MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-Eighth Session
May 12, 2015

The Committee on Government Affairs was called to order by Chairman John Ellison at 8:50 a.m. on Tuesday, May 12, 2015, in Room 3143 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 www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman John Ellison, Chairman
Assemblyman John Moore, Vice Chairman
Assemblyman Richard Carrillo
Assemblywoman Victoria A. Dooling
Assemblyman Edgar Flores
Assemblywoman Amber Joiner
Assemblyman Harvey J. Munford
Assemblywoman Dina Neal
Assemblywoman Shelly M. Shelton
Assemblyman Stephen H. Silberkraus
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart
Assemblyman Jim Wheeler
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Patricia Farley, Senate District No. 8

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Eileen O'Grady, Committee Counsel
Erin Barlow, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Mandi Lindsay, representing Mechanical Contractors Association of Las Vegas, and Sheet Metal and Air Conditioning Contractors National Association of Southern Nevada
Richard "Skip" Daly, representing Laborers' International Union of North America Local 169, and Private Citizen, Reno, Nevada
Greg Esposito, representing Nevada State Pipe Trades
Brian Reeder, representing Nevada Chapter, Associated General Contractors of America Nevada Chapter
Fred Reeder, Owner, Reno-Tahoe Construction, Reno, Nevada
Jim Miller, Vice President, CORE Construction, Reno, Nevada
Jack Mallory, representing Southern Nevada Building and Construction Trades Council
Susan Fisher, representing NAIOP, the Commercial Real Estate Development Association, Southern Nevada Chapter
Mike Shohet, Vice President, Jones Lang LaSalle, Las Vegas, Nevada
Bart Larsen, Private Citizen, Las Vegas, Nevada
David Jones, Vice President, Private Banking, The Northern Trust Company
Sean Stewart, Executive Vice President, Associated General Contractors Las Vegas Chapter, and representing Nevada Contractors Association
Michael Cate, President, Silver State Masonry, Reno, Nevada
Daniel Rockwell, Division Manager, Soil Tech, Sparks, Nevada
Danny Costella, representing Labor and Management, District Council of Ironworkers
Margaret Cavin, Owner, J&J Mechanical, Sparks, Nevada
James Sala, representing the Southwest Regional Council of Carpenters

Mac Bybee, President, Associated Builders and Contractors Inc. Nevada Chapter
Richard Peel, representing the Southern Nevada Chapter, National Electrical Contractors Association

Chairman Ellison:
[Roll was called. Committee rules and protocol were explained.] Now we will start with the work session, and begin with Senate Bill 157 (1st Reprint).

Senate Bill 157 (1st Reprint): Enacts the State and Local Government Cooperation Act. (BDR 22-706)

Jered McDonald, Committee Policy Analyst:
Senate Bill 157 (1st Reprint) was heard in this Committee on May 8. This bill enacts the State and Local Government Cooperation Act, which encourages communication, cooperation, and coordinated working relationships between state agencies and local governments related to planning (Exhibit C). There were no amendments on this bill.

Chairman Ellison:
Are there any comments? Seeing none, is there a motion?

ASSEMBLYMAN WHEELER MOVED TO DO PASS SENATE BILL 157 (1ST REPRINT).

ASSEMBLYMAN SILBERKRAUS SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN WOODBURY WAS ABSENT FOR THE VOTE.)

The floor statement will be assigned to Assemblywoman Spiegel. Next is Senate Bill 249 (1st Reprint).

Senate Bill 249 (1st Reprint): Revises provisions relating to local financial administration. (BDR 31-1023)

Jered McDonald, Committee Policy Analyst:
Senate Bill 249 (1st Reprint) revises provisions relating to local financial administration and was sponsored by Senators Goicoechea and Hardy. It was heard in this Committee on May 8. Senate Bill 249 (1st Reprint) requires the owner of an indebtedness of a county to demand payment within one year after

the date of the original allowance. The county may allow payment of an indebtedness that is demanded more than one year after the original allowance, but is not required to allow the payment (Exhibit D).

There was some discussion in the hearing about adding an amendment concerning cities; however, based on some new information and discussions with interested parties, cities have traditionally not been included in this statute. It was indicated to the Chairman that there is no need for this amendment. There are no amendments on this bill.

Assemblywoman Neal:
I will be voting no on this bill.

Assemblywoman Spiegel:
Me too.

Chairman Ellison:
We will wait to vote on S.B. 249 (R1) until later in the hearing. The next bill up is Senate Bill 289 (1st Reprint).

Senate Bill 289 (1st Reprint): Revises provisions relating to the Information Technology Advisory Board. (BDR S-892)

Jered McDonald, Committee Policy Analyst:
Senate Bill 289 (1st Reprint) was heard in this Committee on May 7. This bill requires the Information Technology Advisory Board to conduct a study of peering, including an analysis of potential benefits of peering arrangements to the state and its political subdivisions. The Board is further required to submit a report of its findings, including any recommendations for legislation, to the Director of the Legislative Counsel Bureau for transmittal to the 79th Session of the Nevada Legislature (Exhibit E).

Chairman Ellison:
Is there any discussion? [There was none.]

> ASSEMBLYMAN SILBERKRAUS MOVED TO DO PASS SENATE BILL 289 (1ST REPRINT).
>
> ASSEMBLYMAN CARRILLO SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYWOMAN WOODBURY WAS ABSENT FOR THE VOTE.)

Assemblyman Carrillo will be assigned the floor statement. Now we will move on to Senate Bill 401 (1st Reprint).

Senate Bill 401 (1st Reprint): Revises provisions relating to notaries public and document preparation services. (BDR 19-895)

Jered McDonald, Committee Policy Analyst:
Senate Bill 401 (1st Reprint) was heard in this Committee on May 7. It requires an applicant for appointment as a notary public or registration as a document preparation service to submit to the Secretary of State a declaration under penalty of perjury stating that the applicant has never had an appointment as a notary public, or certificate or license as a document preparation service, as applicable, revoked or suspended in this state or any other state or territory of the United States. The measure prohibits the use of certain terms in an advertisement by a notary public or a document preparation service that may mislead a consumer into believing either is a licensed attorney, if such is not the case (Exhibit F). The proposed amendment changes the effective date for sections 10 and 12 to October 1, 2015, and makes the effective date of passage and approval for all other sections.

Assemblyman Flores:
I wanted to mention that this is a huge issue plaguing our community, specifically underrepresented communities and people who are most vulnerable. I hope that we can stop these predatory businesses once and for all. I think this bill will do that. It can kick them out of this state and give them no avenue to come back. I urge your support.

> ASSEMBLYMAN CARRILLO MOVED TO AMEND AND DO PASS SENATE BILL 401 (1ST REPRINT).
>
> ASSEMBLYMAN STEWART SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYWOMAN WOODBURY WAS ABSENT FOR THE VOTE.)

Chairman Ellison:
Assemblyman Flores will be assigned the floor statement. I will open the hearing on Senate Bill 254 (2nd Reprint).

Senate Bill 254 (2nd Reprint): Revises provisions relating to construction. (BDR 28-791)

Senator Patricia Farley, Senate District No. 8:
Before I go into the bill, I just want to make a quick statement. I own a contracting business in Las Vegas and Reno; however, this bill does not affect my business differently than any other contracting business. I have checked with the Legislative Counsel Bureau (LCB), and they have determined that I have no conflict of interest with respect to the bill. Therefore, I will be advocating for this legislation.

With that, I am here today to present Senate Bill 254 (2nd Reprint) for your consideration. It took two amendments for the Senate to pass the bill out of the Senate Committee on Government Affairs on a 6 to 0 vote, and out of the Senate with a 21 to 0 vote. Mandi Lindsay will be presenting a conceptual amendment (Exhibit G). I emailed a letter (Exhibit H) to each of you yesterday afternoon about the need for this legislation, so I hope you have had the opportunity to review that letter.

This bill deals with the retainage on public works and private construction projects. Retainage is generally a percentage of the agreed-upon contract price that is deliberately withheld until the work is substantially complete to ensure that the contractor finishes the project and satisfies certain related obligations. This bill addresses more than the rate of retention. It addresses a huge economic issue in the state's third largest industry. Nevada's high construction retainage rates are continuing to stifle Nevada's economy when some of our neighboring states' rates are significantly lower and have much less litigation associated with them. When given the choice to work in Nevada versus other states, developers and owners take their jobs elsewhere where the business environment is more hospitable.

In addition, it makes the challenges of doing business in Nevada greater when the laws require contractors to fund or subsidize developer projects. It drives up the risk for everyone. For most contractors and subcontractors, a 10 percent retention exceeds job profits and overhead. What happens is that the contractors are financing the developer's job. This issue goes beyond owners and developers, or contractors and subcontractors. When a company has more than its overhead in profits and job costs withheld, it impacts every business that does business within the industry. Most suppliers have now become accustomed to a 90-day period for payment, versus a 30-day collection. The realization that their customer's money is being held by the developer impedes the suppliers' and vendors' ability to collect.

I will review the bill section by section. The bill addresses two chapters of the *Nevada Revised Statutes* (NRS): Chapter 338, "Public Works," and Chapter 624, "Contractors." [Continued to read from (Exhibit I).]

Additionally, after 50 percent of the project is completed, any withheld retainage must be paid in certain situations where subcontractors have made satisfactory progress on the work under the subcontract. This is already the law. Existing law sunsets in July, so this bill will make it permanent law. Section 2.5 of S.B. 254 (R2) defines "horizontal construction" and "vertical construction" in Chapter 624 of the NRS. [Continued to read from (Exhibit I).]

Chairman Ellison:
I have one question on the amendment (Exhibit G). Am I correct in thinking that this says you are going to delete section 2.7 of the bill in its entirety?

Senator Farley:
Yes.

Assemblywoman Neal:
In the amendment, it says, "Delete section 2.7 and instead blend portions of section 2.7 into the existing provisions." What does that mean? What portions are you blending? Let us be clear.

Mandi Lindsay, representing Mechanical Contractors Association of Las Vegas, and Sheet Metal and Air Conditioning Contractors National Association of Southern Nevada:
Deleting and blending section 2.7 was a compromise. Essentially, what happened in the second reprint was that in section 2.7, the LCB Legal Division bill drafters had established a completely new process for handling a dispute. The owner of the prime contractor or the prime contractor with the subcontractor in the second reprint could dispute the contractor going down to 5 percent at 50 percent of the contract amount. After talking more with industry representatives, the compromise was that in most cases, section 2.7 would be deleted. But it will mirror the process that is already in NRS 624.624 for how a dispute is handled and what the communication process is. Specifically, we are looking at the provisions that already exist in NRS 624.609, 624.610, 624.624, and 624.626. All those existing provisions will come together and create the new process in section 2.7.

Assemblywoman Neal:
It is not clear what portions of section 2.7, which is the new language, are going to be mirroring these provisions. In section 2.7, subsection 7, people are treated differently if they are a "higher-tier" contractor versus a "lower-tier" contractor because the review standards are entirely different. Is that being deleted or kept?

Mandi Lindsay:
That will be deleted.

Assemblywoman Neal:
Can you give us an amendment that specifies what parts of section 2.7 are being changed, something like "lines 33-37 will be adopted" or "put into NRS 624.069" that makes more sense? Then we will be able to read something before it is in work session.

My other question is on changing the retention. I was reading the minutes from the March 25, 2011, Assembly Committee on Government Affairs meeting on Assembly Bill No. 413 of the 76th Session. In that meeting, the minutes said the intent was not to get rid of it forever. There were economic reasons for having it in place. I disagree with doing away with it. I understand that we are still in a very precarious time right now. But to change this forever? Public works projects are a relationship between private industry and the government. At least a part of it is, when we talk about retention. The bill talks about both sides of the equation. In terms of public works, why would we get rid of it? That was not the intent in 2011, and they repeated over and over again that this was just in place for a period of time.

Mandi Lindsay:
You are correct. This bill addresses retention on the private works side, as well as the public works side. Assembly Bill No. 413 of the 76th Session modified the public works side. I know that Skip Daly is here, and maybe he could talk about the public works side, since that was his bill. I cannot talk about the logic that was applied in 2011. But I can tell you about the study (Exhibit H) of the retainage laws that are present in all states. It shows that going from 10 to 5 percent is a pretty common phenomenon on both public and private projects. This bill simply looks to remove the sunset that was provided in A.B. No. 413 of the 76th Session.

Senator Farley:
We did reflect 90 percent of the other states' retention laws, both public and private. Much of our motivation was because the economy still is not great and we hope it will improve. We want to be competitive. When new businesses

come here, we want them to do work with both construction contractors and subcontractors. We also want banks to come here and invest in those types of jobs. The problem is that now there is so much litigation for subcontractors and contractors trying to collect their money that it is a mess, and people do not want to deal with it. That happens in both the public and private sectors. We are not asking to do something that is not working well in surrounding states, which are doing exponentially better in this industry than we are. We are trying to imitate that and get our economics in line so that we are not damaging a certain industry.

We have the money withheld, so when you have 10 percent on a job and the margin is not 10 percent, they are not withholding profit or overhead, they are withholding job cost. So then the subcontractor or contractor must finance that job, which means all downstream suppliers become partners since they are paid later and later when the contractor actually collects the money. The actual job costs are being withheld. It is anticompetitive and a race to the bottom. It pushes people to potentially bad business practices. We just want to modernize this law to mirror what is going on around us that I explained in my letter (Exhibit H), and we need to become competitive to attract jobs, investors, and developers into our market.

Assemblywoman Neal:
I am still not comfortable with this. On the topic of bad business practices, in section 2.5, subsections 1 and 2, why do we need new definitions for horizontal and vertical construction? Who are we now capturing with these definitions, and what was wrong with the old ones?

Senator Farley:
This was a compromise with some of the developers. I would have to agree that as far as horizontal construction goes, you are 90 percent through with the project before you realize you have a problem. I talked about that specifically with the Howard Hughes Corporation. For vertical construction, it is much different. As a contractor and subcontractor, I definitely know a job is going sideways by 25 percent of the project's completion, and we all know it by 50 percent. It is rare that things suddenly go bad after 50 percent. The reason for that was compromising and trying to do the right thing by the industry by both protecting the developer and the contractor.

Assemblyman Flores:
I appreciate Assemblywoman Neal's questions about the language, but I would appreciate it if we could take a longer view of the issue. I am not as savvy and knowledgeable about this industry as some of my colleagues are. Could you help me see in a practical sense how this plays out in an everyday scenario

when we have this change? We have had people come before this Committee and discuss how, unfortunately, contractors are struggling. They cannot get loans. I understand that and how difficult it is for smaller players to play. When they do become players, we have this issue where 10 percent is withheld. So now the contractors have all their money tied up, and they have one project that has a hard time moving.

I understand the importance of that. But I am trying to understand the other side of the table. My concern is that the other side of the table will not come forward and discuss this. But if we are not going to be able to work with this 10 percent, which is the other side's blanket and way they protect themselves, they will be just fine and continue working only with the big players and we would not be giving the smaller players a chance to come to the table. Please help me understand that dynamic.

Senator Farley:
Regardless of whether you are big or small, retention is withheld at 10 percent. You are right that in the industry, there is no banking or line of credit or anything like that. It has been tough. The second part is that because the market is so tepid, there is a race-to-the-bottom mentality out there. Everyone is underbidding each other to the point where there is no margin. What small businesses, contractors, and subcontractors are trying to do is stay afloat with cash flow. They just want to get the job, service their debt, and keep going.

Everybody knows that when you estimate a job and the bid is below what it should be, change orders or something will happen. It has become a vicious cycle. The upstream contractors hold 10 percent, including developers. They can hold that money between 12 and 18 months. Sometimes it is a significant amount, such as $100,000 to $200,000. If you had a business and somebody held your overhead, profit, and part of the job costs for 12 to 18 months, how long could you sustain? Meanwhile, they do not have to put that money in escrow or pay interest on that money if you successfully complete your job. They just hold it and use it for other projects. Then, at the end of that job, typically it becomes a down-tier negotiation with change orders and retention, and they try to settle. Now that I have done the work and successfully completed the work, my profit, overhead, and some of the job costs are tied up, and I am now negotiating again just to get paid. My only alternative is to spend about $125,000 to perfect a lien against you on your project, for which I have not even litigated yet, but I have perfected the lien. Suddenly, as a smaller contractor, but even in the case of large contractors because the cash flow is tight no matter your company's size, I am in a position of either taking what I can get or going to court and spending a lot of money I may never recover. That is the first part.

The second part is that if a job goes sideways, 10 percent will not help. The owners and developers know that. The general contractors know that. We all carry general liability in a significant amount. That is why the owners of a project want to know that you have $2 million or whatever amount is in play. You have labor and material insurance. They also have a bond with the State Contractors' Board. There are multiple remedies to collect on a job that has gone wrong. But the 10 percent is just holding money, and using someone else's money to finance your business. That is a real problem in today's market.

Assemblyman Flores:
I appreciate that. Could you put yourself on the other side of the table, and give me that perspective? You are obviously not going to make an argument against your bill, but you know what the other side of the argument is. What is the discussion where they say it will hurt small contractors because they no longer have the 10 percent cushion, so they choose more established contractors? Could you explain that argument to me?

Senator Farley:
Whether I have 2 or 140 employees, I pay retentions. It is not a small versus large issue. I do work with banking and make a significant amount of money by getting projects financed and bringing people in to do different projects. I understand that developers have a real concern. That is why they make sure my insurance limits are high enough when I send out a contract, so if a real concern becomes apparent, I have insurance to cover the problem. It is not that they are relying on the 10 percent to cover work, materials, or labor damages. It is insurance to make sure the contractor stays on the job and gets it done. The reality is that I want to get the job done because I want the check, not because I want 10 percent withheld.

In good economies, we just write up the estimates. When there is so much work and a developer or contractor needs subcontractors or contractors, we just mark up the work. We are not worried about the 10 percent being withheld because we have marked it up 20 percent. We are making money and not worried about it. In a bad economy, which we have been in for seven or eight years now and is continuing to get better but not great, we do not have that. The margin is so slim that we do not have the cushion of marking it up to cover the 10 percent retention. We literally have all of our profit, overhead, and some of the job costs tied up in that 10 percent, and we are trying to keep people employed. We do not have a bank financing us on the back end, but we do have the developer holding that money back and using that

money to go do other projects. When you look at it from the other side, they are covered when they take my insurance certificate, and they know I am covered for the amount of work I am doing. They also know that I am bonded for that as well.

Assemblywoman Spiegel:
In reading through the bill and listening to testimony, it made me wonder why there is not a requirement for putting retention dollars into escrow accounts since there is so much reform that is going on in the bill. You had mentioned that could be an issue. Why is the bill not requiring that retention dollars be put into escrow accounts?

Senator Farley:
I would love that, but I would lose half my friends in the state of Nevada if I did that. There was that bill in 2011, and I had one also. Surrounding progressive states do require general contractors and owners to put that money into an escrow account. That money is paid back contractually and also with interest. But I think we would fail to get the support we need to move that along.

Assemblyman Wheeler:
If a contractor wants to put that money in an escrow account right now, can they do that?

Senator Farley:
I do not believe that a developer or contractor would want to do that. They would be bound to the trust, and they would not be motivated. There is nothing that prevents it, but they have no motivation to do it.

Chairman Ellison:
How much feedback did you get on the public versus private? There is quite a difference. Have you gotten feedback on that?

Senator Farley:
The original bill cut rates from 10 percent to 5 percent on public projects. We are including private, which is currently 10 percent across the board. We had no opposition in the Senate Committee on Government Affairs. We had two general contracting associations testify as neutral, and it was voted out of the Senate floor unanimously. We know there is opposition to this, but it is mostly from the people who are private owners. But we have not heard anything from the public. In surrounding states such as California and Arizona, who are doing well, they do not have banking, bonding, or litigation issues. This is working well for their economies. What is not working well is our economy.

Assemblywoman Neal:
In section 2, subsection 3, help me understand the intent behind this language. Are you inserting this language under NRS 338.515, or under NRS 338.555? It is already in NRS 338.555. What are we doing? Why are you adding paragraph (b) if it is already in NRS 338.555?

Richard "Skip" Daly, representing Laborers' International Union of North America Local 169:
The way I read that section is that they are referencing the language that was put into NRS 338.555 before. They have to make determinations based on the information that is in NRS 338.555 in order to do that. The language in this bill is here as criteria as to whether or not satisfactory performance has been made. A judgment has to be made in order to not raise or lower the retention. The criteria is in NRS Chapter 355, so this language directs you to this section.

Assemblywoman Neal:
The way NRS 338.555 reads, it seems as if you created a new criteria in paragraphs (a) and (b). Where the contractor has determined satisfactory progress is a whole sentence that comes after "the contractor shall pay any additional progress payments due under the subcontract without withholding any additional retainage if, in the opinion of the contractor, satisfactory progress is being made in the work under the subcontract." That is how the whole sentence reads under NRS 338.555. This bill has "if (a) and (b)" which are different because of the deletion of the satisfactory progress payments. What are we doing? I just read the bills for what they are and then try to determine the policy so I can be clear on whether we changed language. Whenever you reference a statute, it means I must think about what the existing law is and what the new law is, and what we are trying to change for our benefit.

Richard Daly:
When we first wrote A.B. No. 413 of the 76th Session, we lowered the retention rate from 10 percent to 5 percent. When 50 percent of the work was completed, the contractors would have to pay out unless there was a problem. That is where we put in the language of NRS 338.555, as I recall. There are criteria. You cannot just say you did not think it was satisfactory; you have to state a reason that you would continue to withhold the 5 percent, or not lower it to 2.5 percent if 50 percent of the work is still not done. We are trying to have the retention be more fair.

In section 2, subsection 3, paragraph (b) it says, "The contractor has determined that satisfactory progress is being made in the work under the subcontract with the subcontractor pursuant to NRS 338.555." You still have to go back and justify your decision to lower or pay the retention. This is just referencing the criteria that is established.

Assemblywoman Neal:
Can you give real-life examples of what item 3 on the proposed conceptual amendment (Exhibit G) means? I thought that in the second reprint, the retention did not apply to vertical construction. But maybe that is being amended. It seemed like it only dealt with horizontal and not vertical construction. The 5 percent did not apply to vertical construction.

Mandi Lindsay:
In the first reprint, the sponsor had intended for this bill to be very simple. The waters are muddied very easily. In the first reprint, we were simply on the public works side and trying to take that maximum withholding of 10 percent and drop it to 5 percent. Most of this other language went away, like section 2.7. We wanted to also drop it to 5 percent for private works to imitate what has been happening in the last four years on the public works side, thanks to A.B. No. 413 of the 76th Session. However, there was opposition from the private owners. They have put up a respectable fight that is very different from the public works agencies. Retention tends to be a crown jewel for them that they do not want to let go of. What you see in section 2.7, and in splitting horizontal and vertical construction, is a compromise for the Howard Hughes Corporation, as the Senator stated earlier, to get them to a neutral point.

The LCB Legal Division does not have the conceptual amendment completed yet. What you see in the second reprint and in the conceptual amendment are certain things that are similar. Section 2.7 from the second reprint will change because of the amendment that is being drafted. That will mirror the process in NRS 624.624 as opposed to creating an entirely new dispute resolution process that the second reprint currently demonstrates. For horizontal construction, retention will remain at 10 percent. On vertical construction, we are asking that, from our compromise position, a private vertical construction project's retention rate will start out at 10 percent at 50 percent of the contract amount. We cannot say 50 percent of the project. If you are the dirt mover, you would be done and gone before 50 percent of the project comes into play. If you are the landscaper, you are at the very end of the project. The fairest thing we thought of was to say that at 50 percent of

the contract amount. For example, if you are the general contractor and the three of us are subcontractors, we all have different contract amounts with you for our respective trade work. At 50 percent of that, it will drop down to half of whatever the retention amount in the contract is. That is what the conceptual amendment says in item 3 (Exhibit G).

Assemblywoman Neal:
It was helpful for you to talk about landscapers. Can you put this in the frame of a project? If you are a private industry doing vertical construction, building an apartment building, tell me about the flow of the project so they can understand the issue and ask questions that make sense to the universe. You threw in a lot in this bill, and then added the conceptual amendment. Who are we serving here?

Mandi Lindsay:
I will be honest. The second reprint and conceptual amendment are definitely compromises. I appreciate Senator Farley's efforts here; she has been a champion for trying to get parity with contractors' pay. That is what this bill is about. I am not in love with this amendment or the second reprint, but I am here to support her efforts because often we must take baby steps. It was much easier to me to just drop the rate from 10 percent to 5 percent. No more than 5 percent can be withheld. The telltale sign of good legislation is when both sides are not happy with it.

In vertical construction, there are pieces. Construction is a food chain. There is the owner or developer who has a contract with the general contractor or prime contractor. The owner has the contract with the prime contractor, and the prime contractor then has the contractual relationships with all the subcontractors. From there, some subcontractors often have subcontractors. When there is a chain like that, the money flows down the chain. When you are at the bottom, as Senator Farley articulated today, you tend to get beat up by the time that money flows down. From a vertical construction perspective, the construction process happens in layers. It builds on top of itself. All of the players that enter into a construction project, such as key management, the prime contractor, and building inspectors enter in to make sure that things are done before moving on to the next step. That is the argument for taking it down to 5 percent at the 50 percent contract amount.

Senator Farley:
Horizontal construction is usually the first portion done, such as dirt work, utilities, water, sidewalk, and curb, and those are normally done on different contracts. You do not typically start out with horizontal and vertical being the entire portion of the contract. Horizontal is usually in and out pretty fast,

because they are not tied to an 18-month retention timeline on the project. But by the time you are into vertical construction, you have another prime contract that is working.

Chairman Ellison:
I will open the hearing to those who are in favor of the bill.

Richard Daly:
I wanted to talk mostly about section 1, which is the public side of the issue. I heard the conceptual amendment arguments. I have not been involved in the private side as much. Assembly Bill No. 413 of the 76th Session was my bill. The reason there was a sunset in section 6 that is now being removed is we were trying to make it more fair for the subcontractors. As an example, the Center for Molecular Medicine at the University of Nevada, Reno (UNR) was a 24-month job. The pipe and underground contractor was finished with their portion in the first three months and now had to wait another 20 months before getting the 10 percent retention. At that time, and I think even now, people are not making 10 percent on their jobs, so we have to finance that retention for 18 months or longer. We tried to lower that to a more favorable level to help contractors stay in business. If the progress on the job had gotten to the point where that contractor who finished his part of the job in the first six months and the overall job will be halfway completed in 12 months, the retention could be lowered to 2.5 percent if there were no issues in that contractor's work. That is what we did. There is a legitimate public policy issue here to have retention. You need to have it and hold it in the private and public projects. They need to make sure obligations are followed through, that the building is to code, and that the punch list is completed. We just want the retention percentage to be a fair number.

We talked with the public bodies back in the 2011 Session. They were concerned because they had always gotten the 10 percent and did not know if they were going to have issues with 5 percent. General contractors wanted to hold 10 percent in case there was an issue. If you are the top dog, 10 percent is better than 5 percent in case there is an issue. We said, let us see if there is really going to be an issue if 5 percent will not be enough for retention. That is why we put the four-year sunset on it. I do not think you are going to see a bunch of public works bodies coming up to say it has been an issue.

I hope we get the private side worked out. The language they have for the definitions of horizontal and vertical construction is something we spent a lot of time on last session, and it is in NRS Chapter 338. Relying on the existing dispute resolution processes is something contractors are familiar with. They know how to do it. I do not think those issues will be a problem.

Greg Esposito, representing Nevada State Pipe Trades:
I wanted to say that we agree with the bill. We support anything that gets our contractors paid; keeps our trust funds, pensions, and health and welfare whole; and keeps contractors in business and us employed.

Brian Reeder, representing Nevada Chapter, Associated General Contractors of America:
We support this bill. We feel it sets an appropriate retainage rate that is workable for the owners, generals, and subcontractors. It helps ensure adequate cash flow in jobs when contractors continue to operate on extremely thin margins. Financing is extremely difficult to obtain, especially for smaller contractors. We know the industry was hit hard by the recession. It is starting to recover, but the recovery is young and this will help continue it. Establishing the 5 percent rate will help reduce cash flow challenges while still protecting the owner.

Fred Reeder, Owner, Reno-Tahoe Construction, Reno, Nevada:
We are a small general engineering contractor from Reno. I happen to have been the contractor on the UNR Center for Molecular Medicine building from 2010. Since the economic crash that we faced in 2009, it has been a difficult road for contractors. One thing that we have learned from this recession is that we need to manage our cash flow more effectively, specifically in the area of retention. Historically, we have managed the retention by large credit lines. If a contractor did $10 million in business, the rule of thumb was that you kept a $1 million credit line. If there was $30 million, you would have a $3 million credit line. That is how we managed it.

I actually fell out of my covenants with my bank back in 2010 when they closed my credit line, swept all available cash, and pretty much put me out of business. It has been a difficult fight for the last six or seven years to just keep my head above water, being a small general contractor and the first one in, last one out on these jobs. Banks are not eager to work with us anymore on credit lines. They are more heavily regulated, and we are not a favored client among banks anymore.

The important part of this bill is that it removes the sunset on the bill that Mr. Daly sponsored back in 2011. But it also brings the private side into play, which is also a difficult issue that we have in retention. It also brings the Nevada System of Higher Education (NSHE) to the table because of the way they are funded.

I do a lot of work at UNR, and I have a good relationship with them. However, they do hold the full 10 percent retention. I am doing two projects right now.

One is the William N. Pennington Student Achievement Center, and the other is the Peavine Hall dormitory. Between those two jobs, I have in excess of $300,000 in cash held. These are jobs I started well over a year ago. I am having a difficult time managing my cash. As Senator Farley said, I have a lot of partners as my vendors. Getting retention reduced will help everyone in this economy.

I had a chance to read the Commercial Real Estate Development Association (NAIOP) letter (Exhibit J). They said that "reducing these amounts to a legislatively mandated 5% will immediately increase the risk a property owner has to ensure work is completed timely, lien free and in conformance with industry standards." Try and think about the logic of that statement. It will leave my project completed more timely and lien-free if I hold more money from that contractor? We all have our own businesses. If I hold 10 percent of your paycheck today, will it be easier to make your house payment? I would guess that it would not.

To address some of Assemblyman Flores' questions and putting myself on the other side of the issue, as a contractor, the scenario on the progress billing works like this. Say I started this job on May 1. On May 30, I submit a bill to the owner, and he reviews that bill and accepts it or denies it. If he accepts it, he has 30 days to pay it. I continue working. So now there is another 30 days of holdback on me, plus the 5 percent retention. I would say that the owner is not in a bad position. In addition to that, if the owner is on the ball, and anyone sends an intent to lien, which gives them a right to lien the project down the road, the owner can demand something like a conditional lien release from all the vendors that have pre-liened this job when the bill is submitted. So I submit that. The next month, he gets an unconditional date for those things. The subcontractors and vendors of mine are ensured payment.

If the owner does not want to do this, there are other mechanisms too. There are joint check agreements and third parties out there that do all this compliance for you. They not only make sure your lien releases are in compliance, but they check your licenses and insurance issues. I would argue that the other side can be well-protected if they do their job. If the owners do their job and keep up to date on their releases, there should not be a problem. If it becomes a problem, the owner knows it in the middle of the job and can replace that contractor. I cannot see that being an issue. I want to thank Senator Farley for bringing this bill forward. I think it is a necessary and fair bill.

Jim Miller, Vice President, CORE Construction, Reno, Nevada:
I am here in support of the bill. I think the bill and the legislation proposed meet current industry practices. More importantly, I would like to reinforce what Mr. Reeder and Mr. Daly said about subcontractors and lower-tier subcontractors. Mr. Reeder and his company are currently working for us at UNR on the Student Achievement Center. Mr. Reeder is the first person on the job site, and that retention will be held for 16 to 18 months before we are able to release it, and the client releases it to us. In addition to Mr. Reeder, who is an earthwork contractor, it also affects the reinforcing and concrete contractors. There are a multiple number of subcontractors who are affected by it. We strongly support the bill as written.

Assemblyman Carrillo:
How many people do you currently employ, Mr. Reeder?

Fred Reeder:
As of this morning, I have 52 people in the field.

Assemblyman Carrillo:
How many did you have previously?

Fred Reeder:
Back in 2008 to 2009, we approached 150, and I fell to 12. I am back to 52 right now.

Assemblywoman Dooling:
I am interested in the length of time that you mentioned, where the retention can be held back. So, someone has a contract with the developer, and then the subcontractor has a contract with the contractor. Do you not develop your own contract with the entity that you are working for? If you are the dirt mover and you are done with your job, does your contract not say that you do get paid? You do not have to wait until the end of the project, do you?

Fred Reeder:
For instance, I am working on the Peavine Hall dormitory at UNR. I started that in April 2014. I tore the building down, dug the hole, and put the building in. The building is topped out right now, and it should be done in August. My contract is with Sundt Construction, and my contract pretty much mirrors Sundt's contract with the owner. Retention will not be released until the owner releases the retention. The owner, being NSHE, has not released retention. Typically on these contracts, the owners have a clause where they can cut back to 50 percent retention once the project is half done. But in the 30 years I have been in a management position in construction, I have never seen an owner that

did not agree to work with a contractor. On this particular project, NSHE has refused to cut back on retention. For me, it is a million-dollar contract. I have had $100,000 withheld since April 2014.

Jack Mallory, representing Southern Nevada Building and Construction Trades Council:
We are also in support of the bill with the conceptual amendment that was discussed. We obviously want to see the language. One of the things brought up during testimony that conflicts with the NAIOP letter was the issue of insurance, and how each contractor has to have liability insurance in order for them to secure any type of credit for them to realistically even be on the job. That conflicts with the statement in this letter regarding increased risks to the owner. Hopefully this is something that the opponents to the bill would be able to clarify. We do not believe that it will increase costs for private construction. We believe that it could have the opposite effect. There is a cost incurred when you must borrow money to pay your bills in the form of interest, typically at higher fees, because you are not putting much up for capital or collateral for those fees to allow a private owner to hold your money for longer than 14 or 16 months and then worry about negotiating your retention at the end of the project. We support this bill and ask that you do too.

Assemblywoman Neal:
What is the insurance that a subcontractor has to have under a prime contractor?

Jack Mallory:
It is typically their general liability policy that would apply in this situation.

Chairman Ellison:
Will those opposed to the bill please come forward.

Susan Fisher, representing NAIOP, the Commercial Real Estate Development Association Southern Nevada Chapter:
I would like to correct some misstatements that were put into the record and some inaccuracies that are in the letter from Senator Farley (Exhibit H). That letter said that we did not present any amendment or make any suggestions for change. We have never had any opposition to removing the sunset that is in statute for public works. That is not our issue. Our issue is with private works. Our suggestion is to leave things like they are because it has been working fine for our people as the economy is coming back. We are concerned that this ties our hands a little more. There are many times when we use a number of different tools when we are doing a project. Sometimes, we do use 10 percent retention. Sometimes, it is much less and there might not be any retention.

It just depends on your relationship with the contractors you are working with. We just want to be able to have all the tools available to us to get the projects done and to work with the contractors.

Assemblyman Wheeler:
I have never been in the construction business and do not know much about it, but in my manufacturing business, cash flow was king. We could not grow as a company or hire new people or anything else unless our cash flow projections actually showed we had the money to do that. I am wondering about your statement that the economy is coming back. Would it not come back a little quicker if we had more cash flow to hire more people to get things moving? Would it not just help your owners as well if the project was completed and they could move on to another project?

Susan Fisher:
For the owners' or the contractors' cash flow?

Assemblyman Wheeler:
We are talking about two different things. The cash flow for contractors gets them moving faster and lets them hire more people. The more people they hire, the more buildings they can build. There are more people making money, and we would pull out of the recession a little faster. Would this bill not help that?

Susan Fisher:
According to our members, they say no. This will make their cost of doing business higher. It could result in higher interest rates from our lenders, so it would cost the owners more. They would have to scale back on a project or avoid doing it. We feel this will also drive out smaller contractors, because we are going to deal with larger ones that we know are better funded. We may have a different agreement on the retention rate. I am glad that you were provided a copy of the retainage laws from other states [page 2, (Exhibit H)]. I would encourage you to look at them. Thirty-seven other states do not dictate 5 percent. There are some states that do dictate 5 percent, but there are many that do not dictate anything for private works. They instead say "a reasonable amount." Many are at 10 percent as well.

Assemblyman Flores:
I think Senator Farley brought a compelling argument indicating how the contractors are currently suffering as a consequence of the 10 percent rate as opposed to 5 percent. But I also understand that there is always another side to the argument. Two years down the road, when we are back here, what are you and your members going to come back and tell us went wrong with this?

What will happen? The Senator brought in data, and talked a little about other states that have a 5 percent rate and are doing well, and that it benefits the state. Do you have data or something to illustrate that the opposite is true, that the 5 percent is not helping the state?

Susan Fisher:
I would like to see the data that show the other states recovering more quickly than Nevada is. The industry is coming back in northern and southern Nevada, and I have not seen any data to suggest that we are lagging behind other states. I would like to leave your other questions to those in southern Nevada.

Chairman Ellison:
We will move to southern Nevada for those wishing to testify.

Mike Shohet, Vice President, Jones Lang LaSalle, Las Vegas, Nevada:
I am a board member of NAIOP, and vice president with Jones Lang LaSalle, a corporate real estate services company. Prior to that, I spent seven years as vice president of development with the Nevada-based real estate developer Territory Incorporated. During my tenure there, I developed well over a million square feet of projects in southern Nevada. I am testifying on behalf of NAIOP and the real estate industry.

We oppose S.B. 254 (R2). Retention is an element of a negotiated contract between two willing parties. In a private party contract, retention is the only tool a project owner has to ensure the proper completion of the contractor's contractual obligations. This is significantly different than in public projects, where the contractors are bonded. The bond provides the security to the project owner. Bonds are not commonplace in private party projects. We do not typically incur that cost on a project. Contrary to some earlier testimony, general liability insurance on behalf of the contractors is not a vehicle that a developer can call on to make sure a project is completed. It is there to protect the contractor should mistakes happen on the project. It is not there as a tool to force the completion of a project.

Retention is typically negotiated between a general contractor and the project owner. In many cases, the owner agrees to 5 percent or a reduction at the 50 percent mark to 5 percent. This concession is made by the project owner in a measured way, balancing the additional risks they are willing to take against the potential benefit. I have personally negotiated many contracts where retention amounts were reduced. However, those contracts have been with contractors that I have a relationship with that is built on trust. There are contractors that have a strong reputation for fair dealing in the market and are well-established players in the market. I would not entertain this type of

concession in a contract negotiation with a contractor that was new to me, or did not have the strength of a well-established player in the market. Statutorily reducing the allowable retention to 5 percent will increase the project owners' risk with several potentially unintended consequences.

Retention is all about risk mitigation. If retention is reduced, owners will seek to mitigate their risks in other ways. They may seek to bond contractors and subcontractors to ensure their satisfactory project completion. This will increase project costs, and will exclude many smaller companies from the process that are either not bondable or have inadequate bonding capacity. Owners will also be more selective in the consideration of which contractors to work with. Without retentions, owners will choose to work with larger, more established industry players. Smaller companies will suffer, as they will not have as many opportunities to bid private projects as owners seek to minimize their risk by using larger companies. With more risk, lenders will be more cautious in making construction loans. This will reduce available capital and increase its costs. Fewer projects will be funded, and the industry overall will suffer with less development and higher costs.

My understanding of the impetus of this legislation, as previously testified, is that some contractors complain of having not been paid on projects for long periods of time after the project ended. While that may have happened in some isolated but prominent cases, particularly during the recession, it is not normal practice for our membership. Furthermore, reducing the retention amount does not address the problem that this legislation is intended to solve. It provides no additional means to force payment of the recovered retention at the end of a project. The bottom line is that retention should be negotiated between two willing parties as part of a contract negotiation. You cannot legislate good business practices.

Bart Larsen, Private Citizen, Las Vegas, Nevada:
I am an attorney with Kolesar and Leatham, and I am here this morning as a member of NAIOP. When an owner borrows money from a bank or a bank makes a loan to finance a new project, they are taking on a significant risk that general contractors and subcontractors are going to do what they have promised to do to make that project a success. Mitigation is one of the key tools they have at their disposal to mitigate that risk. One point that may not be clear is that there is no statute that requires any retention be held at all. This is something the parties are free to negotiate amongst themselves. In many cases, where there is a level of trust or circumstances that would justify it, there are voluntary agreements to reduce retention or to eliminate it altogether. But by reducing that statutory cap from 10 percent to 5 percent, what you are doing is driving up the risk that there are going to be problems on the project

and not enough money to complete it. The banks may address that risk by charging a higher premium or higher fees on their loans. Owners are likely to address it by tending to shy away from smaller contractors and subcontractors that they perceive to be more risky. This change may have a disproportionate impact on minorities and businesses owned by women, which tend to be on the smaller side.

There are also a number of statutory protections in place that already benefit contractors and subcontractors. We have the prompt payment statutes in NRS Chapter 624 and tenant improvement work in NRS Chapter 248 that requires a lessee post a bond for 150 percent of the cost of the work or that the entire amount of the work including change orders be deposited with a third party in a controlled disbursement account. We have the mechanics statutes. Contrary to what was said earlier, it does not cost anywhere near $125,000 to perfect a mechanic's lien. To perfect a lien, all you need to do is record the lien and file a lawsuit within six months. There is no reason it should cost that much. Another misunderstanding is about what insurance on projects like this actually does. Commercial general liability insurance does not guarantee performance by a contractor or subcontractor. That is there in case someone does something that damages another trade's work. That insurance would come in and pay for that damage, but it is not a guarantee that a contractor or subcontractor will perform.

It is also a misconception to state that 90 percent of other states are doing this and having success. As far as I know, only 13 other states have any statutory cap on retention. Of those 13, I believe that only 4 or 5 are down to 5 percent on private projects. We are all interested in seeing the construction industry and development grow, but we have to look at the bottleneck of that process. The bottleneck is not subcontractor cash flow. It is demand for new projects, excess inventory that built up during the recession, and the availability of financing. A lot of that is dictated by project cost. If we are going to drive up project cost by reducing retention, requiring bonding on private projects, or increasing lender fees because of the new uncertainty, there are likely to be fewer projects and less work.

David Jones, Vice President, Private Banking, The Northern Trust Company:
I am here to state my opposition to S.B. 254 (R2). I have been a commercial banker in Las Vegas for over 25 years, with 11 years at Bank of America and over 15 years at several smaller community banks. For many years in my career, I specialized in construction financing. For a period of time, I managed Bank of America's Small Business Loan Construction Financing Group, where we provided construction financing for small businesses to own and build their own buildings throughout Nevada and several other states. It is my strong

opinion that any reduction in retention increases the risk to a bank. Let me state that this bill clearly favors the contractor at the expense of the property owner as well as at the expense of the bank. Because of that, I have to state my opposition. This legislation significantly increases the risk to the bank by disbursing and then minimizing the only leverage that a bank has to induce a contractor to finish a job and ensure the punch list items are complete. Otherwise, contractors could more easily delay, argue, or even not finish small but significant finish work that is required by their contract on a particular job.

For those who may not understand this industry intricately, any homeowner that is purchasing a new home knows the value of that little roll of blue painter's tape that they are given to highlight the flaws in the finish work before the purchase is complete, the home is finished, the loan closes, and the homebuilder gets paid. By passing this legislation, you will be taking away the only leverage that we have to rely on that roll of tape to ensure that the job gets done. As we have seen with national legislation, increased regulation not only increases the cost, but it also reduces the availability of financing for your constituents. Additional costs may be incurred from higher rates, additional bonding costs, additional contingencies or reserves, or additional higher equity required from the property owner as banks seek to protect their depositors from increased potential losses by paying too much too early for incomplete or unfinished work.

In defense of contractors, I believe they are adequately protected today through existing Nevada contract law. The proper place to determine the amount of retention and the timing of its release is up front in the bid process through individual contract negotiations, not through broad legislation such as this bill. I encourage you to not support this bill.

Assemblyman Carrillo:
You said that you worked for Bank of America?

David Jones:
Yes, I did, for 11 years.

Assemblyman Carrillo:
In Utah, did you have any issues with the whole process?

David Jones:
To my knowledge, Bank of America does not have any funding sources or branches in Utah.

Assemblyman Carrillo:
I was under the impression that they did. There are a lot of members who do not know what a performance bond is, so my first question would be what is a performance bond? You mentioned that in a performance bond, you have the right to require a percentage bond, correct?

Mike Shohet:
Correct. Private property owners and developers do have the right in a contract to request a performance bond which they then pay for. It is generally not commonplace for developers to require that.

I have developed projects in Utah, and I think I understand what your question was moving toward. They do have a cap at 5 percent in Utah. When my development company went to Utah to develop projects there, we chose to use larger, more well-established contractors. We did not seek to minimize our costs by using mom-and-pop type contractors because of the additional risk we were incurring because of the reduced amount of retention.

Assemblyman Carrillo:
Here in Nevada, we might not have the option of having lots of mom-and-pop establishments that are similar to what the Senator stated earlier. What is the percentage required in Nevada for the performance bonds that you require contractors to have?

Mike Shohet:
When I execute projects, I generally do not require performance bonding. My clients and our development projects typically do not choose to incur that cost.

Assemblyman Wheeler:
I wanted to clarify that there are 172 branches of Bank of America in Salt Lake City, and 269 throughout the rest of the state, according to Google.

David Jones:
Thank you, it has been over 15 years since I worked at Bank of America.

Assemblywoman Spiegel:
Earlier, I asked about escrow accounts. It seemed that part of the issue that is tied up with retention is the ability of the contractors and subcontractors to actually get the money that is retained. Senator Farley indicated that there would not be support for escrow accounts. I was wondering what you thought about escrow accounts and why they would not be supported?

Mike Shohet:
That is a good question. I can tell you what the reason is not. It is not because developers do not want to put their money out there because they want to hold on to it. That money is not really ours; it sits with the lender. We are not earning interest on it or doing anything else with it. If the perception is that we do not want to put that money out there, that is not correct. The real reason for withholding retention is to mitigate risk at the end of the project and ensure completion. If we have to deposit retention money with a third-party escrow, we are giving a third party the ability to pay the contractor for work that may or may not be performed. Voucher control and disbursement accounts are not necessarily under the control of qualified people to judge whether or not the work is done to satisfactory conformance with the project documents plans and specifications. There is a dispute process in place that should be used. There is a lien law in place that should be used to ensure that funds are disbursed in a timely fashion, but they need to be disbursed when the project is complete. To give the money to a third party who has the ability to disburse without the ability to ensure compliance is not something we would support.

David Jones:
Historically, hard money lenders would fund an entire construction project, disburse those funds, and put it into escrow so the disbursement process would happen. That is very expensive for the owner because they are paying interest immediately. Typically with construction financing, we do not fund until there is a request and an agreement between the contractor and the owner on work that has been completed. At that point, we typically have an inspector go out and ensure the work is done. It may not be done satisfactorily to all parties, but once those parties agree that the work has been completed, they request it from the bank and then we go ahead and fund it. That keeps cost down because we are not funding anything and the owner is not paying any interest until the work is adequately completed.

Assemblyman Flores:
Thank you for clarifying that we have 13 states that have a cap similar to what is being proposed in the bill, and that 4 or 5 of them have a 5 percent cap. From that, is there any data you have or know of that says those states that have the 5 percent cap are hurting as a consequence of it? I am trying to understand what the argument will be when we are back here in two years. Is there any evidence that a cap will create a problem?

Bart Larsen:
I am not aware of any hard data that would prove that lowering the cap will create problems. I am also not aware of any data indicating that it improves anything either. What I expect is happening in those states is that they looked

at other ways of mitigating the risk by requiring that private projects be fully bonded by charging premiums on loan fees and interest rates, or paying subcontractors less profit on projects where there is additional risk to the owner or lender. I think that is what would happen here in Nevada if the cap is reduced from 10 percent to 5 percent.

Assemblyman Flores:
I understand the argument of not wanting to legislate contracts. But when we have the most power put on one side, it has been common practice in those scenarios that the state intervenes and tries to level the playing field. I am trying to find the data to really see the other side.

Chairman Ellison:
Are there any other questions? [There were none.] Is there anyone else in opposition? [There was no one.] Is there anyone neutral?

Sean Stewart, Executive Vice President, Associated General Contractors Las Vegas Chapter, and representing Nevada Contractors Association:
My organizations represent approximately 600 general contractors, subcontractors, and suppliers. I want to start by saying we appreciate Senator Farley's efforts on this bill. We understand that there has been a lot of compromise work done. As an association, we support removing the sunset on public works. It has worked in the industry and been a positive thing for the industry, and we hope that sunset will be removed. We also support the first revision of this bill that was passed out of the Senate Committee on Government Affairs earlier this session. We support that revision because it was clean, simple, and easy to follow. Like you, we are seeing the language in the conceptual amendment for the first time. We have questions on that language, and are willing to work with Senator Farley to try and clear up any issues.

At first glance, we do not see the need to distinguish between horizontal and vertical contractors. We have both in our association. We would like to see something simple that is easy for the contractors, owners, and everyone involved in this statutory process to follow.

Chairman Ellison:
Are there any questions? [There were none.] Would the Senator like to make any closing statements?

Senator Farley:
This has been a long but good process. I want to make a few general statements. I did provide a letter with the retention rates in the surrounding states (Exhibit H). Those rates have been there for several years, and I promise you that all the major banks, developers, and insurance companies are doing business there, and it is growing in California, Utah, Oregon, and Colorado. They are growing. All you have to do is pick up a newspaper or check the Internet to see how their economy is doing compared to ours. You can look at financial statistics and see the rate of lending in those states compared to ours. The sky has not fallen, bad buildings are not falling down, and it is working very well.

I think Assemblyman Wheeler summed up that this is about cash flow. When you put in more money and it is working more, you hire more people and you stop stressing the economy and people downstream. We talked about this affecting contractors and subcontractors. The reality is that I have made partners out of my vendors, and I do not like doing that. That is a business term meaning that I owe them money, and I go long on them because I cannot afford to pay them because the money has not turned fast enough so that I can pay them. They are struggling just as much as we are now because we are out 90 days or more on them. That is very typical.

I also want to say that I run a female-owned business. I employ about 40 to 50 people both in Reno and in Las Vegas. This does impact me and businesses similar to mine that also do not have a bank behind them. I do everything in my power to keep every individual working and making good wages, but when these situations come up when money is held and I must constantly negotiate at the end of the job for my retention, it is not done in good faith. It is more the norm than isolated incidents. We all know this.

We did hear this bill in the Senate Committee on Government Affairs, and NAIOP did not show up to oppose the bill. We have met with them twice. There has been no amendment from them; they have only said that they do not like this bill. I have met with the Howard Hughes Corporation, which is why you see some of these changes. I like the idea that if everyone is equally unhappy, we have a good piece of legislation. I am trying to get it right so I can help the economy, our business owners, and move forward.

I am interested in our surrounding states because I want people who are looking to invest money to put Nevada in the same playing field. I do not want them to think that if they move here, they will be dragged out in payments, involved in

litigation, or everything would be cut at the end of the project. I want everyone who testified today to be doing well, because if they are doing well, then we all are.

Assemblywoman Neal:
I thought the reason that NAIOP did not come up was because in the initial bills, the titles and summaries said it was relating to public works. Now on the second reprint, it says it is related to construction. Those are two different reasons to track a bill. I am tracking everything, but that did not show up on my radar until last week.

Senator Farley:
We met with NAIOP prior to the committee hearings, so they absolutely knew. I do not know why they chose not to testify.

Assemblywoman Neal:
You have a different world on the Senate side.

Assemblywoman Shelton:
I saw in your email that some of the other states allow a "reasonable amount." Has that ever been discussed? I do not know whether that is a good or bad thing, but I was curious.

Senator Farley:
We talked about who has the most power and control. When there are few jobs and many people vying for them, what is reasonable? If I say that withholding 10 or 15 percent is unreasonable, but my competitor who is desperate for the job will take it, that should not be the market. It is just like if we had an abundance of work and had to decide a reasonable amount. Contractors would then say they would not take a job unless it is 2 percent, because they do not have to. I think establishing the rules and a fair percentage will actually help accomplish what we need. I do believe they are valid, but it needs to be the right number and not something that stifles the economy.

Chairman Ellison:
We are going to take a recess, but I want to finish these hearings.

[The Committee recessed at 10:32 a.m. and reconvened at 10:41 a.m.]

Chairman Ellison:
I will close the hearing on Senate Bill 254 (2nd Reprint) and open the hearing on Senate Bill 340 (1st Reprint).

Senate Bill 340 (1st Reprint): Revises provisions governing public works. (BDR 28-255)

Richard "Skip" Daly, Private Citizen, Reno, Nevada:
I am here today on behalf of Senator Debbie Smith, who sponsored this bill for me as I asked her to. I had prefiled this bill, and she picked it up. She could not be here today, so I told her I would present it as I did in the Senate.

This bill is relatively straightforward. This bill essentially says that if a federal procurement contractor has been accused of violating a statute for wages, fraud, or so on and had their due process in a hearing, is found guilty, and is debarred from federal projects, only at that time would this bill trigger a notification to the Labor Commissioner that a contractor in the state of Nevada on public works has been debarred at the federal level. The Labor Commissioner would then have the authority, under our statute, to debar them on state projects.

On the system for award management, which is the federal procurement website, it says that if contractors want to do business with the federal government, they must apply and get into the system. They can bid on projects there. If during that time they do something wrong, the government has a process to ensure compliance with various procedures that are in the contract. If you go into that system of award management and you look up a contractor, it will tell you if there is an exclusion for that contractor. That is the word they use. You can look at the tab and it will give you more information, such as if they are ineligible, have been suspended, are proposed for debarment, what stage their debarment process is in, or if they have been debarred. If they have been debarred and after that process is complete, that is the only time the provisions in this bill would take place. The Labor Commissioner is notified, the debarment status would be verified, and then the contractor would be debarred from the state. The Labor Commissioner would send notice to the State Contractor's Board just as we would do under any other provision in the *Nevada Revised Statutes* (NRS).

The only way for a person to be affected by this bill is if they have already been found in violation, and if it was a serious enough issue that they were debarred and not just suspended. There is a period of time that debarment lasts in the federal system. It could be permanent, three years, or whatever time frame.

I talked with many of you. Assemblyman Flores said he understood completely, and he asked why would we want to have someone terrible on our public works jobs? This is a cleanup for those particular contractors. I have heard that there is an amendment (Exhibit K). It is not a friendly amendment. The sponsor of

the bill was unaware of the amendment. I am the only one who has ever testified on the bill, and I was never contacted about an amendment. We are absolutely opposed to the amendment. It guts the bill and takes out much of the intent, and actually takes out some existing statute language that we want to preserve. I believe this bill should be passed as it came out of the Senate. The amendment that came out of the Senate was proposed by the Associated General Contractors in the north to clarify the language in the original bill that included being proposed for debarment. When I did more research, I agreed with them that it should only take place if you are actually debarred and the process is complete.

Assemblyman Wheeler:
You have that the contractor may not be awarded a contract for four years after the Commissioner is made aware of the exclusion, or for the length of time that they are debarred from receiving contracts from the federal government. Is there a debarment procedure at the federal level that is less than four years? If so, say they are only debarred for two years. Why would Nevada go to four years?

Richard Daly:
I do not know for sure what the federal government can do. They can debar you for less time or more time than four years. Unlike our statutes with the Labor Commissioner, if you commit an offense and get debarred at the state level for a state violation under current law, a first offense is three years and a second is five. So we selected in between, four years. If they are debarred for a longer period of time at the state level, then that period would continue.

Assemblyman Wheeler:
If they are debarred for ten years at the federal level, that is covered under this bill. But if they are debarred for two years, I still do not understand why Nevada would debar them for four. It seems arbitrary in the way you explained it to us. Why would we not just keep in line with what is going on? I understand the point of the bill.

Richard Daly:
The thought was to have a period in between. If a person is debarred for ten years, as you have said, and are six years in on their "sentence" and we notify the Labor Commissioner, the four-year ban would take place. If it was four years and a month on the federal level, it would be four years and a month here. If it was three and a half years, it would be four under this. If there was only two years, it is like any debarment at the federal level is a first offense for the state. I do not care how long the federal government bars for, if it is two or ten years. It is like the first offense.

Assemblyman Wheeler:
That seems like double jeopardy to me.

Richard Daly:
However you want to view it. I think that when you look at enforcement, the contractor has already proved he will violate laws. Do we really want to attract those contractors here? I was called by several contractors just before the election, and they asked why some contractors were still able to work on public works jobs. One company had a case where they were fined over a million dollars, and two of their officers were sent to prison, but they are still bidding on public works jobs today. I said the reason is that at the state level there is no mechanism for the Labor Commissioner to recognize that activity and ban them from state jobs. The people who called me asked if I could do something about that. It makes sense. As Assemblyman Flores said, why would we want them on our jobs?

Assemblyman Wheeler:
I do not have a problem with us saying we do not want them on our jobs if they are bad contractors and have been disciplined by the federal government, but I think the punishment should fit the crime. If they had two years in 1986 and we did not find out about it until 1994, we could tack two years on them then. There is a state offense versus a federal offense.

Richard Daly:
If they had two years debarment in 1986, the debarment is over, and they are no longer debarred. This would not affect them. The debarment would have to be current or in the future. If there is a debarment that has expired and the contractor can do federal jobs again and has not committed other offenses, this bill would not apply to them.

Assemblywoman Neal:
I think that Assemblyman Wheeler and I are on the same planet on this issue. In section 1, subsection 2, paragraph (a), it says "after the date on which the Labor Commissioner is made aware of the exclusion from receiving contracts." How do you delineate the time of awareness? It is so broad. If this has been in place for two years, then paragraph (b) says "For the period of debarment of the contractor from receiving contracts from the Federal Government, whichever is longer." When you put those two paragraphs together, when does the time run? Does the four years start from awareness, or from the two years? We are tacking four years on because paragraph (b) says "whichever is longer." How does this work? I get what you are trying to do, and I agree with it.

Richard Daly:
I was trying to make sure that we did not give any additional duties to the Labor Commissioner and there were no fiscal notes. Someone has to make the Labor Commissioner aware. I do not envision the Labor Commissioner checking contractors and looking at the system of award management. I know they do not have the staff or the time. Someone would have to make a complaint and tell the Labor Commissioner this entity has been debarred and explain the problem. The Labor Commissioner would then have to do due diligence, look at it, verify that the contractor is in the federal award management system, and that the contractor has actually been debarred. At that point, the Commissioner would have the authority to debar the person at the state level. The processes for all of that are in place and none of it will be changed. The Labor Commissioner's website then displays the contractor's name as debarred and no longer eligible for public works projects in the state of Nevada. The awarding bodies look at that periodically to make sure they are not getting bids from those contractors. People will now know. Then the Labor Commissioner notifies the State Contractors' Board that the entity has been debarred, which is in existing language. The Contractors' Board then picks it up from there. The Labor Commissioner really does not have anything to do until someone gives notice, and then the period would start when the entity is actually debarred. Then it would depend on which period is longer, four years or the time of debarment from the federal level.

Assemblywoman Shelton:
Is this really necessary? Do we not already have the ability to weigh the federal debarment?

Richard Daly:
No, we do not. That is why we have this bill. There is nothing preventing a federally debarred contractor from performing on public works jobs. There is no mechanism in the law right now for the Labor Commissioner to debar in the state.

Chairman Ellison:
I see no other questions, so will those in favor of the bill please come forward.

Brian Reeder, representing Nevada Chapter, Associated General Contractors of America:
The Associated General Contractors of America Nevada Chapter supports this bill. This bill is about bad actors and whether or not the state wants to do business with them. These are people who have done something illegal and have been fully debarred at the federal level. They will now be prevented from doing public works contracts at a state level.

Michael Cate, President, Silver State Masonry, Reno, Nevada:
I have been an open-shop contractor in this state for over 30 years. Over the years, I have asked why certain persons or companies bid certain jobs when they have been penalized in other states or federally. It has come up more than once. There now could finally be something on the books to keep them from working on public works projects. I would like to state that this is not a union or nonunion, Democrat or Republican issue; this is a right or wrong issue. If you have broken a law and been debarred from doing federal work, I see no reason why you should be able to use our tax dollars to do more work. I think it is a good bill and something that has been needed.

Daniel Rockwell, Division Manager, Soil Tech, Sparks, Nevada:
We are a Nevada company, and we work on federal projects and public works projects here and in other states. We constantly see contractors come in from out of state and perform work we know they are not able to perform. In the public works arena where the low bid typically wins the project, it may look appealing and like you are getting a good deal and that the contractor is going to be able to perform the intent of the project. But many times we have seen and heard complaints from owners and other contractors that change orders come up during the process of construction that end up costing the owner, usually the state, millions of dollars over budget. This is about how much it costs taxpayers every time someone comes from out of state, or even within the state.

This bill is trying to weed out people who are not doing business in a proper manner. We have been operating for 25 years and never had any instances on construction projects where we violated anything. We want to make sure that we are staying true to what we say we are going to do on these projects, just like other contractors that are out there making a living. I am in favor of this bill. I did glance at the amendment (Exhibit K). I am not in favor of that. I like the intent of the original draft of this bill.

Chairman Ellison:
Are there any questions from the Committee? [There were none.] I have one. Is this only on state projects?

Mike Cate:
Yes, I am assuming that this is for all public works projects in the state of Nevada.

Jack Mallory, representing Southern Nevada Building and Construction Trades Council:
We support the bill, and thank the sponsor and Mr. Daly for presenting it.

Danny Costella, representing Labor and Management, District Council of Ironworkers:
We are for this bill without the amendment.

Margaret Cavin, Owner, J&J Mechanical, Sparks, Nevada:
I own J&J Mechanical and I have been a licensed contractor in Nevada for 33 years. I strongly support S.B. 340 (R1) in the version that was brought forward. I had a chance to look at the potential amendment (Exhibit K). I do have an issue with it and do not agree with it. I think it only makes sense that if a contractor has been debarred from doing federal work, that contractor should also be disqualified for performing on public works in Nevada. Nevada's construction dollars should be spent with contractors who respect and follow the law. As one of those contractors, I do respect and follow the law, and I do not think I should have to compete with contractors who do not. I hope you will support this bill.

Chairman Ellison:
I just received notice that this could be challenged because we do not know what the federal complaint was that removed them from a federal project. Could you possibly elaborate on that?

Margaret Cavin:
I cannot answer that question.

Chairman Ellison:
You are a member of the State Contractors' Board, correct?

Margaret Cavin:
I am; however, I am not here as a member. I am here as a licensed contractor.

James Sala, representing the Southwest Regional Council of Carpenters:
Most people know that the federal government does not move swiftly, and usually by the time they get around to this type of compliance with contractors based on work performance or violations of payroll, fraud, tax evasion, and other things like that, there are multiple violations, and I think that is part of the reason for having the four-year debarment or for the time of the debarment. By the time you get debarred at the federal level, you are usually a bad actor in multiple projects in multiple states. We support this bill. I think it is a measured response that gives the state a chance to protect fair contractors and the state's money on public works projects.

Chairman Ellison:
Are there any questions? [There were none.] Will those in opposition please come forward.

Mac Bybee, President, Associated Builders and Contractors Inc. Nevada Chapter:
We believe the intention of this bill is good; however, what is not here is what is called the Fair Pay and Safe Workplaces Executive Order (Exhibit L), which is currently changing how federal contracts are going to be deliberated at the federal level. It is important for the Committee to keep in mind that contractors can be disqualified from federal projects for a variety of reasons. Many of the reasons have no relation to Nevada or its laws. The most disconcerting point is that there is a lot of ambiguity in where the process will end up, what the federal regulatory process will consider, whether or not large general contractors especially are not in jeopardy, and what this will mean to individuals down the road. They are in good standing with the state and with the State Contractors' Board, and yet for reasons that have not been deliberated or put into regulatory structure, they could find themselves in jeopardy of doing state projects even despite the fact they may have a long history of doing state projects with great results. For those reasons, we are in opposition.

Richard Peel, representing the Southern Nevada Chapter, National Electrical Contractors Association:
I am the managing partner of Peel Brimley, a Nevada law firm. I have been before this Legislature for the last 19 years, appearing on different issues that pertain to the construction industry. While I also believe that the intent of the bill is good, the drafting of the bill and its aim are not there. Many things have not been thought through. Senate Bill 340 (R1) modifies NRS 338.017 and attempts to disqualify contractors who have been disqualified from federal projects for bidding or contracting for state or local public works. If S.B. 340 (R1) passes this house in its current form, it will detrimentally impact union and nonunion contractors alike.

I am here on behalf of the Southern Nevada Chapter of the National Electrical Contractors Association. We are urging this Committee to not pass this bill for the following reasons. First, as Mac Bybee indicated, it is important for this Committee to keep in mind that contractors can be disqualified from federal projects for a variety of reasons. Many of these reasons have no relationship to Nevada or its laws. For example, one of these reasons, as Mr. Bybee indicated, is the blacklisting executive order, Executive Order 13673 (Exhibit L), which President Obama issued in July 2014. By way of this executive order, federal agencies are required to subjectively, not objectively, review each contractor's work history to determine whether such contractor has complied with wage and

hour, collective bargaining, and medical leave laws, among others. Additionally, the executive order also allows the federal agency to look at civil arbitration awards and judgments. It is not focused primarily on what happens in criminal aspects but is also looking at civil aspects.

To put this in context, in the given year, the compliance history of hundreds of thousands of contractors will be subjectively reviewed by the federal agencies prior to the award of a given contract. Many contractors are justifiably concerned that this subjective review will result in wrongful disqualification from federal and state contracts. That is what we are also concerned about. In fact, the written testimony from several joint meetings before Congress that pertain to this executive order provided the following: they felt that it would illegally and unfairly exclude responsible companies from doing business with federal government. Such contractors were subjectively disqualified from receiving federal contracts under the executive order. Senate Bill 340 (R1) would likely prohibit these same contractors from being awarded contracts for public works here in Nevada. That is what we have heard.

I will talk about specific things that are a concern in S.B. 340 (R1). It is problematic for a number of reasons. The statute that the bill purports to amend, NRS 338.017, currently prohibits a contractor from being awarded a state public works contract if an administrative penalty has been imposed. To impose an administrative penalty on a contractor, there must have been notice and an opportunity to be heard. We call that due process. There was a question earlier about the ramifications of this. Could this be challenged in court? Absolutely. There is no due process that a contractor is afforded. Instead, we have a statue that simply says that if the Labor Commissioner becomes aware of a particular debarment or disqualification, that the following acts shall be taken. It lays out exactly what the Labor Commissioner must do. But there is no due process. There is nothing that would look at whether that particular violation of federal law was a violation of state law. The new language in S.B. 340 (R1) does not require the due process. In interpreting the disqualification process, federal circuit courts of appeal have found that the act of disqualifying a company and its officers and directors from government contracting constitutes a deprivation of liberty that triggers the procedural guarantees of the due process clause. These same due process guarantees would also be required at the state level, just like I talked about.

To say it differently, S.B. 340 (R1) does not give a contractor and its officers an opportunity to challenge the state disqualification. Additionally, S.B. 340 (R1) could extend the federal disqualification period by an additional four years, as we have heard. For example, if the federal disqualification period is five years, and the Labor Commissioner learns of the federal disqualification in the

fifth year of the federal disqualification period, S.B. 340 (R1) would extend the disqualification for an additional four years. This is what Assemblyman Wheeler was talking about. That is simply unfair. It is punitive and violates due process. Why would we extend the time period for a state disqualification when the federal government, based on its own laws, has determined that an appropriate period is in play? This bill would also require the Labor Commissioner to disqualify the entity, as well as its officers, from being awarded contracts for a public work, even though certain officers may not be the subject of the federal disqualification. Why should the State of Nevada expand the scope of the federal disqualification to innocent officers of the disqualified company? As written, S.B. 340 (R1) would arguably preclude such officers from seeking work with another contractor for fear that the new employer would also be disqualified from bidding or contracting for state and local public works by virtue of the innocent officer's employment.

Senate Bill 340 (R1) is also not limited to future state public works contracts. Instead, the language as presented arguably bars a disqualified contractor from completing ongoing public works. If ABC Company has a current contract on a public works project, and the Labor Commissioner finds out about a federal disqualification, then that particular contractor would not be able to complete their contract under the way this bill is written. If passed in any form, S.B. 340 (R1) should be limited to only future state and local public works contracts.

Senate Bill 340 (R1) is also not limited to future federal disqualifications. Instead, the language of the bill as presented would apply to contractors who are the subject of prior federal disqualifications, not just those that are the subject of future disqualifications. Why is this important? From a public policy perspective, this would give all contractors an opportunity to be educated and understand that if they are the subject of a future federal disqualification, they will be disqualified from entering into future state and local public works for the remainder of the federal disqualification period.

Senate Bill 340 (R1) would also allow the State Contactors' Board to suspend a contractor from contracting in this state for a period of the state disqualification. Thus, a disqualified contractor would not only lose the right to bid on public works, but to bid on any project in this state. We do have an amendment (Exhibit K).

Chairman Ellison:
We have that amendment, and everyone has a copy. What happens if you work for the Bureau of Land Management (BLM), Department of the Interior, or the U.S. Forest Service, and you got into a dispute with management that is not related to your job performance and you get thrown off the job? I have seen this happen. Would you then be disqualified from public works projects?

Richard Peel:
If it is a federal project, and you have been disqualified from doing federal work, the argument would be that the Labor Commissioner, under this bill, would be able to take that into consideration.

Assemblywoman Neal:
You mentioned the Fair Pay and Safe Workplaces Executive Order (Exhibit L)?

Richard Peel:
That is what Mr. Bybee mentioned, yes.

Assemblywoman Neal:
Mr. Bybee, you were saying that it is in conflict with this bill. Can you repeat what you said?

Mac Bybee:
What I stated was that we do not know what the future requirements are going to be, because the executive order has many regulations under review. It does contemplate disqualifications, suspensions, and debarments.

Assemblywoman Neal:
It does. That is the issue I was wondering about. In Executive Order 13673, "Fair Pay and Safe Workplaces" (Exhibit L), section 3(d)(iv) says that each agency shall designate a senior agency official to be a Labor Compliance Advisor, who shall provide assistance regarding complaints by "supporting contracting officers, suspending and debarring officials, and other agency officials in the coordination of actions taken pursuant to this subsection to ensure agency-wide consistency." They try to make sure that information is sent, and that there is coordination when an agency has suspended or debarred somebody. So I was trying to understand that component.

You also said that this bill seems to exclude persons and corporate officers, if any. I first thought that as well, but under NRS 338.0117, it was already in law. I have found that things are already in law that I do not like. But they had just added language with subsection 2 of the bill because there was already

language in NRS 338.0117. There was already an exclusion related to persons not being awarded a public contract if they fit into those categories. Is that what you were talking about?

Richard Peel:
A bad law does not make a good law.

Assemblywoman Neal:
I agree.

Assemblyman Flores:
I heard "debarred" and "disqualified" used interchangeably. I want to make sure that they are not being used technically. The bill specifically talks about debarment. I want to make sure that we are not saying that if at the federal level you are disqualified from applying for a job because you do not have a certain number of employees is the same as being debarred, which means you cannot do anything on any federal jobs. I want to make sure that there is not a distinction, because maybe they mean the same exact thing. To me, debarred means that you cannot apply to any job because your practices were found to not be suitable.

Is there a due process in that? If the federal government tells me they are not going to allow me to work on projects for ten years, do I have due process? I heard that there was not due process during the conversation, so I wanted clarification.

Is there a real-life example of someone who is working in the state who was debarred federally that we can look at as someone who does good work but was debarred for small nuances at the federal level? I am trying to get that distinction.

Richard Peel:
You asked whether there is a difference between disqualification and debarment. If you look at section 1, subsection 3 of the bill, it talks about what the Labor Commissioner can do upon learning that the contractor has been excluded. It goes on to say that the Labor Commissioner "shall disqualify the contractor from being awarded...." I, too, have had that question for the past 19 years as I have looked at different proposed bills before this body. I am not sure what the Legislative Counsel Bureau's Legal Division's intent was, but they have used that word interchangeably with debarment.

Do we have a real-life example of someone who was debarred but is doing a good job? I believe that Mr. Daly was referring to a particular masonry contractor that is doing business in this state, and from what I have learned about the intent of this bill, it was because of that one masonry contractor that we are here today. That masonry contractor has not done anything wrong. They have a valid license before the State Contractors' Board. They are qualified to do work in this state, but they have a federal debarment. I believe that was the focus of this bill. I believe it is improper to legislate based on one particular party or example. We should be legislating when there is a real problem. If this was rampant, and we had 5 or 15 different contractors that fit into that category where we should be protecting the public, then we should be doing this, by all means. But the second aspect of this whole discussion should be how we protect the public. How do we make sure our contractors are fairly educated about what we intend to do by way of laws? This particular bill as presented, in my opinion, has not been thought through. It does not have the corrective answers that we should really be looking for.

Assemblyman Flores:
Is there a due process when debarment at the federal level occurs? Do you know what that process looks like?

Richard Peel:
There is a process at the federal level that a contractor goes through when given notice of debarment. They do have an opportunity to be heard. There is some due process at that level. The question is that if it is a federal reason and not a state reason, such as violation of Nevada law, should the Legislature be prohibiting that contractor from doing business in this state if it will not impact the public safety or otherwise? It is my belief that the answer is no. That being said, we do believe that our amendment addresses most of the concerns that we have. We would ask you to consider our amendment.

Chairman Ellison:
Are there any other questions from the Committee? [There were none.] Is there anyone testifying in opposition? [There was no one.] As neutral? [There was no one.] Will the bill sponsor make a closing statement?

Richard Daly:
We did think this bill through. Debarment and disqualification are two different things. I have not had a chance to look at the Executive Order, but based on the description, it wants the federal government to go through and make sure contractors are complying with existing federal law and coordinate that amongst various agencies. That is what the system for award management does. All the contracting agencies and the federal government are hundreds of

agencies, thousands of projects, and tens of thousands of contractors. They want to do work on federal jobs. In order to be debarred, you have to have won the contract, then violate a provision of that contract, be accused, get a chance to go to your hearing, be found guilty, and then be issued a penalty of debarment, not disqualification. Predisqualification for a situation where someone determines a standard that the contractor does not meet is not debarment.

As far as state law regarding a person or a company's officers, the reason that language is there is because in this business there are plenty of contractors who do not have very good businesspeople, or who are shyster contractors. It is easy for that person to burn a business to the ground and then go get a new contractor's license with a different name and the same business practices. That is why the bill says a contractor is the person and the company's officers, such as the treasurer. That is why that language is there.

As far as LCB Legal Division using "shall disqualify," if the Labor Commissioner debars someone for an offense under our laws and issues an administrative penalty, they issue a letter informing the contractor of debarment and stating that the contractor cannot do public works in the state of Nevada. Whether or not you use the word "debarred," that contractor is still disqualified from being on public works. That is the only interchange between those two words. I do not think that the disqualification we were talking about earlier is the same thing.

There is a complete process after you are awarded a project and have a contract. We believe the bill covers everything we would like it to. I think their amendment (Exhibit K) proposes to eliminate the language to report debarment to the Contractors' Board. That is existing language that has always been there. You report to the Contractors' Board because there may have been a violation of a license that the Board may want notice of and take action with. When people get debarred for a variety of reasons at the federal level, it could be fraud, failure to pay their Davis-Bacon Act wage rate, or a variety of such issues. In the particular masonry contractor's case, they presented themselves as a small business entity, and they were not. They defrauded the federal government and got millions of dollars in contracts by putting themselves up as something they were not. They were debarred for that. Two of their officers got a year in jail and well over a million dollars in fines. This is not something insignificant. These are the types of things we are talking about. That is the only case I know about specifically, but I know there are others out there. Other people have told me about them.

Chairman Ellison:
What type and size of violation do they look at? Where do you go to have a hearing on this? Do you have to go to Washington, D.C.?

Richard Daly:
That is decided per agency. If you are working for the Department of the Navy in Fallon, Naval Air Station Fallon has a commander who is in charge of construction. There are staff people under that commander who monitor you to make sure that if there was an issue, a process with the Department of the Navy would take place. I do not believe you have to go to Washington, D.C. If you had a dispute over an issue with the BLM, people do not usually get debarred for those types of issues. They may get kicked off the project or get a black mark such as a suspension that does not rise to the level of a debarment. In general, if there is a dispute, you settle that through the contract you have with the government. There is a dispute resolution process available that is similar to what we have at the state level.

Assemblyman Carrillo:
Mr. Peel mentioned a masonry contractor and specifically stated they were the reason why this bill came forward. To me, bills are tools in the toolbox. I do not see this bill being used unless you bring it to this level. There will be good actors and bad actors. Have there been any other contractors who have been put in the situation where they have reached the level of this bill, or that of the masonry contractor?

Richard Daly:
I am sure there are others out there. This is Senator Smith's bill; I am just presenting it for her. I received phone calls from two different contractors shortly after the determination was made on the masonry contractor. Those contractors who called me asked how the contractor could possibly still be working on public works projects. I got calls from union and nonunion contractors, who are still in the room with us. That was before the election. I said that I wanted to look into this and try to find a solution. I did not intend to cover just one company. It was the one situation I knew about. Constituents asked me to look into this and try to find a solution to a particular problem. I am sure there are other contactors in a similar situation. I think having this in place will help federal compliance. The more enforcement you have, the better compliance will be. The bill was brought forward because people called and complained about this situation.

Chairman Ellison:
We will work on this bill. I will close the hearing on S.B. 340 (R1) and reopen the work session on Senate Bill 249 (1st Reprint).

Senate Bill 249 (1st Reprint): Revises provisions relating to local financial administration. (BDR 31-1023)

Jered McDonald, Committee Policy Analyst:
Senate Bill 249 (1st Reprint) revises provisions related to local financial administration. The bill requires the owner of an indebtedness of a county to demand payment within one year after the date of the original allowance. I will not go through the whole summary (Exhibit D) again, as I did this earlier in the meeting. I will note that there are no amendments on this bill.

Chairman Ellison:
Is there any discussion?

Assemblyman Carrillo:
I will vote this out of Committee, but I reserve my right to change my vote on the floor.

Assemblywoman Neal:
I will also.

Assemblywoman Spiegel:
While I certainly appreciate the merits of the bill, I think the time frame is too short. I think the time frame should actually be closer to other unclaimed property statutes. For those reasons, I will be voting no.

Chairman Ellison:
Is there any more discussion? [There was none.] Would anyone like to entertain a motion?

ASSEMBLYMAN STEWART MOVED TO DO PASS SENATE BILL 249 (1ST REPRINT).

ASSEMBLYMAN MOORE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN SPIEGEL VOTED NO.)

I will close the work session. Is anyone here for public comment? [There was no one.] We are adjourned [at 11:39 a.m.].

RESPECTFULLY SUBMITTED:

Erin Barlow
Committee Secretary

APPROVED BY:

Assemblyman John Ellison, Chairman

DATE:

EXHIBITS

Committee Name: Assembly Committee on Government Affairs

Date: May 12, 2015 **Time of Meeting: 8:50 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 157 (R1)	C	Jered McDonald, Committee Policy Analyst	Work Session Document
S.B. 249 (R1)	D	Jered McDonald, Committee Policy Analyst	Work Session Document
S.B. 289 (R1)	E	Jered McDonald, Committee Policy Analyst	Work Session Document
S.B. 401 (R1)	F	Jered McDonald, Committee Policy Analyst	Work Session Document
S.B. 254 (R2)	G	Senator Patricia Farley	Proposed Conceptual Amendment
S.B. 254 (R2)	H	Senator Patricia Farley	Letter
S.B. 254 (R2)	I	Senator Patricia Farley	Testimony
S.B. 254 (R2)	J	Susan Fisher, NAIOP, the Commercial Real Estate Development Association	Letter in opposition
S.B. 340 (R1)	K	Richard Peel, National Electrical Contractors Association	Proposed Amendment
S.B. 340 (R1)	L	Assemblywoman Dina Neal	Executive Order 13673