

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Seventh Session  
February 26, 2013**

The Committee on Government Affairs was called to order by Vice Chairwoman Dina Neal at 9:03 a.m. on Tuesday, February 26, 2013, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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](http://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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Teresa Benitez-Thompson, Chairwoman  
Assemblywoman Dina Neal, Vice Chairwoman  
Assemblyman Elliot T. Anderson  
Assemblywoman Irene Bustamante Adams  
Assemblyman Skip Daly  
Assemblyman John Ellison  
Assemblyman James W. Healey  
Assemblyman Pete Livermore  
Assemblyman Harvey J. Munford  
Assemblyman James Oscarson  
Assemblywoman Peggy Pierce  
Assemblyman Lynn D. Stewart  
Assemblywoman Heidi Swank  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

None



**GUEST LEGISLATORS PRESENT:**

Assemblyman William C. Horne, Clark County Assembly District No. 34  
Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1

**STAFF MEMBERS PRESENT:**

Jennifer Ruedy, Committee Policy Analyst  
Jim Penrose, Committee Counsel  
John Budden, Committee Secretary  
Cheryl Williams, Committee Assistant

**OTHERS PRESENT:**

J.J. Goicoechea, Chairman, Board of Eureka County Commissioners  
Michael A. Mears, Assessor, Eureka County  
Michael Rebaleati, Recorder/Auditor, Eureka County  
Chris Ferrari, representing Las Vegas Chapter of Associated General Contractors  
Boyd Martin, Manager, Boyd Martin Construction  
Sean Stewart, Executive Vice President, Associated General Contractors of Las Vegas, Nevada Contractors Association  
John Madole, representing Nevada Chapter, Associated General Contractors of America  
Paul McKenzie, representing Building and Construction Trades Council of Northern Nevada, AFL-CIO  
Jack Mallory, representing Southern Nevada Building and Construction Trades Council  
Randy Soltero, representing International Brotherhood of Teamsters  
Danny Thompson, representing Nevada State AFL-CIO  
Russell M. Rowe, representing American Council of Engineering Companies of Nevada  
Michael Hillerby, representing American Institute of Architects

[Vice Chairwoman Neal assumed the Chair.]

**Vice Chairwoman Dina Neal:**

Chairwoman Benitez-Thompson is testifying on two of her bills in the Assembly Judiciary Committee, so she will join us shortly. [Housekeeping matters were discussed.] We are going to hear one bill today, but I would like to start with a presentation from Eureka County, part of Mr. Ellison's district after reapportionment. I am going to call to the table the Eureka County Commission.

**J.J. Goicoechea, Chairman, Board of Eureka County Commissioners:**

I am currently serving as the Chairman of the Board of Eureka County Commissioners. With me today is Michael Mears, County Assessor, who is our geographic information system (GIS) coordinator and also our county webmaster. He does wear a couple of other hats as well, but that is what we will attribute to him today. Also with me today is Michael Rebaleati, County Recorder/Auditor and our budget officer. In the audience we also have Jake Tibbitts, our Natural Resource Manager for Eureka County. He is available should you have any questions as we get into that portion. The three of us will provide a brief synopsis about current activities in Eureka County and some projections going forward, and then we will open ourselves up to questions. First, I would like to start by thanking the Committee and the Chairwoman for their graciousness in allowing us to testify at a later date than was originally scheduled. As you know, that is how it is out in the rural area; sometimes things come up. Unfortunately, we were not able to get here last week.

Next year will mark the 150th anniversary of the silver strike that led to the establishment of the town of Eureka, and eventually, to the creation of Eureka County. With that silver strike came the mining camps and, subsequent to that, there was a population that needed to be fed, and thus was born our agricultural sector. It is no secret to anyone that we have enjoyed a great relationship with the mining industry, and for that we are very appreciative. In addition to the northern half of the county providing much of the gold that is produced in North America, the southern portion of Eureka County produces some of the highest quality timothy and alfalfa hay, a lot of which is actually exported overseas. We also have a very robust livestock production industry. [Continued to read from prepared text ([Exhibit C](#)).]

We are expecting a population boom of 1,000 to 2,000 people. To most of you that does not sound like a lot, in your districts, but if that hits on the south end of our county, it will double or triple the population of the community of Eureka. The needs that is going to place on our personnel, our emergency management services, and our infrastructure will be great. So, while we are keeping one eye on the future needs, we also have a lot of roads, streets, and utility lines that need to be replaced and updated. We are an old community. As we work through this budget process, we are cautiously trying to determine how we are going to spend our money to upgrade what we currently have and look at this population expansion and the expansion of our infrastructure that will come. We will do our best to stay ahead of the curve. We are very worried about investing in blue sky and then having some increased regulations and policies come down that limit the productivity of our mining and ranching communities. We do not want to take our historic mining town and turn it into a modern-day ghost town.

**Michael A. Mears, Assessor, Eureka County:**

As Chairman Goicoechea stated, I wear many hats in Eureka County. I am the County Assessor, as well as our GIS mapping coordinator and the county's webmaster. I was looking back at what we brought to you last session, and at that time, the issues facing Eureka County were much the same as they are today. Essentially, our two main industries in Eureka County are mining and agriculture, as J.J. stated. In anticipation of population growth, one of the greatest hurdles that we face right now is housing. We are very housing poor, and we are currently making efforts to develop areas for housing. Eureka County does not have zoning of any kind, which creates additional challenges in our county because we do not have control over where development may or may not take place. Therefore, the county is trying to initiate development of housing within the town site at this time by working to develop a subdivision known as the Eureka Canyon Subdivision. Mr. Rebaleati will go into more detail on that, but essentially, at this time we have created space. We now have 50 apartment units in the Eureka Canyon Subdivision and 32 single-family residential lots that are now available for development. We are continuing the expansion of that subdivision to add at least, by this spring, an additional 30-plus lots available for single families. [Referred to outline ([Exhibit D](#)).]

Today, I am going to take off my assessor hat and I would like to wear my GIS coordinator and webmaster hat. I have already heard a couple of the bills in this session related to technology. Especially since I am directly involved in the technology field in Eureka County, I wanted to speak to that this morning. Eureka County has always been in the forefront of investment in our technological resources. When I came to work for Eureka County some 16 years ago, I was hired on to help develop our GIS mapping program. We basically led rural Nevada in development of geographic information technology. Today we have a state-of-the-art GIS mapping program and database. I included a map ([Exhibit E](#)) that Mr. Rebaleati will be referring to, but that just shows our current mining activities in Eureka County and some of the proposed mining activities that we are anticipating. For my part in it, I wanted to share with you some of the mapping capabilities that we have and show you what we are able to do there. [Continued from outline ([Exhibit D](#)).]

Most recently, as a volunteer emergency medical services (EMS) provider, we rely very heavily upon air ambulance services, specifically Access Air helicopters. Because of the traffic loads and such that we have on Highway 278, and Highway 50, we respond to many accidents. Our nearest hospitals are 77 miles east in Ely and 135 miles northeast in Elko, so getting people to trauma care is critical for us on an accident scene, and the ability to get a helicopter to the scene in a timely manner can be a matter of life or death

for us as EMS responders. Therefore, what we have created is an emergency landing zone (LZ) map book for the entire county. We have gone out and identified specific areas where we have a 100-foot radius LZ that will allow the "bird" to get down to the ground. Those areas are already plotted on the GPS and part of the GPS system within the helicopter, so essentially we can say, Meet us at the Strawberry Road turnoff LZ, and that helicopter pilot can launch out of Elko, plug that in, and start flying in that direction before we may even be on scene. If they are already airborne, it cuts down our response time substantially, and we can get that person to the trauma care that they need.

Moving away from the GIS site and putting on my county webmaster cap, Eureka County currently maintains two websites: the Government Site and the Economic Development Site. [Continued reading prepared text ([Exhibit D](#)).]

**Michael Rebaleati, Recorder/Auditor, Eureka County:**

I have been Eureka County Recorder/Auditor since 1983. Fortunately, the term of office has not applied to my office. I have been given the opportunity to serve my community for a very long time. In the next three years, what I want to focus on and I want to share with the representatives from other parts of the state of Nevada is that Eureka County is an export county. We export jobs. We have approximately 5,000 employees who work in Eureka County, but we only have a population of around 2,000. [Read from prepared text ([Exhibit F](#)) and referenced map ([Exhibit E](#)).]

We would like to work with public works, not only with Eureka County, but also with the state of Nevada transportation area, and hopefully these roads can be improved. We have seen great deterioration on these roads in the last year, especially this winter. Again, there is a large amount of traffic, and these roads are going to be deteriorating quickly. We all know, in government, our big-ticket items are highways. With that in mind, I would like to open up to any questions that you might have about Eureka County, or anything that is related to the state of Nevada.

**Assemblyman Ellison:**

I have a couple of questions. I know that J.J. Goicoechea will probably jump in first about the Sagebrush Ecosystem Council and the greater sage grouse. If that bird does get listed, what would the impact be on the Eureka area? Also, are the emergency services that you provide all voluntary? The last thing is regarding the school district. I think that Eureka is the only county in the state that actually pays for all of your school district. Is that correct?

**J.J. Goicoechea:**

I will start with the sage grouse issue, and I will allow Mr. Mears to answer your fire and EMS question. As far as the sage grouse issue goes, it would be no surprise to anyone on this Committee if I told you that we are extremely concerned about the potential listing of the greater sage grouse. I have been fortunate enough to be very engaged in that process. Last week, the Sagebrush Ecosystem Council, as created by the Governor, had its first meeting. I was elected to chair that, so I hope that we can somehow steer a Nevada state plan in the right direction. I am not going to say that we will avert the listing of that bird. Our hope is that we can create a plan within which we can work as a state if that bird is listed, and continue to maintain our economic viability. As I said, Eureka County is not alone in having 13 percent private land. There are a lot of rural counties that have a lot of federal land in them. If that is curtailed, we will see a significant impact in energy development, mining, agriculture, outdoor recreation, et cetera. That is, in part, what I alluded to about the fact that I do not want to see these small communities modernize for potential growth and then become modern ghost towns. That could happen if we are not careful about how we are going to implement saving our sagebrush ecosystem. Also, it is not only the sage grouse; there are other species that are obligate to that sagebrush ecosystem as well.

**Michael Mears:**

To answer your question related to EMS, yes, our EMS and fire service is completely voluntary. I will proudly say that the three of us sitting here are all part of our local fire department and EMS program. We respond regularly to accidents, wild land fires, et cetera. That is one of those things about being a part of a small community; you feel compelled to be able to serve in that capacity, to be able to drop what you are doing at the time that somebody out there needs that assistance. However, that is one of the challenges that we are looking at in terms of growth. Are our volunteer emergency services going to be able to meet the needs of those individuals? Just this past year we have already seen an increase in incidents on the highways because of the amount of travel that is taking place to and from these mine sites. That is only going to continue to increase. It is a great concern of ours that we are going to have not only the volunteers available, but to have them trained well enough to deal with the various incidents that will come our way.

**J.J. Goicoechea:**

Just to clarify something that Mr. Mears said, we are all volunteers, but we do currently have one EMS coordinator who is an emergency medical technician (EMT) intermediate. That is a paid position. We have two other paid EMT intermediates in the county; one on the north end, and one in Eureka. The reason for this is that we are an intermediate service. We are not

paramedic. We are not advanced life support. However, we have to have an intermediate run with a basic, or a driver, on these ambulances, and we have a lot of mining people volunteer who, due to their work schedule, may not be able to answer that call. In order to maintain that level of care to our constituents, some years back we, as a county, elected to go ahead with a couple of paid intermediate positions.

**Michael Rebaleati:**

To answer your last question concerning the school district, yes, the Eureka County School District operates at least 90 percent on ad valorem revenues. There is some state revenue that comes in for specific programs such as special education, or for something that is mandated by the state, but there is funding provided. For a brief bit of levity, when we are all sitting at a meeting and the fire siren goes off, sometimes the meeting has to be suspended until we take care of the issue. Then we will get back and continue the meeting.

**Assemblyman Stewart:**

I am happy to see another generation of Goicoecheas effectively involved in politics. I assume that the mustache goes along with the office. I hope that as you mature you will become as handsome as your father.

I have several questions. First, regarding the land, how has the drought of the last few years affected things? Is it easing at all this winter? How have the range fires affected you? Also, with your housing boom you are preparing lots. Have you had construction companies that are interested in going there to build? I imagine that it will be a challenge to house them while they are building. Could you enlighten me on those areas, please?

**J.J. Goicoechea:**

I hope that one day my dad's mustache will be as good as mine. Someone once asked us, jokingly, if we were born with these. I really do not remember, but perhaps.

To address the issue of drought, we did have a very significant drought, as did a lot of the state. This year our side of the state is substantially drier, again. A lot of our snowpack telemetry (SNOTEL) sites are over 100 percent of snowpack already on the eastern side of the state. It is looking better. Anyone who has lived in this state long enough knows that it is all about timing, and about how much snow you get. There are drought environmental assessments that were released from all Bureau of Land Management (BLM) offices within the state of Nevada. Those will dictate how we will go forward as a public land grazing industry, and also some other utilization on public lands,

in periods of drought. They have linked that to the national drought monitor. We have to watch that very carefully. If you have an area of exceptional or extreme drought, there will probably be some increased restrictions placed upon how we utilize our public lands. I am keeping my fingers crossed. I know that we have enough moisture out there to start green grass this year, but it depends on whether more will come in April and May to keep that going. Along with that comes the threat of fire. If we do get the right type of spring, and we do get a good flush of cheat grass and other invasive weeds, we will see an increase in fire intensity. A lot of our piñon-juniper forests are dry from this year of drought. We have some decadent stands of sagebrush in many of our valleys that are extremely dry because the timing did not come right to allow them to put some moisture back into their system.

Fire has impacted Eureka County. We had the large Frasier Fire on Roberts Creek. I am proud to say that Eureka volunteers played an active role in keeping that fire out of a Wilderness Study Area. If we had not, we would have been fighting fire after the snow came. We do have some displaced permittees in the northern end due to fire. We are fortunate enough to have a good working relationship with the Nevada Division of Forestry (NDF). So we have good resources, and we access state resources as needed to go along with federal resources.

When phase two is complete, we will have 67 residential lots available for sale in the Eureka Canyon Subdivision. I am proud to say that yesterday one of those lots went into escrow, and I was asked to sign some paperwork on that for an individual. So, we are starting to see a little interest. Obviously, wintertime is not the best time to build anything in Eureka. We have been under some snow. There has been some recent discussion about two other subdivisions in the southern end of the county. Eureka County is heavily involved in the Eureka Canyon Subdivision to try and keep that population close, but these other subdivisions are actually three miles north of town, in the Diamond Valley area. We are keeping a very watchful eye on that. We are hoping we do not see some unwanted impacts, or some controversy, if you will, between our agricultural community and some proposed housing in that area.

**Assemblywoman Pierce:**

I have my own ideas about state funds, but I would be interested in knowing where you think the state should get the money to repair the highways in Eureka County.

**Michael Rebaleati:**

I will take a crack at that. I really cannot answer that, but the reason I brought this up is so that people are aware of the two highways in Eureka County that

are going to need repair. What I would like to do is open the door between Eureka County and the State of Nevada, even if it takes shared funding, just as long as there is a study or some kind of a plan that has to be made, and hopefully identify the source of revenue to help repair it. It might be a combination of federal revenue along with net proceeds, but I would just like to see the issue addressed. I am sorry that I cannot give you the silver bullet that is going to solve the problem, but I think that if there is a plan and some cooperation between all entities, including the mining industry, then maybe we can come up with the funds to repair these roads. Hopefully, that at least opens the door for discussion.

**Assemblywoman Bustamante Adams:**

I had the opportunity to visit Eureka County last year, and I am really grateful to actually have a picture in my head now of what you discuss about the county. My question is: you mentioned that you were an export county, and I know there is agriculture and mining, but what else do you export, if anything? My second question is regarding business licenses. If you are expecting this growth in business licenses, and I know yesterday we talked about the business portal, what are you doing specifically to make sure that you are prepared for these businesses that will be coming over the next couple of years?

**Michael Rebaleati:**

As far as the business portal, yes, we really hope that there is an increase in private industry and more new businesses are created to service the growth of the mining industry. A lot of the businesses that service our area now already have their licenses from Washoe County, Clark County, or Elko County. I am not sure if Eureka County itself is really going to see that many new businesses as grassroots development through just our county. So, yes, we will be prepared for those. We are so small in population that there is going to have to be a huge number of businesses coming into our county in order to really affect us. I believe we are ready, but again, most of them come from other counties or other states.

Could you repeat the first question?

**Assemblywoman Bustamante Adams:**

In your testimony you labeled Eureka as an export county. So my question is, besides agriculture and mining, what else do you export?

**Michael Rebaleati:**

We export most of our bright kids. Unfortunately they leave the county because the jobs do not exist in the county. I am not making light of that. It is true. Hopefully, the professional sector in Eureka County continues to grow so

that a lot of our bright students return to us. It was very nice to see Chairman Goicoechea come back from his extensive studies. He earned his degree as a veterinarian. We do export our bright students. The reason I brought up the net proceeds of mines is because it is such a substantial amount of money. We do export that. Other than those major sectors, there is not much else that we actually do besides our agriculture, as Mr. Goicoechea mentioned. We are exporting all of our hay. The hay goes anywhere from the horse racetracks in Kentucky to Japan. Our economic situation is quite simple: mining and agriculture, and that is it.

**J.J. Goicoechea:**

One key thing to keep in mind, to be honest, is that we export paychecks. We do not have that big of a population residing within Eureka County. In the north end, the employers are the large mining companies. That is where the bulk of our people work, if we want to call them "our people," as for where the paychecks that come to Eureka County are. Those people live in the communities of Battle Mountain, Carlin, Elko, and Spring Creek. Those dollars go back into the local economies of those other counties and communities. I think that is what Mr. Rebaleati was trying to get at; we export, not necessarily jobs, but the paychecks that go along with those jobs. That is the key thing that we feel we export to the surrounding counties. Plain and simple, we just do not have the place for them to live, nor the infrastructure to draw them there.

**Assemblyman Oscarson:**

I really applaud your efforts to GIS your helicopter landing sites. I think that is a great thing to do in rural counties, and I hope that others would follow that example. Whenever you can get those responders on their way while you are on the way as well, I think that is a great thing. Thank you for doing that.

I have two quick questions. You talked about your website. I would like to know what the availability of connectivity is throughout your county as far as cellular and Internet capabilities. Also, with your volunteer services and your three paid people, do you have any idea what your volume of EMS calls is on a yearly basis? Could you break that down, if you have the information? If not, I understand. How many fires versus EMS calls do you receive?

**Michael Mears:**

We have been working with the Connect Nevada initiative to expand broadband connectivity throughout Eureka County. At this time there are very few areas that are dark, if you will, where we do not have connectivity of one kind or another. I will also refer to Mr. Rebaleati on this, but the County itself is actually investing in additional broadband with the idea that our location in the

center of Nevada could potentially become a hub for distribution of additional broadband to the other communities and counties around us. So again, I go back to some of my initial comments. We have invested heavily in technology for many years, and we would like to be out there in the forefront of expanding broadband throughout northern, and especially northeastern, Nevada. Certainly, Mr. Rebaleati could expand on that, but that would be my short answer.

**Michael Rebaleati:**

We really need the state's support in enhancing our broadband capability. We have dark fiber coming through the town of Eureka, and it is very difficult for us to try to light that up, even if we offer money. It is tied up into the large companies, and it is very frustrating that I know that there is this large pipe of broadband going right through our community and we cannot tap into it. Unfortunately, a lot of it has to do with politics.

**J.J. Goicoechea:**

I will address the EMS and fire calls. Assemblyman Oscarson, I do not have the exact numbers, but I will say that we run roughly three EMS calls to one fire call. Summertime is when we see the majority of our fire calls. We do respond to a lot of vegetation fires on our public lands. With the increased traffic, we have seen a drastic increase in motor vehicle accidents in the area. Last month we had that report at our commission meeting. In the month of January we saw a 50 percent increase over last year for the same period. There were 24 calls, if my memory serves me correctly. That is almost one call per day. It does not sound like a lot to a big city, but in Eureka, when you go on that call and you have to transport to Elko, you are gone for five hours. That places a significant strain upon our volunteers.

**Vice Chairwoman Neal:**

You had a great presentation. I know there are some Committee members who want to follow up with you later. I am one of them. We appreciate your presentation. We will now open the hearing on Assembly Bill 172.

**Assembly Bill 172:** Revises provisions governing bidder preferences on certain public works. (BDR 28-110)

[Chairwoman Benitez-Thompson assumed the Chair.]

**Chairwoman Benitez-Thompson:**

We would like to welcome the bill sponsors to the dais: Assemblyman Horne and Assemblywoman Kirkpatrick. Thank you so much. The Committee was enthralled by the presentation from Eureka County and peppered them with

questions—all in due diligence for the good of the legislative process. Mr. Horne, I will let you begin whenever you are ready.

**Assemblyman William C. Horne, Clark County Assembly District No. 34:**

We, too, will attempt to enthrall the Committee if that is okay. I appreciate the Committee taking the time to hear testimony on Assembly Bill 172. I would like to preface my comments by saying this bill is a work in progress, but by no means should this Committee consider this to be an attempt to change the spirit or intent of Assembly Bill No. 144 of the 76th Session. Some of you will remember that as Assemblywoman Kirkpatrick's bill, and that is why she is sitting here to my left. She knows this topic inside and out. With that, Madam Chairwoman, I will begin.

We passed and implemented Assembly Bill No. 144 of the 76th Session, which expanded existing bidders' preference law to require at least 50 percent of all workers and design professionals employed for a public work project be Nevada residents, at least 25 percent of materials used in the public work project to be purchased in Nevada, and certain payroll records to be maintained and available in Nevada. The intent of A.B. 172 is to streamline and simplify the bidders' preference process. This bill clarifies existing language so that business and local government may comply with these regulations with ease.

At this time I would like to inform the Committee that there are also proposed amendments that go along with this bill to correct a few errors that occurred in the drafting process. These amendments will be presented to you following my presentation. We have had meetings pertaining to A.B. 172 as recently as this morning. This bill increases the required residency to 100 percent. It also provides that all workers, and 50 percent of design professionals, must register all vehicles owned by the worker or design professional, including vehicles for personal use, in the state of Nevada. It eliminates the requirement that a percentage of suppliers of the materials used for the public work be located within the state. It clarifies that the driver's licenses and identification cards used to satisfy the statutory requirements must be issued by the Department of Motor Vehicles (DMV) in the state of Nevada. It requires a contractor to meet those requirements only if the contractor was awarded the contract as a result of bidders' preference. It restricts who can file a written objection alleging a violation of those requirements to only persons who submitted a bid on the public work.

Section 1, and sections 4 through 8, make technical fixes to existing language to clarify the intent of this legislation. For example, it is changing the term "liquidated damages" to "penalty," the word "breach" to "failure to comply," and "have" to "provide."

Assembly Bill No. 144 of the 76th Session required all contractors on a public works project to keep records of their employees' names, occupations, identification numbers, and wages. Section 2 of this bill clarifies that only those who were awarded a contract for a public work are obligated to comply with those requirements. This will reduce paperwork for businesses and promote efficiency.

Sections 3 and 5 of the existing law prohibit a contractor who failed to comply with certain requirements within the preceding one to five years from receiving a preference in bidding on a contract for public work under certain circumstances. This bill removes those provisions.

Section 9 provides that the revised requirements for preference in bidding on a contract for public work apply to any public work that is first advertised for bid after July 1, 2013. It declares that any contract for such a public work that fails to comply with this bill is void.

Section 10 states that this will become effective July 1, 2013. This concludes my presentation for A.B. 172.

**Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1:**

I am liking coming before this Committee. I have been here twice in recent days, so I will try to figure out how I can get here next week as well.

I wanted to give you a little history of where we are coming from and to tell you what to expect today. There is no perfect bill in this building. Whether it is one line or 30 pages, there are always changes to be made. We passed Assembly Bill No. 144 of the 76th Session, and we are working very hard to make sure that folks in Nevada get the jobs first. It was very frustrating to see people from out of state come in and get the jobs when Nevadans were on unemployment or unable to care for their families, so we worked collectively across the board with many different agencies to put something into place. We wanted to make sure that the cars were registered in Nevada, that the workers had some type of Nevada identification, and that they were trying to get some of the supplies here in Nevada, so that we could ensure that the economy was seeing the fruits of the dollars and that it was all being spent.

I did say, as I have always said, that we should revisit it and see what is not working and how to fix it, and let us always go back and fix our bills. I am a big proponent of following your stuff through the interim to make sure that it did what it was meant to do, and if it did not, then to clear the air. During the summer months, many groups worked together on some problems. Some of the local agencies and some of the governmental state agencies, as well as the

contractors and laborers, all found problems with the legislation. In August we thought that we had resolved most of that and we submitted a bill draft request (BDR) to drafting. However, interpretation is everything on how the bill actually comes out and is finished. So, what I have asked is for people to come to the table today to put their opposition on the table, because as the Chairwoman may know, I am big on making sure that the record is very clear so that we can go back and actually fix the problems. So you cannot come to the table and say, "I support it, but please take out sections 4 through 13." That does not work for me, and it does not help you do your job as legislators. You can testify in neutral if you have no skin in the game, but I guarantee you that all of the folks behind us have skin in the game, and they really want to see this work. I have encouraged them to come to the table and state their opposition so that we can go back and revisit the bill section by section. They did not really want to do that, but I begged them to please do it right.

On the Assembly side we try to be consistent. There is nobody who is going to come to the table who wants to delete the whole bill. There is nobody who is going to come to the table who does not want to be a part of the overall solution, because we want to ensure that it works and that it is streamlined for the long term. It does no good to have a piece of legislation in place if it does not work.

Some of the things that you may hear are whether or not the architects and engineers should be in there, and "a penalty" versus "liquidated damages;" there are reasons for that, and I would hope that folks would explain why we made some of those changes. A "penalty" was more quickly assessed than "liquidated damages." So, I hope people will bring those to you.

I think we are 99 percent there on the intent with this bill, but maybe with some legal assistance we can get closer. The intent is to ensure that Nevadans get the jobs first. If you get a Nevada driver's license, state law says that you have 30 days to register your vehicle. That is already law. However, if you are using the bidders' preference, we want to ensure that your folks are having their cars registered because that is a big problem that we see. Do I know if we could actually enforce it the way that it is written? I am not sure, but I think we need to revisit that so that it is enforceable. When you rent a hotel room, they always ask for your plate number so that they can be aware. Maybe on the form somebody puts similar information, and then in my mind, the contractor has done his due diligence to ensure that his members have registered their vehicles within the state.

With all of that being open, we really hoped to come here with the perfect bill, but it does not matter who you are; you do not have a perfect bill. So I would ask you to be open and know that everybody really does want to work together, but we also want to keep the intent of making sure that Nevadans get the jobs first and that Nevadans are the ones who are collecting the paychecks and feeding their families. That is the intent of this bill. Nobody wants to get away from that. We just want to streamline it.

One of the other things that came up during the interim is that every agency had a different form. Five or six of you were on the Committee last session, and we all know that was the one thing that we talked about everybody doing better. So this kind of tightens it up so that they can. Also, we definitely did take out the supplies portion of the bill, and I support that for a couple of reasons. We were running into a system where we could not get the supplies. There was no easy way to track the supplies within our state. Do I think that somewhere down the road maybe we will want to revisit that? Yes, but I do not know how to fix that problem sooner rather than later. I can tell you that folks are working to keep Nevada's workers using Nevada's products. However, we did agree to take that out. I do know there are some concerns about the tractors that come to the job site, as opposed to the lay-down yard, and I was not aware of how that actually worked. So I am hoping that they put it on the record and that they are specific so we can talk about it.

This is a working bill in progress. We want everybody to be honest and truthful and give us a little bit of direction as to why they think it has to work, so that we can go back and work together. With that, I thank you.

**Chairwoman Benitez-Thompson:**

Thank you, Assemblywoman Kirkpatrick. As Assemblyman Horne referenced, I believe that there are amendments that are supported by bill sponsors that we would like to cover before we go into asking questions of the bill, so that we are asking questions of items that are agreed upon.

**Assemblyman Horne:**

There are multiple amendments, and as Assemblywoman Kirkpatrick stated, it is a work in progress. Even within the amendments themselves, we are not in total agreement. However, we are in agreement with either what the intent of the amendment is or in portions of the amendment.

**Assemblywoman Kirkpatrick:**

Madam Chairwoman, I would like to offer a suggestion on how this might work for you, because I do not believe that there is one person in this room who is going to say that they love this bill the way it is. I just cannot imagine that, and

I would not expect anybody to say that, but maybe if you just let them bring their amendments and explanations, Assemblyman Horne and I can stay behind and try to start addressing them. I do not see anybody in support, nor would I expect them to be in support. It is not a harsh thing; it is just a reality. I do not know that anybody is going to be neutral, because we have asked them to be in opposition, but to bring their amendments so that we could work through them at a later time.

**Assemblyman Daly:**

I remember this bill from last session. I want to try to understand the intent this time, so that when I am looking at everybody's stuff we can hopefully get it there. As I recall, Assembly Bill No. 144 of the 76th Session had a trigger on all of these requirements. The trigger was if you were the successful bidder and you actually got the bidder preference. That is a very narrow interpretation, and it did not really apply or work very often. I know there were complaints, and I heard from a lot of people that it just put an extra burden on a guy who was already an in-state contractor. Was our intent this time not to really have a trigger off of the bidder preference? I know we are talking a lot about the bidder preference. Was it if you have one you have to comply? That is where I got confused when I was reading the bill, and I know there will be amendments coming. In one section, you could submit your bidder preference if you had it two hours after the bid, and in another section it is not there. If a guy is going to pick and choose, or if I was a contractor, when I read this and I look at some of the stuff that goes on there, I just would not put in my preference or say that I have it at all, and then I do not have to do any of this stuff. But if that is not what our intent is, and we want people to comply with some of these things, whether they are the right number, or 100 percent, or 50 percent, there are some flexibilities that are going to be necessary. So, what are we trying to trigger? How are we trying to trigger this to get people to have to meet paragraphs (a) through (d) in section 1, subsection 1, of the bill?

**Assemblywoman Marilyn Kirkpatrick:**

Assemblyman Daly, you are absolutely right. Last time we required everybody to fill out the paperwork regardless, and that created a problem both on the local level and the contracting level. This time, we believe the best way to start this, because I think we have to step back a little bit to get the process to work before we can expand it, is to require that if you get the job based on being lowest bidder, then you have to comply with all of these requirements, and that is when you will fill out the paperwork.

What I can tell you is that we have worked with people because the locals were having a hard time implementing it. I will also tell you that it brought a lot of discussion to the table. People who had not normally been at the table were

joining the discussion. But that really is the intent; to require all of the paperwork once you are awarded the job. You are welcome to work on a working group with us.

**Assemblyman Daly:**

I will. You probably could not keep me away. There were a few other things, so I was glad to see that there is a working group, because there are flaws that are unintended consequences that I can see in the draft, but having already experienced that in a bill of my own, I understand. I said the same thing in the Assembly Committee on Commerce and Labor yesterday with one of my bills.

**Assemblyman Stewart:**

I applaud your efforts, Assemblyman Horne and Assemblywoman Kirkpatrick, in bringing more jobs to Nevada. I think that is great. One thing that I am a little bit concerned about, and I am sure your amendments will cover this, is on the 100 percent; if we have a multistate company that maybe has an expert in Houston who has specific talents, would they be able to use that individual on the project so long as the rest, or maybe 95 percent, of the workers were Nevadans?

**Assemblyman Horne:**

That provision is addressed in amendments and there are some constitutional provisions on how far we can go with those types of restrictions on hiring, or not hiring, contractors with the personnel from out of state.

**Chairwoman Benitez-Thompson:**

Following the rules of the Assembly Committee, we will open up for testimony in support of the bill—support meaning the bill as written. It sounds like amendments are a work in progress. Assemblywoman Kirkpatrick said she does not expect many folks to be completely in step with the letter of the draft. Seeing none in Reno, are there any in Las Vegas? Seeing none in Las Vegas, we will move to opposition. Opposition can be considered those folks who support the intent of the bill, but have amendments. Let us take those with amendments first. Please walk through your amendment to clarify the intent and language that you have so far, and we will make sure that we get good legislative record about what you are trying to accomplish.

**Chris Ferrari, representing Las Vegas Chapter of Associated General Contractors:**

With your indulgence, Madam Chairwoman, with me today are Sean Stewart, the Executive Vice President of the Associated General Contractors (AGC), and Boyd Martin, one of the AGC members, from Boyd Martin Construction. I just wanted to come up for a moment. Boyd and Sean are going to take you

through the details, but they have both taken an extensive amount of time with Mrs. Kirkpatrick in working on this legislation, and have convened a working group, which Mr. Martin will tell you more about, to really try to accomplish the intent of Assembly Bill No. 144 of the 76th Session. We are happy to continue working with Assemblywoman Kirkpatrick and Assemblyman Horne. Thank you so much for your time today.

**Boyd Martin, Manager, Boyd Martin Construction:**

We actually started working on this in May of 2012. We involved Assemblywoman Kirkpatrick, who was very kind in giving us some of her time to bounce ideas off of her and Assemblyman Horne, who was also involved in some of our meetings. When we say "working group," I just want to give you some concept of what that was: it was many government entities, and many contractors as well. The goal of the working group—and I do not know if I drew the short straw, but I was asked to chair that subcommittee on that working group—was to try to make this a workable piece of legislation. It was not to try to delete it in any way. We spent the majority of the summer, May through August, working on the amendments. There are issues in the drafting, and so we oppose the bill as drafted, as it currently sits before you. We had a short time to reconvene our group yesterday afternoon. These amendments are by no means written in stone, but there are proposals, and we would like to participate in whatever other meetings occur.

Our first amendment ([Exhibit G](#)) would be to section 1, subsection 1, paragraph (a), to restore the deleted language at line 11. The deleted language is: "At least 50 percent of all workers." That addresses one of the concerns raised today. It is, in our opinion, difficult to enforce the "each worker" language in this bill for lots of reasons.

Our second amendment says, "Delete section 1, subsection 1, paragraph (c)." This amendment is not really specific to the original intent. Our original intent was to limit the design professional aspect of this bill, as far as the contractor's perspective, to design-build projects. It is very difficult to hold a contractor responsible for the design professionals when they are not under his contract. The way it is currently worded has been one of the aspects of this statute that has been difficult to enforce at the government agency level. It is generally inferred that somehow we would be responsible for the employees of a design professional, just because we are the contractor. Many jobs are low-bid, and we have no say whatsoever on who the design professionals are on the project. Our real goal was to limit that language with respect to design-build.

Our third amendment is more of a consistency in language issue than anything else. In section 1, subsection 5, "person" is referenced in lieu of "entity."

In lines 22 and 24, of subsection 5, the word "entity" is used, and we would propose to change that to "person," just to stay consistent. "Person," as I am sure you are all well aware, is a broad term, statutorily, and covers businesses. That was actually something that was brought up by some of the government agencies that participated; the suggestion that "person" would be more appropriate language there.

Our fourth amendment was actually brought up yesterday in our working group by a representative of the Nevada Department of Transportation (NDOT). We would propose to delete the language in section 5, subsection 11, and also in section 7, subsection 11. This specifically references a joint venture. The concern was with the language starting on line 9 on page 12. This is restrictive as to how they determine the best bid of the joint venture. The intent of this is that all of those parties to the joint venture would have a bidders' preference. We propose to substitute language that would replace subsection 11: "In the event of a joint venture, all of the participants in the joint venture must individually meet the requirements of subsection 2 in order for the joint venture team to receive preference." As I said, that language is our initial proposal, but it was just to clarify that all participants in the joint venture would have to have preference. Again, that was something raised by NDOT.

The rest of the amendments, 5 through 10, were more to clean up language and have consistency throughout the bill. There were changes made in the initial section 1 that were not subsequently made in drafting throughout the remainder of the bill, and so to maintain consistency, that is primarily what items 5 through 10 are intended to do. I would be happy to go through those individually.

**Chairwoman Benitez-Thompson:**

Please do, just for clarification. Amendment 5 is talking about different types of money levels, and I have a Committee that loves to ask technical questions, so I think walking through them might help address some of the questions before we dig into them.

**Boyd Martin:**

The intent of amendment 5 is to remove the \$25 million and \$5 million provisions that were removed in sections 3 and 5, but remain in section 4, subsection 1; section 6; section 7, subsection 9, paragraph (b); and section 8, subsection 3. The recommendation is to make language consistent in all sections.

The intent of amendment 6 is to have the requirements only apply to contracts awarded as a result of bidders' preference, which is noted in section 1, but is

not noted in section 2, subsection 4, and in section 2, subsection 4, paragraph (b), subparagraph (3). The recommendation is to make language consistent in all sections.

As you can see, amendment 7 amends section 7, subsection 2, paragraph (b), subparagraphs (1) and (2) to comport with section 5, subsection 2, paragraph (a), subparagraphs (2) and (3), outlining the time and process for submitting the certificate and affidavit. The recommendation is to make the language consistent in all sections.

Amendment 8 is to amend section 2, subsection 4 of the bill, which currently reads "by that contractor." We propose to amend that subsection to read "by that contractor, or any lower tier subcontractor," and that again is a consistency in language issue. Lower tier contractors are referenced in some aspects of the bill, and that was just to clarify that in this particular section.

Amendment 9 is to amend section 1, subsection 7 at line 9 to state "in bidding described in subsection 2," and at line 15 to read "who receives a preference in bidding described in subsection 2." That particular section provides clarification for the government entity. It talks about the affidavit described in section 1. The bidders' preference is actually more specifically described in section 2. With the way that section 2, subsection 4 currently reads, everything is referenced to section 1. This was proposed that in the two instances where preference is referenced, it should more appropriately reference to subsection 2.

Amendment 10 is to amend section 7, subsection 13, to comport with section 5, subsection 13. That again is a language issue having to do with preference.

**Assemblywoman Bustamante Adams:**

Going back to amendment 5, I understand your deletion in section 3, or your mentioning of it, but why did you remove it in section 3? I know you want to stay consistent in any other section, but why remove the \$25 million of the provision?

**Boyd Martin:**

The idea was that this bill, as drafted and amended from last session, was to render the responsible party as the party that would receive the penalty, or as it is called in the current statute, "liquidated damage." That way the person who causes the problem is held responsible. For example, I am a general contractor, and if I have a subcontractor performing one aspect of this job, and that subcontractor may have a \$3,000 contract, and they violate a provision of this statute, the subcontractor who violates the provision of the statute is held

responsible to receive the 1 percent penalty of their contract. So, the provisions are all written the way they are right now to be punitive to the party who causes the breach or the failure to comply. These two particular provisions are directly, and only, able to be assessed against the general contractor. For example, in that hypothetical instance I just gave you, I could have a \$3,000 subcontractor on a \$25 million job, who potentially causes a problem for me to be able to bid projects. This provision limits the general contractor's ability to bid public projects. I believe the \$25 million provision is for a period of a year. The loss of bidders' preference is for five years. That seems particularly onerous and punitive to the general contractor, and it cannot be assessed against the offending party. That was the reason to delete those two sections.

On top of that, the government entities and agencies were having a struggle on how they would even assess that from a legal standpoint in the discussion groups that we had. Every aspect of this bill is geared towards the offending party except these two provisions, because a subcontractor does not have bidders' preference, and they are not obtaining the right to bid through the state of Nevada, whereas the general contractor is.

**Assemblyman Daly:**

Mr. Martin, I am going to ask you the same question that I earlier asked Assemblywoman Kirkpatrick. I want to make sure I am understanding this correctly. I understand we want to put Nevadans first, as in Assembly Bill No. 144 of the 76th Session, known as the Nevada Jobs First bill. We want to have the requirements, or at least some version of the requirements, on the 50 percent and the truck registration and the other provisions that make it so that we can put our workers back to work. I just want to make sure where the trigger is coming in, because before, it was only if you bid that you had the 5 percent bidder preference; then only if it made a difference. In other words, if there were four local contractors who all had their certificates for the bidder preference, but they were not used in the determination of who got the award, none of it applied. That was the very narrow trigger in the interpretation from State Public Works. That is actually how it was written.

What are we trying to achieve under this? If you have a certificate, whether you need it or not to get to bid, all of this "Nevada first" stuff is going to apply. Or, is it still only going to apply if you actually get to bid because of bidder preference? I just do not want to create a situation where, as I was explaining to Assemblywoman Kirkpatrick, if I have to do all of this stuff, but I can avoid doing it all by just not having a certificate, or by not turning it in, then I am going to look at who the bids are from two hours after the bid, and then make

that determination on whichever way is the path of least resistance. So, I want to make sure that I understand what the intent is, and that we get the language to hit the target we want.

**Boyd Martin:**

Our goal was to not require unnecessary paperwork and put undue burden on Nevada contractors who are already in compliance. Our goal would be that if the preference was necessary in the award of the contract, then you comply with the preference and with all the aspects of this "Nevada first" bill.

If the preference was not necessary in the award, which has proven to be the case in many instances where it is basically Nevada contractors bidding these projects, then the paperwork would not be required. That was supported not only by the contractors, but also by the government entities in their desire not to have to track an unnecessary stack of paperwork on a job where the preference did not apply. That would be our goal. If the preference is necessary, the paperwork would be required; if not, it would not be.

**Assemblyman Daly:**

I think I understood what you said. What is the difference between where we were to where we are? That was the interpretation from State Public Works, and that is what the bill actually said. Only if you receive the bid with the bidder preference, even though you were less than 5 percent higher, you actually got the job. That was the only time it applied.

So, what is different in your intent from what you just said, regardless of what the bill says now? I want to find out what the intent is. What do we want to try to do? What do the parties want to try to do? I think I understand what Assemblywoman Kirkpatrick wants to do, but I need to try to figure out what your goal is.

**Sean Stewart, Executive Vice President, Associated General Contractors of Las Vegas, Nevada Contractors Association:**

Assemblyman Daly, that was the interpretation from the Public Works Board, I believe, but that was not universally accepted by the entities in the state of Nevada. There are projects going on in Nevada right now where preference was not a determining factor, but they are still tracking all of that paperwork for the Nevada contractors who did it.

Our efforts here are just to clarify what was agreed to last year; that the preference will only be required to be collected in instances where the preference was needed to get the project.

**Assemblywoman Neal:**

I have a question to follow up on Assemblywoman Bustamante Adams' question about removing the \$25 million and the \$5 million provisions in section 4 and section 6. Help me understand this. When I read the language of the bill, especially in section 6, where it says, "A local government or its authorized representative shall not accept a bid on a contract for a public work if the contractor who submits the bid has, within the preceding year, with regard to a contract for a public work for which the cost exceeds \$25,000,000, failed to comply with a requirement . . . ." The first thing that clicked in my mind was that these are large-scale projects. Does this involve project labor agreements?

**Sean Stewart:**

Assemblywoman Neal, no, it does not involve project labor agreements.

**Assemblywoman Neal:**

So, it is a large-scale contract. Help me understand the provision. Why do we want that removed? Is there not a protection that is supposed to be in place when you have a large-scale contract?

**Sean Stewart:**

In reality, the bidders' preference provision, which is the \$5 million provision, is applicable to the general contractor on the job. That bidders' preference provision kicks in on a \$5 million project, and it removes bidders' preference from a general contractor for a period of five years. In essence, if you lose your bidders' preference for five years, it takes you completely out of the public bid arena. It seemed extremely punitive to the general contractor, when in reality the general contractor is not causing the problem. In all likelihood, if the general contractor causes the problem, there is still a penalty provision of the statute. The statute is written such that the person who causes the breach, or failure to comply, is penalized 1 percent of their contract. So, to give an example, if it were a \$25 million contract, and the general contractor was the person who caused the breach, or failure to comply, they would be assessed a \$250,000 penalty. If, on the other hand, it was one of their subcontractors, as in the example I used previously, a \$10,000 subcontract on a \$25 million job seems extremely unfair to assess a general contractor, or to take away the general contractor's right to bid for one year, or to take away his preference for five years when it was not the general contractor who caused the problem. As the language is drafted, you can go against the subcontractor who caused the problem and failure to comply, and obtain a penalty from the subcontractor. It is just that this specific language is only assessable against the general contractor. It is not concurrent with the rest of the statute that basically gives

the public entity the right to assess the penalty to the individual firm causing the breach.

**Assemblywoman Neal:**

I have a question on the language that you wanted deleted. You have in your amendment number 4, "the joint venture." Who is a part of this joint venture team? It is my understanding that there are people who join together who may not be able to bid alone. Who makes up the joint venture team? You want the subcontractors because clearly in your statement you want the penalties to apply to the subcontractors. So, if the joint venture team is a general contractor and a subcontractor, you can have a person in your team eliminated because they failed or have a penalty assessed against them. Correct?

**Boyd Martin:**

No, not entirely, Assemblywoman Neal. The joint venture and first general contractors are bidding a job as a prime to the owner. The joint venture is at the general contractor level, and you would both have to be appropriately licensed. All parties to the joint venture have to be appropriately licensed. The only intent of this language, just to be clear, is to make sure that it is clear as written. Some of the working group thought that it was not necessarily clear as written that all the parties to a joint venture have to have bidders' preference to receive the bidders' preference. They did not want a situation where one contractor had the preference, and an out-of-state contractor came in who did not have the preference, and the joint venture received the preference. It was that all parties receive the preference.

**Chairwoman Benitez-Thompson:**

Are there additional questions? [There were none.] Thank you for getting handouts to the Committee. We have your ten amendments here. Are there any additional comments on your amendments at this time? [There were none.] In that case, we will take any folks who would like to put testimony on the record in opposition who are coming forward with amendments.

**John Madole, representing Nevada Chapter, Associated General Contractors of America:**

We support the same amendments that Mr. Stewart and Mr. Martin just went over with you.

**Chairwoman Benitez-Thompson:**

If there is any other opposition, just fill up the chairs and keep it going. If you have amendments, walk us through; if not and you just want to make sure you get something on the record, and as much as we can, please state the section

and subsection of the bill you are referring to so that we can be mapping out all of these amendments in a way that will help make sense for us.

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

We support the concept of the bill, but there are some issues that we saw in the changes that were made that raise concern with my affiliates. To begin, the provision on page 3 of the bill in section 1, subsection 3, the original language states, "A person or entity who believes . . . ." The word "entity" has been struck and replaced by the words "who submitted a bid on the public work, and . . . ." We believe in the original legislation, Assembly Bill No. 144 of the 76th Session. One of the reasons that the language was written that way is that nine times out of ten, the contractor who bids on a project personally will not raise issue with the public body or another contractor over the way that the contracting has been done out of fear of reprisal. We believe that the original language of Assembly Bill No. 144 of the 76th Session was put in there so that an entity or person could intercede on behalf of that contractor if there was an issue as outlined in this section. We spoke with the sponsor of the bill this morning and we believe that they are amenable to working on that issue.

Our second concern is on page 4 in section 1, subsection 5. Normally, if a public body assesses a penalty against a contractor, it does not require them to take a civil action through the court to get the penalty. In this section, the reason the civil action is in there is because they were seeking liquidated damages, and they wanted to give the contractors the chance to defend themselves in court before liquidated damages were assessed. In this case, where we are assessing the penalty which is clearly outlined in statute, we do not believe that the public body should have to go take a civil action in court to assess that penalty; rather, a means of appeal should be allowed to the contractor, and at that point they would be able to appeal to the court if they feel the penalties are unfair.

The third area of concern is on page 5 of the bill, with all of the new language in section 1, subsection 8, especially that of vehicles used on a public work. We understand the delivery of supplies to a construction site by a supplier who may be contracted from California, and it would be burdensome to ask him to license his vehicles in the state of Nevada in order to deliver those supplies. Currently, we have trucking contractors who are actually part of public works who are lending vehicles that are not licensed in this state; they may have licensed the tractor in the state of Nevada, but they licensed the trailer in a neighboring state where they can get long-term licenses and circumvent licensing their vehicles in the state of Nevada. To me, the thought of giving them a bidders' preference would be like rewarding them for circumventing

Nevada law. We think it would make good business sense for the state of Nevada to require a contractor or subcontractor, if they are going to claim that they have Nevada bidders' preference, to license all of their vehicles in the state of Nevada. Those vehicles that place materials on the job site should have Nevada plates, or be apportioned to the state of Nevada, similar to those contractors who operate in multiple states with vehicles apportioned to the states in which they operate.

Additionally, we have a concern about raising the limits on projects. I do not know how many of you have looked at the jobs currently being bid throughout the state, but I do not think that I have seen a \$25 million job bid for quite a while. To limit the applicability of this language to a \$25 million job would limit the utilization of it. While I understand Assemblywoman Kirkpatrick's and Assemblyman Horne's intent in doing that, we do not have this burden being put down on a job that is \$100,000. If we are going to let them utilize bidders' preference on jobs at the lower level, then they should have to substantially follow the provisions of this legislation.

As to the amendment that was proposed by the parties in front of us, a general contractor is substantially responsible for his subcontractors on the job. I believe the reason that the provisions of Assembly Bill No. 144 of the 76th Session that held the general contractor responsible if one of his subcontractors violated a provision of this legislation remain is because he needs to assume that responsibility for his subcontractors. If the general contractor brings a subcontractor on the job, and that subcontractor signs an affidavit that says that he will follow the provisions of the law, and that subcontractor violates the law, under the provision of this legislation he has the right to remove that subcontractor from the job. Alternately, he can keep the subcontractor on the job and accept the penalty for allowing that subcontractor to violate the law. I would not think that releasing the general contractor from responsibility for his subcontractors is good business, either.

**Assemblywoman Bustamante Adams:**

Mr. McKenzie, I know Assemblywoman Kirkpatrick addressed the issue of the 25 percent of the suppliers of the materials, and from my past experience, this has always been probably the most robust area for local vendors to get involved. Do you have any statement on that portion?

**Paul McKenzie:**

We do not disagree with the change of language given the reasoning behind that change. There are certain materials and supplies that we were having problems purchasing in the state. I believe that we should use local vendors anytime we can. The issue that we have is that we have a lot of local

vendors where, even under this 25 percent provision, it is cheaper for them to operate by circumventing Nevada's DMV laws. They are not violating the law; they are actually in compliance with the law. However, they are in violation of the spirit of the language by using vehicles that are not registered in the state to operate on the job.

**Assemblywoman Bustamante Adams:**

If we took care of the registration portion, then this may not be a problem area for our local vendors. Is that what you are saying?

**Paul McKenzie:**

I think that it would keep our local vendors more competitive for the bids. The local vendors are the ones actually spending their money in the state, paying the taxes you are asking them to pay. The person who is willing to circumvent any law so they can get a little bit of an edge is the one who usually gets these bids. The local vendor who is following the letter of the law is the one who gets damaged by that.

**Jack Mallory, representing Southern Nevada Building and Construction Trades Council:**

I think for the first time this session I am not going to really have a whole lot to say in front of your Committee. Mr. McKenzie said a lot of what I would have to say about this bill. In addition to his comments regarding removing the third party entity that would have the ability to report a failure to comply with the provisions of paragraphs (a) through (d) of section 1, subsection 2, that provision is also deleted in section 5, subsection 13, on page 12, line 16. I would also like to comment relative to the deletion of paragraph (d) on page 3, lines 10 through 13. There are some types of projects where nearly 100 percent of the materials that are required for that project are readily available in the state, particularly when you talk about highway projects, with the possible exception of bridges. I think that rather than completely deleting this section, the public and local vendors may be better served if there was a provision that placed emphasis on utilizing Nevada suppliers. It is not something that is compelling that they do so, but I think that we would benefit by having the legislative intent stated in the bill and in the legislation, that it is something that would ultimately support Nevada suppliers and vendors. Other than that, I look forward to the opportunity to be able to work with this working group, and I hope that we can come to some quick resolution over the issues that folks have with this legislation and move forward.

**Chairwoman Benitez-Thompson:**

I have a quick question with regard to section 1, subsection 3, about the third party and the complaint in process. Would that be unique to this bill?

Or do we see that across any type of bidder preference projects right now that third parties can lodge complaints?

**Jack Mallory:**

There are other areas within contracting where third parties have the ability to protest the award to an individual, particularly when it comes to the issue of defining a most responsive responsible bidder. We have the ability to enter evidence into the record that would dispute whether or not somebody is in fact responsible. Ultimately, I think that because of the nature of the bidder preference and the potential fiscal impact to state and local governments, it is absolutely appropriate for interested parties to have the ability to enter into a protest relative to the award of the project.

**Randy Soltero, representing International Brotherhood of Teamsters:**

We have the same concerns as expressed by Mr. McKenzie and Mr. Mallory, with particular attention to section 1, subsection 8, talking about in-state contractors and the requirement for their vehicles to be properly licensed. We look forward to working with the architects of this testimony and the working group to get this clean-up language done.

**Danny Thompson, representing Nevada State AFL-CIO:**

As you can see, there is a lot of opposition to this bill, and what I would like to propose is that we would like to work with whoever is interested in fixing this bill. The amendment that was given to us this morning did not match the amendment that was presented to you, so it was very difficult to follow without the amendment. The amendment was not on Nevada Electronic Legislative Information System (NELIS), and so I would ask that before you consider moving this bill or voting on an amendment, give the parties the opportunity and time to sit down and see if we can come to some agreement. We totally support bidders' preference. In fact, we were very active in enacting the original bidders' preference. We know there are problems with the changes that were made last time, and we would like to work on this and come up with something that everybody can use, because it is clear to everyone what the unemployment is here in Nevada. We have to do everything we can to put Nevadans back to work, because the experience has been that we have a lot of out-of-state people coming here and working, and preventing that was the whole purpose of the bidders' preference in the first place.

**Russell M. Rowe, representing American Council of Engineering Companies of Nevada:**

We definitely support preference legislation in Nevada. Just for some context, as you may recall there was legislation last session specifically with respect to design professionals, not including contractors or subcontractors, that actually

does need work. We have been working with Assemblywoman Kirkpatrick on that language, which I believe would be part of separate legislation. Although, who knows? It could become part of this legislation. Either way, we are committed to resolving the issues with respect to the separate design professional preference legislation. We want to make sure that is consistent with this legislation, because where you have the crossover is with respect to design-build teams as was referenced earlier in the proposed amendment where you have both the contractor and the design professional submitting together. Therefore, you needed the design professional to be able to qualify under this legislation as part of a design-build team. We support the intent of the amendment to include design professionals within this legislation as part of the design-build team, but not to go beyond that. Again, we want to make sure there is consistency throughout both the legislation here for design-build teams, and with respect to design professionals separately. We are committed to working with everyone to make that happen.

**Michael Hillerby, representing American Institute of Architects:**

I just want to echo Mr. Rowe's testimony. He was very eloquent. We will do the same thing. We support preferences that help Nevada businesses to engage in more work here. Design professionals, including architects, are part of that. We look forward to working with the parties and the Committee to hopefully move some legislation forward. I would be happy to answer any questions. Thank you.

**Chairwoman Benitez-Thompson:**

Thank you, Mr. Hillerby, for your testimony. Is there anyone in Las Vegas who wanted to put any comments on the record? [There was no one.] Are there additional comments in opposition in Carson City? [There were none.] Is there anyone in neutral? Seeing none here, and none in Las Vegas, I will invite the bill sponsor back up for closing remarks or comments for clarity regarding the amendments.

**Assemblywoman Kirkpatrick:**

On behalf of myself and Assemblyman Horne, we apologize that we violated the rules with the amendment not being put on NELIS. We will work with all of the interested parties and any legislators who want to be part of the discussion. I am sure Mr. Daly will want to set up a time this week, but I honestly believe, and maybe we can work with your legal team on this, that some of it is just consistency throughout the bill. When the digest does not necessarily match the inside of the bill, that is something we should watch on all bills. I just want to make sure that we have the time to address every issue, because this is two days' worth of bill drafting and sending stuff back. I do not want to do that to our Legal Division because there are a lot of other bills. That is why we

did not do it officially. We just wanted it on the record. We apologize, and we will try not to break the rules in this Committee again.

**Chairwoman Benitez-Thompson:**

I appreciate that, Assemblywoman Kirkpatrick. Any of the legislators on the Committee who are interested in working with Assemblywoman Kirkpatrick on this, and of course, those who are listening over the Internet, who are here in the room or in Las Vegas, please make sure that your concerns and interests are known. We are happy to lend out Mr. Penrose to help on this. I will close this hearing on Assembly Bill 172. I will open up for public comment. Seeing none, I will adjourn this meeting of Assembly Government Affairs and we will reconvene tomorrow at 9 a.m. Meeting adjourned [at 10:48 a.m.].

RESPECTFULLY SUBMITTED:

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John Budden  
Committee Secretary

APPROVED BY:

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Assemblywoman Teresa Benitez-Thompson, Chairwoman

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

**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** February 26, 2013

**Time of Meeting:** 9:03 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
	C	J.J. Goicoechea	Prepared Text
	D	Michael Mears	Prepared Outline
	E	Michael Mears	Detailed Map
A.B. 172	F	Michael Rebaleati	Prepared Text
A.B. 172	G	Boyd Martin	Proposed Amendments