we know that somebody was in no way responsible for a defect, why would we draft a statute that says they can be forced to be responsible for it? If we are talking about a starting point, it seems a starting point would be to err on the side of not allowing somebody who had absolutely nothing to with the defect to be forced to be responsible for it.

Joshua Hicks:
I may turn that over to Mr. Mead in Las Vegas. I believe subcontractors do have ways to get out of these cases as it stands now. I do not believe it is the policy of the state to try to do that.

Leon Mead, Board Member, Associated General Contractors of America, Las Vegas Chapter; National Construction Alliance:
The reason it is very difficult to codify that somebody who has no responsibility whatsoever should not have any involvement is because, unfortunately, it is just not that clear. In most cases in construction, multiple parties touch multiple parts of a construction project. It is very few and far between the situations where it is clear-cut that one party is always at fault when another is not. The thing to think about is that up to this point, as Mr. Hicks was saying, we have had no laws on the books to stop indemnity whatsoever. Under those circumstances, without restrictions, contracts have prevailed, and you have been able to enforce these types of boilerplate provisions that have brought more people into it. The trend from the Supreme Court over the last couple of years has been to limit that and to draw back and require, at a minimum, if a controlling party wants indemnity from someone who is not otherwise involved, that indemnity obligation has to be very clearly specified and clearly drawn up in the contract so that the parties will agree to it and know about it going forward. That is what this attempts to do, to simply codify where the Supreme Court is now to prevent different arguments or changes to that, but also to give a starting place to change that in the future.

Vice Chairwoman Kirkpatrick:
Mr. Frierson, do you have any other questions?

Assemblyman Frierson:
I have one last follow-up. I am looking at section 3, on page 3, and it appears to link a construction defect definition and several factors together. In reading it, I did not quite understand if something is constructed in a way that violates the law, or local code or ordinance, that it has to also be these other things in order for it to be considered a defect. Why would we have the law if there is no reason to stick to it?

Joshua Hicks:
I will take a shot at that one. What you see here is the same kind of language that is currently in a constructional defect but reorganized in a way to take this from what the current state of the law is, which is that a defect can be any one of four different categories. Trying to put this down into a defect now, it would fall into one of two categories. The language you see in there is the same kind

of language you see above in strikeout. It is now compressed into these two categories.

Assemblyman Frierson:
Existing law says "or." This language says "and." You make it sound as if it is a drafting issue, and it is clearly different. One requires all of them, and the other requires one of them.

[Chairman Bobzien reassumed the Chair.]

Joshua Hicks:
You are right. If I gave you that impression, I did not mean to. What we did was take the four categories which are currently phrased with an "or." If you look at the four subsections in the strikeout, you will see there is an "or" on line 11. That is the current state of the law, that any one of those can be a defect. What we did was combine those. It does have a substantive change, but we kept the same language. Now what you see under this language is that a defect could be one of two things. The first category involves a defect that presents an unreasonable risk of injury to a person or property, which is designed to make sure that when homeowners know they have something that is going to be a problem, they do not have to wait for it to fail to have a defect. Those are things like defective plumbing you know is going to fail, so you can fall under that category.

The second category combines the language in the prior categories, so it covers the good and workmanlike manner, the violations of codes or ordinances, which includes all of the building codes in NRS Chapter 624, and proximately causes physical damage. We put it that way because we found, under the current state of litigation, many allegations of defects will fall under one of the four categories, but they will not actually have damage or even a risk of damage. They will simply be code violations that may be minor or cosmetic, and they will end up in court. Often the first time a builder will even hear about it is when they get a NRS Chapter 40 notice. We are trying to direct those kinds of issues into a place where they do not go to court as a first resort; instead, you go through the warranty process. You can go through the State Contractors' Board if you cannot get any redress there. There also is a recovery fund we have had on the books for quite a while to provide compensation if need be in those circumstances. Granted, there will always be issues that need to be redressed, but we are trying to make sure only the legitimate major issues go to court.

Chairman Bobzien:
Do we have additional questions from the Committee?

Assemblyman Ohrenschall:
If this bill were to pass, does this affect NRS 40.648 and the right to repair or is that left as it is?

Joshua Hicks:
I will ask Mr. Mead to answer that question.

Leon Mead:
One of my colleagues represents subcontractors more than I do. I will let him answer that more directly.

Craig Marquiz, representing Coalition for Fairness in Construction:
With respect to the issue addressed, the right of repair would not be changed in the context with this definition. The process under NRS 40.645 for the constructional defects to be identified would trigger the same notice going to a builder/developer under NRS 40.646. The process would commence for only those legitimate issues that would satisfy the definition as expressed either with section 3, subsection 1, paragraph (a), which is being an unreasonable risk of injury, or all of the requirements under section 3, subsection 1, paragraph (b). The right of repair would then process through as it normally does. The builders and subcontractors would conduct an inspection and make the determination of whether or not they want to exercise their right of repair or allow the process to proceed.

Chairman Bobzien:
Do we have additional questions?

Assemblyman Hickey:
May I have one response to Assemblyman Frierson's comments?

Chairman Bobzien:
Sure.

Assemblyman Hickey:
If I understood you right, you were saying, how is it that someone, maybe a smaller contractor in the overall scheme or a subcontractor, can get pulled into something where he or she does not have any responsibility for it? Is that the essence of it? I am not talking from a legal side.

Assemblyman Frierson:
To make it simple, because examples can confuse things, why should a roofer be required to sign an indemnity agreement for a problem that was with the foundation?

Assemblyman Hickey:
I think you make a good point. I would answer that by saying, as a subcontractor, this is the problem that we have and why we have not reached a solution. Most of the discussion is going on between attorneys, and the right, ability, or need to repair for a homeowner is left out of that. I was in one case where it took ten years before it was settled. I found out that the only thing I was possibly involved in was some paint overspray on one light fixture, which probably could have been fixed in five minutes. In the meantime, since it was litigated to such a degree, it took ten years to even find that out. I am being simplistic, and I am not an attorney, but I think this is the underscore where we have to get to a point where it is not so overly complicated that people cannot fix things, and homeowners do not get remedies except for the monies and huge settlements they get a portion of. Typically, their homes do not get fixed.

Chairman Bobzien:
Do we have additional questions?

Assemblyman Ellison:
This is more of a statement than it is a question. I have been following this and hoping in the past we could get some of these things out. The longest journey starts at the first step. This is one of these issues we need to do. I am glad this bill was brought forward, and I support this bill. Could it be tweaked? Yes, I think it could, but we have to make a start. I think we can address the concerns of the people and put people back to work.

Chairman Bobzien:
On this issue of the affidavit, we have disclosure requirements right now. With the affidavit, if there is an issue that goes from property holder to property holder, are there other examples where if someone wants to enter into a proceeding subject to NRS Chapter 40, they have to sign an affidavit to do so? I want to know if there are some examples or precedent to doing this in other sections of law.

Terry Care:
I do not practice under NRS Chapter 40. I recall the Special Session in 2002 with medical malpractice insurance cases; it goes way beyond that. I want to refer to 2009. We were already reading newspaper snippets about the HOA investigation by the U.S. Department of Justice, and NRS Chapter 116 gives the authority to the executive board to commence an action on behalf of the association. What I recall is there were people living in HOAs who did not even know they had a home that was the subject of NRS Chapter 40 litigation. I know the way the bill is drafted, it talks about the association and an individual residence. What we are talking about is a circumstance of an HOA

where somebody is getting dragged into a lawsuit. We would like to know about that.

Chairman Bobzien:
Do we have additional questions? [There were none.] We have a number of people who want to express their support for the bill. I believe we have covered everything, and we are over our allotted time. We have people signed in as support, so we have that on the record. Mr. Hickey, I am going to put this on you. Is there any glaring omission in the record in support that we really need to hear from somebody?

Assemblyman Hickey:
In the interest of time, maybe people would be allowed to raise their hands who are here in support.

Chairman Bobzien:
I am fine with that. We can see those in Las Vegas as well. A show of hands for those in support is perfectly appropriate. [Many people raised their hands in support.] Is there anyone opposed to A.B. 504?

John Griffin, representing Nevada Justice Association:
We are in opposition to the bill. With regard to the indemnity provision, I think the questions from the Committee have been good. The reality is most of the time these are boilerplate contracts. They are given to somebody, and if you do not sign it, you do not get the job. Saying the Nevada law is what you put in contract could be a false offer, and it is really nothing. I would only suggest that this be something we sit down and work on and discuss with the stakeholders. An indemnity provision similar to one in California was brought to this legislature in 2007. It was considered and debated. Mr. Daly's indemnity bill, A.B. 367 (R2), which in and of itself was only an indemnity bill, was a bill draft request that was dropped well before the session. It was introduced on the floor on March 18, 2013. We have probably had eight to ten meetings, discussions, and negotiations on this. I would beg you that if there is something to discuss or work on in the interim, please do not put me through that again. I think we have worked on it enough. It has been a topic of discussion now for four months. I cannot imagine what else there is to discuss with the time everybody has had to discuss it and figure it out.

Charles Dee Hopper, representing Nevada Justice Association:
No, I do not have any comments on indemnity beyond what Mr. Griffin had to say, other than the fact that I agree with him that we have discussed this issue for many months now, and this is the first time something has been brought

forward by the other side on this topic. Considering the time we spent on this, A.B. 367 (R2) should be what moves forward.

John Griffin:
Section 3 of the bill, which is the revision of the definition of construction defect, is similar to what Senator Care had put in a few sessions back. It is very similar to what Senator Roberson put into his bill and what Assemblyman Duncan had in his bill. This issue has been well vetted, but we will cover our points on that.

Currently, the definition of construction defect has four components—one, two, three, "or" four. This definition revision says one "or" and then combines the next three. We think that combination provides a significant problem, a detriment, and punishes homeowners, because it has basically combined good and workmanlike manner, violation of codes and ordinances, and proximately causes physical damage. That is a problem if those are combined in an "and" situation, and we can give a number of examples. People would disagree what the percentage is. We would say 30 percent of what happens on a house is not covered by code. Many aspects of a roof are not under code. Therefore, if there is a problem with a roof that is not covered by a code, there is no code violation. Technically, there is no construction defect if your roof is falling in. The homeowner loses in that example. Regarding the proximately causes physical damage to the resident, take the Kitec plumbing case in Las Vegas. There were a number of homes that had Kitec plumbing problems that exhibited themselves and caused serious water damage, mold, et cetera. There were also homes that had same Kitec plumbing that had not failed yet. They were going to fail, but they had not failed yet. The fittings having not failed would not qualify under this paragraph (b) because they have yet to cause physical damage to the residence. By combining three of the definitions, you are significantly reducing the number of real, legitimate defects that cause damage to a homeowner's home from being considered and the homeowner for getting recovery from those defects.

I will move on to section 5. *Nevada Revised Statutes* (NRS) 40.688 already extensively lays out what happens if a homeowner is involved in the construction defect case, and what he or she is required to provide and disclose to any subsequent purchaser. It is actually much greater than the typical disclosure. Everybody has sold a house. You have to disclose known defects or any problems with the house, including the heater not working, et cetera. You have to fill out your disclosure, and failure to fill out that disclosure subjects you to violations under Nevada law and triple damages. That is in existing law for everybody. This adds another layer if you are involved in a construction defect case. Upon the sale of your home, you have to provide

the purchaser all of the notices in the case and all of the material in the case, including the opinions of the all of the experts in the case. If there is a settlement or a judgment, the terms or details need to be provided. There is plenty of Nevada law related to construction defects and what you have to turn over and disclose to a subsequent buyer.

That being said, I really do not understand the gist of what section 5 attempts to do other than say we really, really mean it.

Charles Dee Hopper:
In addressing the earlier question to Mr. Care as to whether or not there are other examples of this, the answer would be no, which is an answer I do not believe we actually heard from Mr. Care. There is no other example where somebody would have to do something like this in order to file a lawsuit. Homeowners are smart enough to be able to buy a home without having to produce an affidavit. They are certainly smart enough to pursue a lawsuit and take care of their own problems without having to do the same.

Assemblyman Hansen:
Could you elaborate on your point? You said that roughly 30 percent of home construction is not covered by codes. That is new to me. Where did that come from?

Charles Dee Hopper:
The point being that not every aspect of construction defect is code-based. There are some areas where codes do not apply. If you tie all defects to there first and foremost being a code violation, but you do not have a code violation to begin with, then you do not have a defect.

Assemblyman Hansen:
I understand the point. I am not aware of anything in construction that is not covered by a code. That is superfluous. It does not make a lot of sense. I am not aware of anything that is ever done on a residential housing tract, whether it is the underground utilities or up to the peak of the roof, that is not covered by code specifically. If you have any specifics, I would love to hear them.

Charles Dee Hopper:
I do not have any specifics with me today, but I can provide those for you. Again, it is not just limited to the code. It is also the other areas they tie this definition to. For example, the physical result in damage; if you do not have physical result in damage, then by definition, even if you do have a code violation or it does not meet workmanlike standards, there is not a defect

present. We believe this section is too onerous. It goes above and beyond any type of compromise as far as construction litigation would be concerned.

Chairman Bobzien:
Do we have additional questions for the opposition? [There were none.] Do we have additional opposition on A.B. 504? [There was none.] Mr. Hickey, would you like to bring us home?

Assemblyman Hickey:
Thank you for this hearing. I think we have heard what I believe is the problem. We basically have a law so complicated that it is up to attorneys to deal with this seemingly endless issue. While that is great, and I would be the first one to admit that I think attorneys on both sides of the issue do extremely well. Good for them. I am a free enterprise kind of guy. Going back to my original point, and why I think this body has to take this seriously now, we have a problem we are not addressing. We have builders, homeowners, subcontractors, and others who say this is impossible to fix and impossible to solve. In the process, our insurance rates, as builders, are out of this world.

I appreciate the hearing on this bill, and I would hope we move something forward so this legislative session is the first to really take a bite out of the apple. I know there is other legislation, and there is still time left. If we do not, it is still there and is still impacting homeowners, members of HOAs, and a lot of people in the industry who are begging us to do something about it.

[Assemblyman Hickey submitted a report, "The Nevada Housing Market: Prospects for Recovery" (Exhibit E).]

Chairman Bobzien:
We will close the hearing on Assembly Bill 504. We will open the hearing on Senate Bill 261 (2nd Reprint).

Senate Bill 261 (2nd Reprint): Revises provisions relating to door-to-door solicitation. (BDR 52-829)

Senator Justin Jones, Clark County Senatorial District No. 9:
I appreciate your hearing this bill late in the session. I am here to introduce Senate Bill 261 (2nd Reprint). The sale of goods or services by legitimate door-to-door solicitors has a significant impact on the economy and well-being of Nevada and its local communities. However, unscrupulous practices by persons soliciting donations or the sale of goods are contrary to good business practices and have caused our citizens to suffer substantial losses because of misrepresentation. In particular, our elderly population is often targeted by

these types of people who use deceptive tactics to getting in the door, high-pressure sales tactics, and high prices for low-quality merchandise. In some cases, the consumer pays for merchandise that is never received. Some solicitors use fraudulent or intimidating tactics when attempting to sell magazine subscriptions door to door. Frequently, magazine sellers tell consumers they may purchase a subscription and donate to a charity in lieu of receiving it themselves, or that the solicitor works for a charitable organization. This is often a fraudulent sales pitch and no benefit goes to charity.

Some sellers have serious criminal records and are dangerous. Serious crimes against persons have been committed, particularly against the elderly, as well as property crimes. Young mothers looking to protect their children have been so intimidated they have had to call the police. That is where this bill came up for me. In my own neighborhood, we have had several instances in which friends of ours have been intimidated by door-to-door solicitors and have feared for their children's safety.

Other solicitors are at-risk youth or young adults who are recruited or lured into a sales crew, dumped in a van with promises of travel and easy money, and are hundreds or thousands of miles away from their hometown. Due to the financial aspects of working for a sales crew, these individuals are frequently unable to leave the sales crew because they fear they will lose the wages the team leader is purportedly holding for them. They may not even have the money to pay for a bus or plane ticket home.

I want to go through a couple of the provisions of the bill. There are definitions for door-to-door noncommercial solicitation. We want to make sure those who are religious individuals and nonprofits are not taken up by this. Also, those of us who are soliciting support for political candidates for organizations, ballot measures, ideology, or polling, canvassing, or gathering information. The bill makes it unlawful for a business owner, agent, or employee who engages in door-to-door commercial solicitation to have been convicted of a felony during the immediate preceding five years or deceptive advertising, deceptive trade practices, or the unlawful employment of minors during the immediate preceding two years. As amended, S.B. 261 (R2) also requires the owner of a business that engages in door-to-door commercial solicitation—and that does not mean somebody who just goes out by themselves—to maintain certain records. It also requires somebody who engages in door-to-door solicitation do so only during the hours of 9 a.m. and 7 p.m., display an identification badge, and refrain from providing false and deceptive information.

Many of us have received emails from Avon and other salespersons. I have sent responses to every one of them asking for an explanation of what concerns

they really have with this bill. I did not get many responses. The one I did get back this morning was from someone who said this bill would prohibit them from doing their job even though they do not go door to door. I thought that was ironic since the whole point of the bill is door-to-door commercial solicitation. I pointed that out to them that the definition in section 4 of door-to-door commercial solicitation means only "making or attempting to make personal contact with a person at his or her residence, without a prior specific invitation by or appointment with the person." My mother-in-law is a regional vice president (RVP) with Arbonne, and my wife has engaged in sales for direct sales organizations. I do not think those who may have contacted you would be affected in any way by this legislation. It is targeted at those who are stuck in a van, dumped in a neighborhood, and intimidate our seniors and families. I would ask for your consideration on this bill.

Chairman Bobzien:
Do we have any questions for Senator Jones?

Assemblyman Healey:
Does this pertain to the Girl Scouts and other charitable organizations that may be in our neighborhoods?

Senator Jones:
No. They are excluded under the door-to-door noncommercial solicitation definition.

Assemblywoman Bustamante Adams:
Just today there was a report about women leading the workforce numbers as far as being providers for their own households. A lot of the emails we received were from females. They may not understand the bill. However, there is an education component that needs to take place because these women are mad. What are your plans, because these women are extremely upset?

Senator Jones:
I have done the best I can. You know as well as I that it is hard to convince people they do not understand the legislation. I have been in discussions with the Direct Sales Association. I had one person meeting with the Legal Division to make sure we got this right and it did not affect them. I cannot control what message a third-party organization sends out in order to rile up their members when they put out false information about what the bill does.

Once again, my family is involved in this type of work, but they do not go door-to-door. Frankly, I am not sure there are too many people out there who

do any of this type of door-to-door work when they are trying to sell cosmetic products or other types of products.

I do everything I possibly can to educate those who are riled up right now, but I do not think it makes sense for us as a body to not consider legislation because some individuals do not understand it.

Assemblyman Ellison:
Most of these matters are covered by city ordinances and regulations. The only solicitors who come around my house are politicians.

Senator Jones:
With regard to local city ordinances, my research shows there are no such ordinances in the state of Nevada right now. There are in other jurisdictions across the country. My original bill was modeled after Colorado Springs, Colorado. Delaware recently passed legislation. My original bill actually required licensing, but it ended up with a $4.5 million fiscal note because we got rid of our Bureau of Consumer Affairs. Therefore, we scaled it back substantially. Right now, it is fairly simple, but I hope it will provide some protection from those in our neighborhoods, particularly in our senior communities, which are experiencing unwarranted assaults by these individuals.

Assemblywoman Carlton:
I want to make sure I understand this correctly. There is a personal contact component in there, and I know there are many people who do day work in leaving door hangers. I have had Avon books left on my doorstep. We need to make it very clear that just because there is a door hanger or a flyer, that it is not considered personal contact, because they do knock on the door so you know they have left something. Those of us who have knocked on doors for a number of years, if your flyer is coated just right, you can slip it in between the door and the weather-stripping so half of it is in the house and half is out. I want to make sure personal contact does not involve those day people leaving things on people's doors, such as "Come to this dry cleaner," "I will clean your house," "We will do your Internet work," and those types of things.

Senator Jones:
That is my intent. The language under section 4 is about someone attempting to get someone to open the door.

Assemblywoman Carlton:
I just wanted to make sure that is covered.

Chairman Bobzien:
I appreciate this bill from the standpoint of now having an understanding of where we are in statute. Within the first 30 seconds, you have to make clear your intent to make a pitch. That is pretty interesting, and I did not know that. Are there any final questions for Senator Jones?

Assemblywoman Diaz:
How do we identify the legitimate versus the illegitimate people and all of the people who are exceptions? How is that whole mechanism set up? Is law enforcement involved? I do not want legitimate people to be targeted when they are trying to earn a decent living and to feed their families.

Senator Jones:
A person who decided to engage in door-to-door solicitation would need to make a name badge. I did that yesterday to make a point on the Senate floor. It took me about 90 seconds and cost about 11 cents to put together the name badge. A person must wear a name badge that has a photo taken within the last six months and identifies the company the person is working for, if he or she is working for a company. If someone is working for himself or herself, then it would just need the name, and a copy of the business license would be maintained if applicable. I do not think it is onerous. There were those concerns in the original bill because it would have required a $200 licensing fee, fingerprinting, and the like. The average person would be required to have that information about fingerprinting if he or she had employees. Companies that are operating door-to-door solicitation routes would have to maintain fingerprints and other records. For the average Avon lady, all she would have to do is wear a badge and maintain her business license.

Assemblywoman Diaz:
Let us say that somebody was not aware he or she had to be wearing a name badge, and someone calls law enforcement. What are the consequences that person faces at that point?

Senator Jones:
It is a misdemeanor under section 24. It is deemed "a deceptive trade practice." Therefore it goes to section 27.5. That would be the consequence.

Chairman Bobzien:
Do we have any final questions? [There were none.] Thank you, Senator. We will now go to any additional support for the measure.

Barbara Deavers, Private Citizen, Reno, Nevada:
I come before you as a senior who lives by herself. I am so grateful to Senator Jones and the other supporters of this bill. I had the occasion to speak on the Senate side on this bill. Right before I was going to testify, somebody came to my door who wanted to sell me a security system. It took me 10 minutes to tell this guy I did not want one and to leave. By the time he left, the hair on the back of my neck was standing up. I did not know what this guy really wanted. He said he had this stuff to sell, and I said I did not want it, but he kept trying. To make a long story short, I did not buy anything. I want to make sure people know that seniors do get targeted. Since then, somebody else come to my door trying to sell me something. I specifically asked, because of having read this bill, for the permit and identification badge. I looked at both. I said, "I am not interested, but thank you for following the law." Then somebody came to my door to hand me a flyer. I told him, "I will let you know that I am in favor of a bill that is pending in the Legislature to have no solicitors." The person looked at me, grabbed the flyer out of my hand, and promptly left my home. If this bill had not been introduced, I might have been a victim of another ploy.

I own my home and bought a sliding glass door and windows from somebody coming door-to-door when I was a little more naive. I ended up with something that was not the quality it should have been. I am a senior advocate, and I have also worked with the senior and disabled communities for over 25 years. I know how vulnerable these people are. They are very lonely, so when somebody comes to the door, the first thing they want to do is talk to these people because they do not have many visitors. That leaves them open to all sorts of situations that may not be the most lawful. I would ask all of you to please consider this bill. I think it is a good start to protect our seniors, disabled individuals, and women living by themselves.

Chairman Bobzien:
For the Committee's knowledge, Ms. Deavers used to be my constituent, but after redistricting in Reno, she is now Mrs. Benitez-Thompson's constituent. It is nice to have you in Carson City today.

Debra Gallo, Director, Government and State Regulatory Affairs, Southwest Gas Corporation:
We are in support of this bill and thank Senator Jones for bringing it forward. We have a different but unique problem with several of our conservation and energy efficiency rebate programs. We have had it over the years. We have had four complaints in the last two months where contractors, very enthusiastically, have tried to promote our programs, which is good. Unfortunately, it is confusing because some of the consumers thought they

were Southwest Gas representatives. They were making representations as to the rebate amounts the residents were going to get and the savings in their electric and gas bill from our programs. Currently there is no recourse for the consumer, and that is what we like about this bill. Consumers have gone to the State Contractors' Board, and there is really nothing they can do. At the end of the day, they are our customers, and they are fairly angry with us even though we had nothing to do with it. When this bill came out, we liked the amended version very much.

Chairman Bobzien:
Do we have any questions? We will move now to opposition.

Randi Thompson, State Director, National Federation of Independent Business:
I support the concept of what Senator Jones is trying to do. My fear, and Mrs. Diaz alluded to it, is how do you enforce it? Let us say when Ms. Deavers opens her door, the man hands her a fake identification badge. As Senator Jones just said, he made one on the Senate floor. It is very easy to make a fake identification badge, put together a fake business license, hand it to somebody, and leave. The consumer is left to take action against someone who does not exist. I do not see how to enforce this without education to the homeowners that when somebody comes to your door, ask for their badge and business license. The consumer does not know they should be doing that.

Regarding specific concerns about the bill, in section 9 it says everyone is supposed to have fingerprints on hand for the salesman and a photo taken no less than six months ago. Most of us do not take photos past our fortieth birthday. In section 19, it makes it unlawful for someone to enter a premises with a no soliciting sign. Having run for office, you know you never walk a sign that says no soliciting. But I have a problem with making it unlawful to knock on the door of a premises with a no soliciting sign.

Section 46 gives the fees and licensing to the county and city, so they "shall" even though it says "may." Essentially, you are asking the counties and cities to create a new license for door-to-door solicitors. Legitimate businesses—like National Federation of Independent Business salesmen, ADT Security Services salesmen, Mary Kay or Avon salespeople—have the badges and business licenses. What you are doing is burdening legitimate people, and most importantly, you are not going to get to the illegitimate people. You are not going to get to the guys that say, "I can reroof your house for $3,000 if you give me $1,000 today and sign this contract." It looks legit, but you never see them again. There is no way to truly enforce this, and I think Mrs. Diaz was getting to that when she asked how we can separate legit from illegit. You really cannot. I understand what Ms. Gallo was talking about regarding

Southwest Gas and making sure any documentation left behind represents truly who they are. My biggest concern is how you are going to enforce this law.

Chairman Bobzien:
Are there any questions? [There were none.] Is there anyone else in opposition? [There was no one.] We will close the hearing on S.B. 261 (R2). Does anyone wish to get public comment on the record? Seeing none, for the Committee, we are going to recess to the call of the Chair.

The meeting is recessed [at 3:18 p.m.].

[The meeting was called back to order at 10:20 p.m. on Monday, June 3, 2013, and adjourned behind the bar of the Assembly at 10:21 p.m.]

RESPECTFULLY SUBMITTED:

_____
Julie Kellen
Committee Secretary

APPROVED BY:

_____
Assemblyman David P. Bobzien, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: June 2, 2013 **Time of Meeting: 1:24 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 479	C	Kelly Richard	Work Session Document
S.B. 123 (R2)	D	Kelly Richard	Work Session Document
A.B. 504	E	Assemblyman Hickey	"The Nevada Housing Market: Prospects for Recovery"