

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

**Seventy-Ninth Session
May 23, 2017**

The Committee on Government Affairs was called to order by Vice Chairwoman Dina Neal at 9:03 a.m. on Tuesday, May 23, 2017, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Dina Neal, Vice Chairwoman
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Chris Brooks
Assemblyman Richard Carrillo
Assemblyman Skip Daly
Assemblywoman Amber Joiner
Assemblyman Al Kramer
Assemblyman Jim Marchant
Assemblyman Richard McArthur
Assemblyman William McCurdy II
Assemblywoman Daniele Monroe-Moreno
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblyman Edgar Flores, Chairman (excused)
Assemblyman John Ellison (excused)

GUEST LEGISLATORS PRESENT:

Senator Mark A. Manendo, Senate District No. 21



STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Jim Penrose, Committee Counsel
Lori McCleary, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Terry J. Reynolds, Deputy Director of Administration, Department of Business and Industry
Bruce H. Breslow, Director, Department of Business and Industry
Sean Stewart, Chief Executive Officer, Nevada Contractors Association
Brian Reeder, representing Nevada Contractors Association
Warren B. Hardy II, representing Nevada Chapter, Associated Builders and Contractors, Inc.
David Frommer, Executive Director, Planning and Construction, University of Nevada, Las Vegas
Craig Madole, Chief Executive Officer, Nevada Chapter, The Associated General Contractors of America, Inc.
Marc Markwell, Chief Financial Officer and Secretary, Sierra Nevada Construction, Inc.
Kevin Linderman, Operations Manager, Q&D Construction, Inc.
Luke Puschnig, Legal Counsel, Las Vegas Convention and Visitors Authority
Lisa Foster, representing the City of Boulder City
William H. Hoffman, Deputy Director, Department of Transportation
Russell M. Rowe, representing American Council of Engineering Companies of Nevada
Lucas Ingvaldstad, representing Nevada Builders Alliance
David Cherry, Communications and Intergovernmental Relations Manager, City of Henderson
Kelly Crompton, Government Affairs Officer, Office of Administrative Services, City of Las Vegas
Josh Griffin, representing MGM Resorts International
Brad Keating, Legislative Representative, Clark County School District
Tom Morley, representing Local 872, Laborers' International Union of North America, AFL-CIO
Omar Saucedo, Public Affairs, Southern Nevada Water Authority
Angela Castro, Senior Director of Government Affairs, Media and Marketing, Regional Transportation Commission of Southern Nevada
Les Lee Shell, Director of the Office of Risk Management, Department of Finance, Clark County
Andrea Sullivan, Director of Procurement and Contracts, Purchasing and Warehouse Departments, Washoe County School District

Michael D. Hillerby, representing Regional Transportation Commission of Washoe County
Todd Koch, President, Building and Construction Trades Council of Northern Nevada, AFL-CIO
William Stanley, Executive Secretary-Treasurer, Southern Nevada Building and Construction Trades Council, AFL-CIO
Greg Esposito, Government Affairs Director, Local 525, Plumbers, Pipefitters and Service Technicians

Vice Chairwoman Neal:

[Roll was called. Committee rules and protocol were explained.] I will open the hearing for Senate Bill 501.

Senate Bill 501: Extends the prospective expiration of the Consumer Affairs Unit of the Department of Business and Industry. (BDR 18-908)

Terry J. Reynolds, Deputy Director of Administration, Department of Business and Industry:

Senate Bill 501 is simply an extension of the Consumer Affairs Unit in the Department of Business and Industry through the biennium. The funding will be coming out of mortgage settlement funds, which has been voted on and approved. We are here for any questions you may have. This is a very simple piece of legislation.

Vice Chairwoman Neal:

For the benefit of the Committee and the new members, can you explain what the Consumer Affairs Unit does, including the mortgage settlement agreement?

Terry Reynolds:

The Consumer Affairs Unit consists of six and a half employees; five in Las Vegas and one and a half in Carson City. The Unit basically handles consumer complaints and follows action cases through to an administrative law judge who handles the cases, if they get that far. The Unit handles approximately 2,000 cases a year, which is growing. We have gone from about 1,800 to 2,065 cases in 2016. Many of those are inquiries that are handled over the phone. The Unit gets about 300 cases from the Office of the Attorney General that are not criminal or civil cases, but basically fall under deceptive trade practices. The Unit is fairly successful with a 93 percent clearance rate. The Unit basically handles many underserved populations that really have nowhere else to go. They are fairly effective in what they do.

The Office of the Attorney General had additional mortgage settlement funds left over, so they were able to fund the continuation of the project, which is approximately \$1.3 million over the biennium.

Assemblywoman Bilbray-Axelrod:

Can you give me an example of something that would be handled by the Consumer Affairs Unit? Also, how is the public made aware of how to contact the office? To be honest, reading this bill was the first time I became aware of its existence.

Bruce H. Breslow, Director, Department of Business and Industry:

I am technically the Commissioner of the Consumer Affairs Unit the way the law was written. We attend many events in the north and south. We host forums on consumer affairs. We also use public relations. We do not have an advertising agency. It is a unit within the Director's office. It is part of all of the flyers we send out and all the contacts we do. Every event that the Department of Business and Industry or state government is part of, the Consumer Affairs Unit is there. The Consumer Affairs Unit has been able to get the word out, and we are growing, as Mr. Reynolds stated, to over 2,000 cases.

To give you an example, there were 387 cases having to do with products that were purchased. Some of the more egregious cases involve seniors buying \$1,200 worth of makeup in front of a hotel from someone who set up a booth. There are many cases like that the Unit has been able to resolve. There were 166 body shop complaints. I saw a decision by the administrative law judge that had to do with a body shop who put parts on a woman's car. When the car stopped working, she took it to a different body shop. She was shown the previous body shop had put old equipment on her car and painted it with spray paint. It is about getting restitution for people. It is not about building a fine fund or anything like that. I believe out of 2,000 cases, close to 96 percent of the consumers were helped by the Consumer Affairs Unit. It is about making the consumers whole again. There were also 150 timeshare complaints. Timeshares are a very pressure-packed sales pitch, and many times people will make a decision that may not be informed.

We submitted some documentation to staff having to do with a breakdown of all of the cases when we did the budget. This Unit has been approved in the budget based on another settlement. Of course, we hope this is not just kicking the Unit down the road for another two years, but it is all about funding. The Attorney General had another settlement that allowed for the funding to go through to allow the Unit to continue. This bill just extends the sunset for an additional two years, and hopefully two more years, until one day the state of Nevada decides if it really wants to go forward with this Unit with State General Fund money.

The Consumer Affairs Unit was a huge division under the Office of the Attorney General and was then moved to the Department of Business and Industry. The Unit collapsed under its own weight because of the cost of operation. Currently, the Consumer Affairs Unit is a very lean strike force within the Director's office and handles all of these complaints now.

Vice Chairwoman Neal:

I appreciate that explanation. I have been thinking about this for a while. I know you have a consumer affairs poster in front of the elevator here. Every time I see it, I think maybe there should be one of those hanging in libraries for more marketing. There are not many regular people who actually come to this building.

Is there anyone wishing to testify in support of Senate Bill 501? [There was no one.] Is there anyone wishing to testify in opposition to the bill? [There was no one.] Is there anyone wishing to testify in the neutral position? [There was no one.] Are there any closing remarks? [There were none.] I will close the hearing on Senate Bill 501 and open the hearing on Senate Bill 246 (2nd Reprint).

**Senate Bill 246 (2nd Reprint): Revises provisions relating to public works.
(BDR 28-667)**

Senator Mark A. Manendo, Senate District No. 21:

Thank you for hearing Senate Bill 246 (2nd Reprint). Many of you may be aware that there are several ways in which contractors bid contracts for public construction work in our state. This bill deals with one such method, which is construction manager at risk. Construction manager at risk is a valuable tool for public entities, and perfecting the process of construction manager at risk has been an ongoing, collaborative process bringing together stakeholders who are interested. This bill is the next step in that process.

Numerous industry and agency meetings were held to address this process. Data on projects were gathered, issues were addressed, and conflicts were resolved—at least we hope most of them were. The bill before you today is the combination of multiple years of hard work and collaboration between many of the interested parties. I would like Mr. Stewart to walk us through the bill.

Sean Stewart, Chief Executive Officer, Nevada Contractors Association:

We appreciate Senator Manendo and his efforts on this bill. In case you are not familiar with construction manager at risk, it is one of three project delivery methods entities use in Nevada to build projects. By entities, I mean cities, counties, the state, et cetera. The entities have the ability to choose which method suits their needs in the project and which method will generate the best timeliness and results to the taxpayer.

The three available methods we have in statute are design-bid-build, which means the bidder with the lowest price wins; design-build, which means the design and construction are contracted by a single entity known as a design builder; and then we have construction manager at risk, where a construction manager is selected to deliver the project for a guaranteed maximum price and coordinates all subcontractor work.

Unlike design-bid-build, multiple factors, in addition to price, are used during the construction manager at risk selection process. You will hear today from contractors, labor, and public agencies who have found the construction manager at risk process to be very positive. It has improved the certainty of project cost and schedule, and reduced project risks. As Senator Manendo said in his opening remarks, there has been an ongoing collaborative process with several meetings during the interim, both north and south, the result of which is the bill before you. I would like to turn it over to Mr. Reeder to walk you through the actual bill.

Brian Reeder, representing Nevada Contractors Association:

This bill addresses only a few parts of the construction manager at risk process. Section 1 adds to the statement of legislative intent that the construction manager at risk process is not intended to be used by public entities to limit competition, discourage competitive bidding, or engage in or allow for bid-shopping.

Sections 1.3 and 2 require that public advertisements for a construction manager at risk project be administered in the same manner as all other public works projects in *Nevada Revised Statutes* (NRS) Chapter 338. Section 1.3, subsection 5 prohibits an applicant for a construction manager at risk project from substituting another employee for an employee whose résumé was included in the applicant's proposal except for the specific circumstances found in the bill.

Section 1.7, subsection 6 protects the consumer by making sure price is a consideration in the scoring process for a construction manager at risk project. Section 3, subsection 3 requires construction manager at risk applicants to provide a standardized bid sheet that has been approved by the project owner or public entity to each subcontractor. The intent of this change is to bring fairness and clarity to the subcontractor selection process and to prevent what is known as "bid-shopping."

Section 4, subsection 3 allows for the limited use of the design-build project delivery method for jobs costing less than \$5 million. Currently, design-build can only be used for jobs costing more than \$5 million. This allows public entities to contract with a design-build team twice per year. That gives owners more options when choosing the best delivery method for their project.

Finally, changes in sections 5 and 6 extend the sunset language for construction manager at risk for another four years. This is a critical piece of the bill. Without it, public entities will no longer be able to use construction manager at risk as of July 1, 2017. We would be happy to stand for any questions.

Assemblywoman Woodbury:

Why do we keep sunseting this issue? Why has it not become permanent? Has the construction manager at risk process not proven itself as a viable, effective, efficient option? Why do we continue to limit how many projects can be done using this process?

Sean Stewart:

The discussion has been to continue to sunset the law in order to continue working on the process to make sure we make adjustments as we go. The construction manager at risk process is fairly new to Nevada. Being new, there have been issues that have come up, like bid-shopping and the other issues we have addressed today. We continue to go along with the sunsets in order to make sure we correct as we go and have an opportunity to bring it back to the Legislature. Mr. Hardy helped with this legislation originally, and he could speak to that point, if that is okay.

Warren B. Hardy II, representing Nevada Chapter, Associated Builders and Contractors, Inc.:

The equivalent of construction manager at risk in the private sector is a perfected process that works very well. Local governments want to have that tool in their toolbox. In fact, I sponsored the very first piece of legislation to put construction manager at risk in statute. These things take a long time to work themselves out. When we did design-build in the mid-1990s, it took many years before everyone was comfortable removing any limitations. This is a very good bill on a procurement process that I would describe as a rough stone rolling. We need to work things out. A rough stone eventually smooths out over time. We felt very strongly about the sunset in case there need to be adjustments and changes so we can force people to the table.

The limitation on construction manager at risk, in my opinion, is the opportunity it presents for potential bid-shopping. When this process first started, there were numerous examples of that happening. That has lessened over time as people become used to the process and agencies become used to the process. We are also the ones who requested the legislative declaration be included that it is not to be used to bid-shop or prevent competition. That is the reason we requested the sunset. We believe there will need to be additional adjustments to this process over time. Those adjustments do not happen unless there is a sunset.

Assemblyman Daly:

Anyone on the panel can answer this question. I understand bid-shopping probably better than most. Other than the language in the Legislative Counsel's Digest regarding section 1 that states the method of construction is not "intended" to allow bid-shopping, I see nothing in the bill that really changes the existing process where the problems have developed. I know, having talked with some of you, you think the form added into the bill in section 3, subsection 3 is going to help eliminate some of that. I may have questions for the public bodies when they testify as to what the actual process is and how the selection of the subcontractors comes about. Other than feel-good language that says it is not your "intent," does it actually prevent it? Tell me how you are preventing bid-shopping with this language and what you think the form is going to accomplish toward that end? As you know, there is already language in NRS Chapter 338 added in 2013 that says public bodies cannot interfere with the prime contractor's ability to select his subcontractors, but it happens every day.

Sean Stewart:

I understand your concern. The point through the meetings we had with the public agencies, contractors, and subcontractors was oftentimes when the bids are received, the bids are different and the scope is different on each contractor bid. The idea put together by this collaborative group was to have a standardized form where everyone submits the exact same information bid items in order to compare apples to apples. The hope is when those bids are received, there is no reason to spend too much time scrubbing the bids. The entities should be able to look at the bids and see they are the same and there would be no need for any further discussion with the subcontractors at that point.

Assemblyman Daly:

I understand the form is going to try to make things uniform. My understanding of the problem has been with how they are providing the guaranteed maximum price. If that process is allowed where a contractor can provide his fee plus whatever the cost of the work is, there is going to be a problem with the awarding bodies to act in their best interests by picking one subcontractor over another because of a different price, rather than the construction manager at risk being able to pick his team who he believes is going to provide the best value and deliver the project on schedule. It is the same way the construction manager at risk process is used to pick the contractor, not necessarily the low price, to deliver the contract on time with fewer issues. I do not see this as solving that problem.

Warren Hardy:

The difficulty with construction manager at risk, in terms of a public procurement process, is if we ask the construction manager to truly be at risk, he has to be allowed to choose his own contractors and subcontractors. How does that mesh with a concept that we have in government of allowing everyone to bid equally for public works projects? It does not mesh very well. We spent the entire interim trying to answer that very question. My members were comfortable with giving the uniform bid documents a try. They felt it was going to resolve a huge percentage of the problems. I should indicate it is not widespread. The overwhelming majority of agencies that are using construction manager at risk are taking measures to ensure there is not bid-shopping. Part of the problem is that potential is inherent in the process. I guess the answer to the question is we cannot guarantee that, which is precisely why we put another sunset in the bill. I think it is the best product we could come up with to keep this moving forward until we can knock all the rough parts off that stone.

Vice Chairwoman Neal:

I would like to discuss a statement you just made, Mr. Hardy, regarding the issue being inherent in the way construction manager at risk works. Why does construction manager at risk have an inherent potential for bid-shopping? I think the answer to that question would be a very good educational moment for us to lock in on and then move forward.

Warren Hardy:

The bid-shopping portion is not necessarily inherent in the construction manager at risk process. The opportunity to select a contractor is. That is counter to what we have always done in terms of government construction procurement. We have always done low bid. Construction manager at risk is a best-bid process that we definitely see a lot of value in for the taxpayers and the agencies. There may not be a solution to bid-shopping other than having some uniform guidelines, or best practices if you will, across the state. We have discovered it is very difficult to legislate public works. As times goes forward, these agencies are falling into these best practices as they are listening to our concerns.

We have had issues about advertising, which is in this bill. Agencies are required to bid for construction manager at risk in the exact same way they advertise for every other bid. We were having difficulty with some agencies finding where the construction manager at risk bid process was advertised because they were so intent on wanting to hire the contractor they wanted to hire. That is the dilemma, and that is what we are working out. Again, the inconsistency is if you are going to ask someone to be at risk, which is the intent of this legislation, you have to allow them to select their own subcontractors. It has to be subcontractors the construction manager has confidence in, has worked with before, and knows has the ability. You cannot just require a low-bid process.

This is a process that I think is going to take a few more years. It took us almost 20 years on design-build to where everyone was comfortable to remove all of the limitations.

Vice Chairwoman Neal:

Thank you for that, because that was one of my questions on the advertising on page 8, lines 5 through 12. I did notice you are making the process the same, but the way the strike-out of the language worked, it only involves paragraph (a) of subsection 1 of NRS 338.1385. I am trying to understand why the design-bid-build process is better in this limitation. It seems like it was countywide, but now it is only if it is over \$100,000. I want a little more conversation around that issue.

Warren Hardy:

I should probably let my friends from the Nevada Contractors Association answer that question. However, that process has evolved as we have had venues other than newspapers to advertise. We have webpages and that sort of thing. It was our intent to make sure whatever that process was for design-bid-build, it is also used for advertising construction manager at risk.

Sean Stewart:

The concern that was brought up in the numerous meetings we had with all the stakeholders was to make sure it was uniform with our other methods. We want construction manager at risk advertised in the same manner as design-build and design-bid-build. We want to make everything uniform in statute so all of the entities that advertise these projects realize they have to advertise in the same manner.

Vice Chairwoman Neal:

What is not clear is why it is better and what are the issues that were popping up in the different methods. That is what I want fleshed out and stated for the record.

Sean Stewart:

The concern was that some contractors were not able to find where construction manager at risk was being advertised. We want to make sure that all entities advertise in the same manner so everyone has an opportunity to bid on these projects.

Vice Chairwoman Neal:

I guess that is why I am confused. Why can the contractors not find the advertisements?

Warren Hardy:

The issue is that construction manager at risk is a very different process, and agencies were looking at it as a very different process. Part of the appeal of that process is allowing the agencies to have more control over the contractors they select to do the project. Apparently, inherent in that was a lack of understanding that it was not necessarily intended for the agencies to go straight to one contractor without informing the rest of the industry that there was a bid opportunity available.

I think uniformity is the key to this issue. This is going to be resolved through best practices, not through legislation. We have agencies that are doing a very good job of implementing this. The Department of Transportation, along with the Regional Transportation Commission and others, are doing a very good job of implementing this. We want those best practices to be uniform across the board. That is not a very good answer to your question. It is not really a commentary on the advertising process. There were contractors who could not find the advertisement. We had contractors who were told that the bids for construction manager at risk were on the webpage. And they were, but they had to be searched for. We want the traditional places that contractors go to look for bid opportunities to also contain the construction manager at risk bid opportunities.

Vice Chairwoman Neal:

I have a feeling this issue may show up next session. If it does and the same Committee members are here, there will be more knowledge and they can recall X, Y, and Z.

My next question is regarding section 1.7, subsection 6. You have created a range. Previous law said the proposed amount of compensation "exceed," which was stricken out and replaced with "be less than 5 percent or more than 20 percent of the scoring for the selection" I am trying to understand what the range you have created is accomplishing.

Sean Stewart:

The concern is that under the previous language, an entity could advertise a project in price, which is important to the consumer. There was an ability not to use price at all in the final evaluation, giving it zero percent weight. We want to give it some weight and make sure every project has a price element to protect the consumer.

Vice Chairwoman Neal:

When we have the price element, what is it we gain? Is it transparency?

Sean Stewart:

Yes, transparency and, in our opinion, we are protecting the consumer and making sure price is a consideration when these bids are put together. We want to make sure the agencies are spending money wisely on these projects.

Warren Hardy:

We are also gaining some vestige of competitive bid as well.

Assemblyman Daly:

My question also has to do with section 1.7, subsection 6. I know a little bit about this issue also. In fact, I have a change in a different bill [Assembly Bill 406]. The 20 percent was added in 2015, and now you want to make it not less than 5 percent and not more than 20 percent. Unless you change the word "may" on page 6, line 10, the panel still does not have to include any price. If you want to make sure the price is considered, "may" has to be changed to "shall." Currently, with "may" in the language, if a price is listed at all, it cannot be between that range. I do not think you hit the mark, and I am just pointing that out to you.

Vice Chairwoman Neal:

Would you like to respond to that, Mr. Stewart?

Sean Stewart:

I was not sure there was a question.

Assemblyman Daly:

I was just responding to their statement that the 5 percent range in the language is to keep a degree of competitiveness, and they want to make sure there is a price consideration because they said public bodies had not used price as a consideration at all. As long as the word "may" is in the bill, the public body still does not have to consider price. If the agency does have price as a consideration, it has to be at least 5 percent and not more than 20 percent, but they do not have to have it. I am just trying to correct the record. It is not a question, it is a statement. The bill has not met the mark to what they are testifying to.

Vice Chairwoman Neal:

Do you agree or disagree with Assemblyman Daly's statement?

Sean Stewart:

We agree that we need to write it in a way that requires price to be a consideration in the final evaluation. We will look at that language.

Vice Chairwoman Neal:

My last question is to section 4, subsection 3, which states, "Within any 12-month period, a public body may contract with a design-build team for the design and construction of not more than two discrete public works projects" I am not sure what "discrete" means in this instance.

Sean Stewart:

The intent is to allow design-bid-build to be used on up to two projects per entity per year. In the past, they could not be used on any project under \$5 million. This language was crafted in order to allow the entity to use it up to two projects per year.

Vice Chairwoman Neal:

What does "discrete" mean?

Sean Stewart:

We think "discrete" means "separate" projects or two projects per year.

Vice Chairwoman Neal:

Seeing no further questions, I will open the hearing for those wishing to testify in support of the bill.

Warren Hardy:

I first came up for clarification on some parts of the bill, but I would like to state that Associated Builders and Contractors, Inc., Nevada Chapter, is in support of the bill. Our issues with construction manager at risk deal with construction manager at risk and not with this bill. We think this bill is a good step forward in perfecting the process over time.

David Frommer, Executive Director, Planning and Construction, University of Nevada, Las Vegas:

I am here in support of S.B. 246 (R2). I am very grateful for the efforts, consideration, and collaboration of the bill sponsors, the committees, industry members, and other stakeholders who have worked thoughtfully and hard on this bill. There has been a lot of work. The University of Nevada, Las Vegas' (UNLV) experience with construction manager at risk and design-build delivery for both limited and more full-scope projects has been very good, and we welcome the improvements this bill brings to these processes.

Having these project delivery methods available to us is important as it allows us to apply the most effective project delivery approach to specific projects based on their specific circumstances. Some instances that we have had of using these delivery methods very successfully include installing, via design-build delivery, the first certified synthetic turf rugby competition field in the United States at Sam Boyd Stadium. That was a very successful design-build project with very specific performance criteria that was benefited from design-build delivery.

For construction manager at risk, a great example is our major renovation and expansion of the UNLV Thomas & Mack Center. I believe construction manager at risk was particularly suited for that project with the notion that we not only needed to engage in that project, but it was very important to keep the facility open and operational during the construction, be it renovation or expansion, so we could continue to operate UNLV athletic events and major regional events, such as the National Finals Rodeo. The ability to use construction manager at risk and the preconstruction process, as well as the ability for the general contractor to select subcontractors based on qualifications and price, was very important.

We not only find these delivery methods to be successful, but we also find the vendors and subcontractors we, or the prime contractor, engage on these projects represent a wide and diverse cross section of design and construction industry members in Nevada.

We are appreciative of the bill and its statement of purpose, reauthorization, and refinements for the construction manager at risk process and the ability to undertake no more than two design-build projects under \$5 million in any 12-month period. I know, having worked with Nevada Contractors Association and others, the amendments that have been made to this bill have been broadly and robustly discussed and are thoughtful in nature. We believe S.B. 246 (R2), with the two amendments that have been incorporated into the bill, is a bill that has been thoroughly reviewed and deliberated with strong engagement and support by both public bodies and a wide variety of stakeholders in the design construction industry.

With that, I thank you for your time and would be happy to respond to any questions you have of me.

Craig Madole, Chief Executive Officer, Nevada Chapter, The Associated General Contractors of America, Inc.:

We participated in this large working group with public owners, contractors, and other associations. We are very supportive of this bill and think it makes the necessary changes to construction manager at risk that need to be considered for the upcoming biennium. We do welcome the opportunity to come back and consider lifting the sunset in four years, to Assemblywoman Woodbury's point.

Marc Markwell, Chief Financial Officer and Secretary, Sierra Nevada Construction, Inc.:

Sierra Nevada Construction, Inc. is a heavy highway road builder based in Sparks, Nevada. We have been a subcontractor and are currently working as a general contractor on a preconstruction contract for construction manager at risk. We have worked in both capacities as a subcontractor and a general contractor, and we do see the value in it for the more complicated projects. We definitely are in support of S.B. 246 (R2). We have worked with several agencies and several other contractors around the state on this bill, and we encourage you to support it and move forward.

Kevin Linderman, Operations Manager, Q&D Construction, Inc.:

We are here to support this bill. We have been part of several successful, difficult construction manager at risk projects throughout its life in Nevada. They have included pricing at the time of bid and not pricing afterward. We were part of the think tank to include amendments to this bill in the Senate. We support the bill and appreciate the opportunity to continue construction manager at risk. We would like to revisit the sunset and make it a permanent statute.

Vice Chairwoman Neal:

You said you have experienced the bidding where there was pricing and no pricing. What was the effect and what were the differences?

Kevin Linderman:

Usually, there is hardly any difference with pricing. With percentages, usually the proposals coming out, the more qualified contractors are selected. Basically, the pricing scheme is a good way to keep everyone in check. I agree with what is in the bill. I guess there are some instances where an owner would not want to put pricing in the bid based on an extremely difficult job where more of the stakeholder interest is more of a value to the entity than just what percentage the contractor has on the project.

Luke Puschnig, Legal Counsel, Las Vegas Convention and Visitors Authority:

As you may know, the Las Vegas Convention and Visitors Authority (LVCVA) is building an expansion and renovating the Las Vegas Convention Center. The LVCVA would like to use the construction manager at risk method for both of these projects. As such, the LVCVA respectfully requests that you pass S.B. 246 (R2) and especially approve the extension of the sunset for the authorization to use construction manager at risk.

Lisa Foster, representing the City of Boulder City:

The City of Boulder City is in strong support of this bill. They feel it will help them deliver projects to the public faster and more efficiently.

William H. Hoffman, Deputy Director, Department of Transportation:

We are in support of S.B. 246 (R2). Today, the Department of Transportation's (NDOT) experience with the construction manager at risk delivery method has been very positive. The use of construction manager at risk on our projects has infused innovation, improved overall project costs, and provided more certainty in the project schedule for both the contractors and NDOT. The insight received from contractors during the design phase on these projects has been extremely valuable. This bill will allow NDOT to continue to reap these critical benefits from the successful delivery tool like construction manager at risk. Again, NDOT is in support of S.B. 246 (R2).

Assemblyman Kramer:

I see this will allow two distinct projects a year of \$5 million or less. I have a hard time seeing NDOT having that many projects a year under \$5 million. While construction manager at risk would be good, it seems it would be a small part of what you are doing. Can you comment on that?

Bill Hoffman:

The Department of Transportation uses construction manager at risk very cautiously. The project costs may not necessarily come into play for NDOT. Many of our projects are up at Lake Tahoe and are very complicated. There are many underground unknowns. What we like to do is use construction manager at risk to bring the contractor in so our designers and the contractor together can start working on these risks that both sides have identified in the design phase. As they work the contract, if those risks are identified or come up, there is negotiation by both sides on how they would handle that risk. We average about one and a half construction manager at risk projects a year looking back to 2013, so not a lot of them. However, we use them very strategically to save money on high-risk projects.

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

The engineering community in Nevada supports this bill, particularly sections 1 through 3 on the construction manager at risk provisions. With respect to section 4 and the language regarding the exception to the \$5 million threshold for design-build projects, we understood that language would also sunset in 2021, and unless I am reading the bill wrong, I think that may have been missed by the drafter on the second reprint. Perhaps the Legal Division of the Legislative Counsel Bureau could take a look at that. I believe those who support the bill also support having that sunset in 2021. We would support it as well.

Lucas Ingvaldstad, representing Nevada Builders Alliance:

For the sake of time, I would just like to say we support this bill. We supported the bill in the Senate as amended. Thank you for your time and your consideration.

David Cherry, Communications and Intergovernmental Relations Manager, City of Henderson:

The City of Henderson views the construction manager at risk system as offering several advantages over the traditional design-bid-build system, including expedited delivery of the completed project, contractor review of the design elements prior to finalization of the plans, the selection of a contractor based on qualifications, in addition to price and the minimization of change orders and claims. The City of Henderson has used construction manager at risk a handful of times over the last several years on road projects and vertical projects. We are currently using construction manager at risk to build our new fire station in Inspirada. I am pleased to say, at the halfway point in the project, we are ahead of schedule and have had no change orders or claims.

Kelly Crompton, Government Affairs Officer, Office of Administrative Services, City of Las Vegas:

I will echo much of what my colleague, Mr. Cherry, just said. We do believe this will help us with high-quality and on-time delivery. We support the bill.

Josh Griffin, representing MGM Resorts International:

We, too, support S.B. 246 (R2), and we appreciate and agree with all of the comments that have been made, which captures why we do support this bill. We would appreciate your consideration.

Brad Keating, Legislative Representative, Clark County School District:

I would like to echo the sentiments that have been made today. Clark County School District appreciates this bill being brought forward. We support S.B. 246 (R2) and have used construction manager at risk for a number of projects. We recently used construction manager at risk at Boulder City High School with a classroom addition and the new performing arts building. In our elementary schools in Clark County, we have been able to use construction manager at risk to help expand at the lowest cost in as quick a time as possible. We appreciate this bill being brought forward and look forward to supporting it.

Tom Morley, representing Local 872, Laborers' International Union of North America, AFL-CIO:

We are in support of S.B. 246 (R2). It is not often that Mr. Hardy and I see eye to eye on anything. Often, our relationship is like Wile E. Coyote and the Roadrunner, and that varies bill to bill. However, we support this issue.

Omar Saucedo, Public Affairs, Southern Nevada Water Authority:

I want to thank Senator Manendo and the contractors for bringing forth this important piece of legislation. We were happy to work with them on an amendment in the Senate that alleviated some of our concerns. I am happy to say, the first reprint addressed our concerns. The Southern Nevada Water Authority has used construction manager at risk and design-build as a valuable tool in the toolbox for future projects, such as pipeline replacement along Las Vegas Boulevard. We would appreciate having this tool available.

Angela Castro, Senior Director of Government Affairs, Media and Marketing, Regional Transportation Commission of Southern Nevada:

We support S.B. 246 (R2). Construction manager at risk has proven to be an effective tool to control costs and deliver projects that are complex and have tight schedule constraints. This legislation also provides us with another tool in our toolbox to effectively and efficiently deliver infrastructure projects.

Les Lee Shell, Director of the Office of Risk Management, Department of Finance, Clark County:

We, too, support S.B. 246 (R2) and thank the sponsor for bringing this important piece of legislation forward. While not widely used, it is important for us in complex projects that need to be done in a timely and cost-effective manner. As an example, we cannot shut the tarmac down for extended periods of time at the Clark County Department of Aviation.

Andrea Sullivan, Director of Procurement and Contracts, Purchasing and Warehouse Departments, Washoe County School District:

We are here today in support of S.B. 246 (R2). With the passage of Washoe County Question 1, construction manager at risk is an important process for us to utilize on certain projects that are complex and time sensitive. Therefore, the extension of the construction manager at risk sunset is very critical to our operations. We have worked very closely with The Associated General Contractors of America and Nevada Contractors Association. We support the amendment as presented, and we respectfully request your support for this bill.

Michael D. Hillerby, representing Regional Transportation Commission of Washoe County:

We support the bill.

Vice Chairwoman Neal:

Is there anyone else wishing to testify in support of the bill? [There was no one.] Is there anyone wishing to testify in opposition to the bill?

Todd Koch, President, Building and Construction Trades Council of Northern Nevada, AFL-CIO:

We appreciate the discussions we have had with the bill sponsor. However, we oppose the bill at this point because it does not go far enough to ensure that the awarding bodies have the most competitive construction manager at risk bids nor does it offer protections for subcontractors from bid-shopping.

In theory, the construction manager at risk process would build construction teams that would deliver a great product. However, in reality, let me tell you what has happened. Some large general contractors have been virtually locked out because of the selection process, and subcontractors have described to me the construction manager at risk process as the "good old boy system on steroids." They feel their bids are shopped, sometimes for months after the construction manager at risk has been chosen. This has a negative effect on the members we represent because their livelihoods are tied to the contractors they work for. I would be happy to answer any questions.

Assemblyman Daly:

I know it has been testified to that there have been several meetings. I know there were meetings on my bill [A.B. 406]. I made sure everyone was invited, and we discussed it with as many people as possible. Were you involved in those meetings, or did you know anything about them? I know I certainly did not and I was not asked to the meetings. I am wondering if they just had a one-sided view of how this bill should go forward.

Todd Koch:

No. We were not involved in this process. I have often wondered why we were not involved with this from the onset. The only thing I could think of is that some people do not realize this type of bidding process, or any bidding process, has an effect on the workers.

Vice Chairwoman Neal:

You made the statement that people are locked out. How does that happen?

Todd Koch:

The grading process and the interview process for contractors favors those general contractors who have done many construction manager at risk projects. For example, those general contractors who had been building many schools in this area in the past do not have any experience in construction manager at risk. When they are graded, they lose points because they do not have that experience. That is why I am going to presume that construction manager at risk had a sunset from the beginning, and that is why we keep putting a sunset on it because it is a very problematic bidding process.

William Stanley, Executive Secretary-Treasurer, Southern Nevada Building and Construction Trades Council, AFL-CIO:

I will echo some of the comments that my colleague from the north, Mr. Koch, has made. The Southern Nevada Building and Construction Trades Council is very interested in having healthy contractors. Without having healthy contractors, the folks we represent every day do not have a place to go to work. Having a healthy contracting environment is important to us. We need contractors to be successful; we need contractors to be profitable; and we need contractors to stay in business. The construction manager at risk process being brought back to this house since its inception with one tweak after another, after another, after another, should tell the story that there are problems with the process.

I believe the process can be fixed, and I am committed to working with the bill sponsor to fix what I believe to be the most egregious part of this bill, which is the bid-shopping. Bid-shopping with subcontractors is a reality. We have heard from owners, general contractors, and that side of the fence. What you do not have coming forward today, and you have not heard from on the other side, are a lot of subcontractors or subcontractor associations. They are the individuals who lose under this system because their bids are shopped and shopped to where their margins get to the point where it is actually hard to stay in business. That is our concern, and it remains our concern. We need healthy contractors,

and we need profitable contractors. This bill, in its current form, does not protect the subcontractors in the way we could protect them. For those reasons, we will continue to work with folks to fix the construction manager at risk process. However, at this point, the Southern Nevada Building and Construction Trades Council is opposed.

Greg Esposito, Government Affairs Director, Local 525, Plumbers, Pipefitters and Service Technicians:

I first became aware of the issues with construction manager at risk before the 2011 Session, and I came up here trying to work on a solution. We were notified by one of our contractors that they had bid a public works project under the new delivery system called construction manager at risk. The general contractor had come back to the subcontractor and told him he had come in at X amount of money and the competitor came in at a lesser amount, and could he change his bid.

Prior to construction manager at risk, as described, the delivery methods were design-build or design-bid-build. Typically, an end user chooses a general contractor who puts the bid out to subcontractors. Those subcontractors submit bids, and under the current law, they have to choose the lowest bid. That is not a very good system. We actually tried working on that system in previous legislation. Construction manager at risk fixes that to where the general contractor has the freedom to choose the best subcontractor despite the bid. However, the other systems currently say the numbers cannot be changed. Under construction manager at risk, there are no such limitations. When we say bid-shopping, that is what the general contractor does. The general contractor goes to the subcontractors and tells them he really wants to use them, but there was a lower bid, and asks the subcontractor to change his numbers.

That is not how public works projects are supposed to go. That is not a fair bidding method. It is fine in private practice, but not in public practice. Many people came up here and testified as to how it is a valuable tool. Yes, it is a valuable tool, but it is a valuable tool that has been abused. There are many subcontractors I work with who will not bid construction manager at risk projects anymore because they know it is a fruitless enterprise and they will not be selected, or their number, which is typically the prevailing wage number, is going to be shopped around to contractors who do not know how to bid prevailing work, they just know there are accurate numbers out there that they can copy.

We are not against the language or everything else in the bill. We appreciate the new form that will ensure when the bid is scrubbed, it is the same thing and comparing apples to apples. What we are against is no sunset. We were looking forward to it being sunsetted. We are willing to work in the interim. To address Assemblyman Daly's question, I worked extensively on this issue in 2011. There is pretty much no one here who does not know that this is an issue for my organization. I was very surprised in the interim that there was a bill being worked on. I asked around and was told other groups had been contacted. Our groups never were.

We are willing to work in the interim on better language that fixes the bid-shopping issue. It is very simple. Not allowing them to change numbers after the bids are opened is an easy fix. Still allowing them to choose whoever they want is fine; just do not allow them to change the numbers.

Vice Chairwoman Neal:

Is there anyone else wishing to testify in opposition to the bill? [There was no one.] Is there anyone wishing to testify in the neutral position? [There was no one.] Are there any closing remarks? In addition, would the sponsors like to address anything that was testified to in the opposition regarding not allowing numbers to be changed?

Brian Reeder:

I would like to have Mr. Stewart address some of those questions specifically. However, I want to state that this has been a collaborative process and an open process, not just this session, but for the last four years, and has included a broad representation of labor, contractors, and the public entities. We have not seen an amendment to this bill. This late in the game, we are disappointed to see some of the opposition come to the table.

Sean Stewart:

As Mr. Reeder stated, we did work with a broad coalition, including labor, on this issue. We have had many discussions. I am shocked to hear the opposition that has come forward. I spoke with all three of these men. None of them have reached out to me personally, but I called them personally and was told by Mr. Stanley they were not opposed. I was told by Mr. Koch that he was still considering his options. Mr. Esposito had promised to get an amendment that would address his concerns with bid-shopping, which has not happened so far. I am shocked to hear the testimony today. I am not sure what is going on, but I am surprised.

I want to mention that there has been a broad coalition that has put a lot of time and effort into this bill, and you have heard from them today. I think it is a good bill. We are open to addressing any specific concerns, but it is a little shocking to hear the testimony that has come forward today for the first time.

Vice Chairwoman Neal:

In regard to not allowing numbers to be changed, do you agree or disagree?

Sean Stewart:

We definitely agree with that statement. Numbers should not be changed. I think most of the entities could testify that when bids are open, they are open with the entities present, and the numbers are compared between the two. We do not want bid-shopping, and that is what we were doing the entire interim. We were trying to fix the bill to address these concerns. We are open to the suggestions, but we have to have those suggestions submitted to us. We have not had that information.

Vice Chairwoman Neal:

Is that a feasible amendment to this bill, and where would it go?

Sean Stewart:

I am not sure where it would go. I think it is very sensible, and we are open to that discussion.

Assemblyman McCurdy:

If I heard correctly, the opposition testified that they were not included in this process. Is that true?

Sean Stewart:

To my knowledge, the three individuals who came up in opposition were not in any of those meetings. We did invite labor and we had members from labor. We had Laborers' International Union of North America Local 872, International Union of Operating Engineers Local 12, International Brotherhood of Teamsters Local 633, and Operative Plasterers' and Cement Masons' International Association who were all involved in the process. We have spoken to members from AFL-CIO. We had signatory contractors whom you have heard from today that employ these unions that have come forward. In my opinion, there has been collaborative effort. We tried to reach out to everyone. There were over 50 people at our meetings, and there were multiple meetings north and south. It was not our intention to ever not include someone. I have reached out to all the individuals who testified today, and I am willing to continue those conversations, but I have to have feedback from them. That is the part I do not understand.

Assemblyman McCurdy:

We just want to make sure that everyone has an opportunity to have their voice heard and be at the table. After this hearing, please get together and see what you can come up with that is palatable to everyone.

Vice Chairwoman Neal:

Time is very limited, so whatever happens, it needs to happen before the end of the day. I think everyone knows what they want and do not want. You will either come to a consensus on those issues or you will not. Let me know what you get worked out. You have heard it on the record, so it should not deviate.

Senator Manendo:

Thank you to the Committee for hearing this bill. It was a long process, but I echo that we should get something in writing. That way, the coalition that has been working together can work off something on paper to bring back to this Committee in writing as well.

Vice Chairwoman Neal:

I will close the hearing on S.B. 246 (R2). Is there anyone here for public comment? [There was no one.] Having no further business, this meeting is adjourned [at 10:10 a.m.].

RESPECTFULLY SUBMITTED:

Lori McCleary
Committee Secretary

APPROVED BY:

Assemblyman Edgar Flores, Chairman

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.