

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

**Eightieth Session
February 13, 2019**

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 1:32 p.m. on Wednesday, February 13, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Ellen B. Spiegel, Chair
Assemblyman Jason Frierson, Vice Chair
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblywoman Melissa Hardy
Assemblywoman Sandra Jauregui
Assemblyman Al Kramer
Assemblywoman Susie Martinez
Assemblyman William McCurdy II
Assemblywoman Dina Neal
Assemblyman Steve Yeager

COMMITTEE MEMBERS ABSENT:

Assemblywoman Jill Tolles (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Patrick Ashton, Committee Policy Analyst
Wil Keane, Committee Counsel
Katelyn Malone, Committee Secretary



Earlene Miller, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Misty Grimmer, representing State Contractors' Board
Margi A. Grein, Executive Officer, State Contractors' Board
Nancy Mathias, Licensing Administrator, State Contractors' Board
Craig Madole, Chief Executive Officer, Nevada Chapter of The Associated General Contractors of America, Inc.
Brian Reeder, representing Nevada Contractors Association
Aaron West, Chief Executive Officer, Nevada Builders Alliance
Joshua J. Hicks, representing Nevada Home Builders Association
Paul Rozario, Director of Investigations, State Contractors' Board
Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada

Chair Spiegel:

[Roll was taken. Committee rules and protocols were explained.] Today we have a presentation from the Nevada State Contractors' Board, and four bill hearings.

Misty Grimmer, representing State Contractors' Board:

Margi Grein is the Executive Officer of the Nevada State Contractors' Board; she will be presenting the bills and she has staff with her to help answer questions. We also have one of the board members in the audience, Mr. Leggett. If you have any questions, we at The Ferraro Group are always in the building.

Margi A. Grein, Executive Officer, State Contractors' Board:

I have had the pleasure of serving as the Executive Officer for the Nevada State Contractors' Board for the last 21 years of my 33 years with the Board. On behalf of the Contractors' Board, I would like to express my appreciation for the opportunity to provide you with an overview of our Board that addresses our mission to promote public confidence and trust in the competence and integrity of our licensees, while protecting the health, safety, and welfare of the public. My presentation today will walk you through the operations of the Board, and touch on some of our most recent accomplishments and activities. Hopefully you have a copy of the handouts that I have provided for the Committee. These will provide you with a high-level overview of our legislative package ([Exhibit C](#)), our constituent services ([Exhibit D](#)), and an overview of our data and highlights from fiscal year 2017-2018 ([Exhibit E](#)).

The State Contractors' Board was established by the Legislature in 1941, and is comprised of seven members, including six licensed contractors and one public representative. Each member is appointed by the Board for a three-year term. Our Board meets monthly to provide staff direction on policy and government matters, in addition to developing an annual strategic plan that outlines our goals and objectives to be achieved each fiscal year. We have

a number of subcommittees that meet as required, with the exception of the Residential Recovery Fund Subcommittee, which meets every other month and is comprised of three Board members. The State Contractors' Board is self-funded primarily by the revenue received through license fees. We are not part of the State General Fund, although we do remain a Title 54 board in the Executive Branch of government.

Our Board has maintained an operating reserve policy since 1948, which has been modified over the years based on recommendations from our auditors, to comply with the most current financial statement reporting requirements. Our current operating reserve policy was revised and most recently approved by the Board on October 12, 2010, following audit recommendations received by our public accounting firm. The current reserve policy requires an annual analysis of the ratio of the unrestricted net assets and the Board's operating expenses at fiscal year-end during the annual audit. It further confirms that the Board is in the practice of maintaining a one-year operating reserve; however, in the event of a measurable decline in revenue, the reserve may be reduced to six months of annual operating expenses, but not below.

As you are aware, the economic downturn impacted the construction industry the hardest. The Board was also impacted by this; however we were fiscally conservative over a ten-year period, which allowed the Board to avoid layoffs and other employee-related hardships in spite of the decline in revenue. Following the audit and analysis that took place in June 2014, a proposal to reduce the Board's general fund balance by issuing refunds to current eligible licensees was presented to the Board. In March 2015, the Board reviewed and approved this program. The Board authorized a monetary refund of approximately \$2.6 million to approximately 15,000 licensed contractors, both active and inactive, based on their current license status as of June 30, 2015. The refund checks were issued in September 2015, and the Board established a separate checking account for those funds.

We employ 65 personnel across our two offices in Reno and Henderson, and maintain our own benefit and retirement packages. Since its inception in 1941, the Contractors' Board has never participated in the Public Employees' Retirement System (PERS); however, we have been an active participant in Social Security since 1952, and we offer both a 401(k) employer-funded retirement plan and a 457(b) employee-funded retirement plan.

We currently license about 16,000 construction companies in the state of Nevada, both residential and commercial contractors. Licensees may consist of sole proprietors, partnerships, corporations, or limited liability companies. Of our current 15,803 active licensees, approximately 36 percent, or 5,632 licensees, are from out of state. Each of those licensed entities are directly responsible for hiring and the employment of the estimated 90,000 people in Nevada's construction industry.

Our licensing process includes, among other requirements, a review of the applicant's financial wherewithal, experience, and character. Applicants are required to take and pass required trade exams, as well as the Nevada Construction Management Survey Exam, which tests the applicant's understanding of applicable Nevada laws and their knowledge of

operating a business. The license classifications range from specialty licenses—those for plumbers and electricians—to general contractors. Projects that these licensees perform can range from small home repairs to building projects such as the Raiders stadium [Las Vegas Stadium] or the Tesla Gigafactory.

Last fiscal year, approximately 4,500 applications for new licenses and license changes were received, and just over 7,000 license renewals were processed. Our licensees renew biennially, which is why approximately half our licensees renew each year. Our licensing data often correlates with the economic conditions of the state. In this past year, we noticed a 10 percent increase in the number of new license applications from the 2016-2017 fiscal year as the construction industry continues to welcome new work in both residential and commercial projects.

The Board remains committed to making licensure more accessible to those who have an interest in starting a construction business. Since 2017, our Board has participated on Nevada's team engaged with the national Occupational Licensing Policy Learning Consortium, which aims to identify potential barriers to licensure and labor market entry, while also seeking opportunities to expand license portability and reciprocal agreements. Over the past year, we have implemented several strategic initiatives to address these concerns, including the implementation of regulations relating to licensure by endorsement that allows the Board to recognize licensure and exams from other states for consideration of an application in Nevada. We have researched the various trade exams and experience requirements of each state to identify the states whose requirements are most in line with Nevada's. With this information, we were able to produce a State License Equivalency Chart, which applicants can use to determine whether or not they can apply for a waiver of our trade exam or experience requirements. We have worked with our exam provider to allow applicants to take Nevada exams in any of their approved facilities across the nation. We have also proposed a number of legislative changes, included in Assembly Bill 25, which I will be discussing later in today's meeting. Lastly, we are making efforts to raise awareness of our Business Assistance Program and our Veterans Assistance Program. These programs provide individualized assistance to veteran applications, and offer monthly seminars to business applicants that provide information concerning application requirements and other helpful tips.

In addition to our licensing efforts, our Board maintains a responsibility to ensure that those we license comply with statutory and regulatory provisions under *Nevada Revised Statutes* (NRS) Chapter 624 and *Nevada Administrative Code* (NAC) Chapter 624. Our enforcement department includes three divisions. The compliance division investigates all complaints received by the Board related to licensed contractors. These complaints typically fall into one of three categories: workmanship compliance complaints from property owners, which may include but are not limited to abandonment of a project, failure to correct contractual obligations, or failure to complete contractual obligations; money-owing compliance complaints, which involve subcontractors, suppliers, or vendors; and violations of industry regulations, which normally include violations of laws such as failure to obtain a building

permit, hiring or doing business with an unlicensed contractor, or failure to maintain industrial insurance.

Our criminal division investigates all unlicensed contractor complaints and may forward validated complaints to the local district attorney's office for criminal prosecution. In addition to investigating complaints, our criminal investigators coordinate sting operations against unlicensed contractors, and proactively monitor a variety of electronic mediums where construction-related services are being advertised, such as Craigslist, Facebook, and other online bulletins.

The fraud division is charged with taking on significant, complex cases regarding unlicensed contractors who prey on unsuspecting homeowners, often senior citizens, and commit felony crimes, including obtaining money under false pretenses, diversion of funds, and property theft, amongst others. The fraud division also assists licensed contractors who have been a victim of embezzlement through criminal activity, such as theft, diversion of funds, forgery, and misrepresentation.

Because many of these cases are rejected by the courts as civil matters, the ability for the Contractors' Board to investigate allegations and prepare criminal charges with enhanced penalties for crimes against seniors has been successful when presenting the cases to the District Attorney's or Attorney General's offices for prosecution. The efforts of our fraud division have resulted in the prosecution and conviction of multiple criminal fraud cases, bringing both restitution to the victims and prison time for the offenders. During fiscal year 2017-2018, our enforcement division received over 3,000 complaints, processed 3,200 fingerprint cards, and performed 221 background investigations. A total of 170 administrative citations and 192 criminal citations were issued. We filed 187 criminal affidavits with district attorney's offices throughout the state, issued 282 cease and desist orders to persons operating without a license, and investigated 12 complex cases involving fraudulent activities. Additionally, the Board held 131 disciplinary hearings, which resulted in the revocation of 40 contractor licenses and assessed fines of more than \$186,000.

The money received from disciplinary fines is deposited into the Construction Education Account and is distributed by the Commission on Construction Education in the form of grants to community, educational, and industry-affiliated organizations which implement and promote construction education programs in the state of Nevada. Additionally, the Residential Recovery Fund Subcommittee considered 42 claims and awarded nearly \$404,000 to harmed homeowners, many of whom put their life savings on the line, were senior citizens that were taken advantage of, or were homeowners who had their projects abandoned. The Recovery Fund is an important protection we afford owners of single family residences who have contracted with licensed contractors, because it allows them to receive financial recourse of up to \$35,000 without having to go to civil court. Since the first claim was paid in 2001, the Recovery Fund has awarded over \$11 million to harmed homeowners across the state. I can tell you firsthand, there is no greater feeling than helping a homeowner who has been harmed by a contractor.

While much of our work centers around the accountability of our licensees and regulating their abilities to follow the laws of the state, our greater purpose and outcome is measured by the people we protect each and every day. We have developed a number of programs: a senior awareness program that addresses construction-related scams and highlights the free resources available from the Board; a home improvement forum that brings together industry professionals and the Contractors' Board to highlight the importance for homeowners of all ages to hire licensed contractors when looking to engage in home repair or remodel projects; and an informational program that has been provided to community managers, realtors, and government agencies responsible for hiring contractors. We make an effort to meet with the various industry associations and groups to share their objectives and activities with the Board, seek their input, and proactively address concerns of relevance to the Board. We partner with government agencies to promote collaborative initiatives, such as fraud protection, and have developed a series of collateral materials and informational videos which we make available to the public on our website and social media platforms.

As noted earlier, the Contractors' Board's vision is to be a model regulatory agency, which is why we participate in an annual strategic plan discussion to reflect on environmental changes and recent experiences, in order to continue advancing the services of the Board. We also had the pleasure of responding to three audit requests this past year, one from the Legislative Commission's Sunset Subcommittee and two from the Executive Branch Audit Committee. Both platforms gave our Board the opportunity to share its story, and demonstrate the transparency we hold ourselves accountable for in all operations of the Board. We are proud of the efforts made to protect the public and promote the integrity of the industry.

Chair Spiegel:

Are there any questions from the Committee? [There were none.] I want to thank you for giving refunds in 2015 when you had the opportunity to do so. That was refreshing to see. We will now begin the hearing on Assembly Bill 25.

**Assembly Bill 25: Makes various changes to provisions governing contractors.
(BDR 54-234)**

Margi A. Grein, Executive Officer, State Contractors' Board:

Assembly Bill 25 (A.B. 25) serves to further our efforts to reduce barriers to licensure, improve portability of licensure, and address other housekeeping matters. Section 1 of the bill will provide the authority for the Board to delegate application denial hearings to a hearing officer, administrative law judge, or panel. This provision will increase the frequency and effectiveness of the hearing process, and afford applicants a more timely appeal process.

Section 2 of the bill will expand the time period for consideration of work experience. Currently, only experience gained within the past ten years can be considered. This has proven to be a barrier for some applicants who have qualified work experience from an earlier time period, or for contractors who may have found work in another industry at the time of the economic downturn and are now returning to the trade. Most of the recent

situations we have come across involve applicants whose experience falls partially outside the ten-year time period, and therefore disqualifies them for licensure. The typical request for consideration of experience is approximately one to four years outside the current statutory restriction.

Section 3 of the bill would remove the provision of *Nevada Revised Statutes* (NRS) 624.264, subsections 3 and 4, that require a licensee to undergo a financial review every year for the first two years of licensure. This provision was added in 2003 as a measure to monitor residential contractors during their first two years of licensure. While well-intended, we have found that the program has not provided meaningful results, and the requirement has been costly for both the licensee and the Board. In the past five years, just over 4,000 licensees have been subject to the financial review provision, which requires submittal of a CPA-prepared financial statement. The process resulted in the suspension or revocation of only 67 licenses, or 1.6 percent. We also feel that other existing provisions in the law adequately serve to protect the public and monitor financial responsibility. Subsection 5 of NRS 624.263 and subsection 3 of NRS 624.283 provide authority to require a licensee to establish financial responsibility at any time, and the complaint process helps to provide a remedy if the licensee fails to pay.

Section 4 of the bill removes the time limit that a license may be held on inactive status. This limitation currently does not provide any additional protection, and has been the source of many licensees' complaints.

Section 5 of the bill provides for the waiver of any late penalty for a licensee whose license expires while the licensee is on active duty as a member of the Armed Forces or Nevada National Guard.

Section 6 of the bill removes references to outdated technology, such as beepers, and paging services and devices. We have an amendment to this bill ([Exhibit F](#)), which is supported by the industry, that removes the word "Nevada" in reference to the National Guard, as we feel it was the intent of the Board to consider all members of the National Guard under the language presented.

Assemblyman Daly:

Section 1 of the bill states that an authority will be delegated to hold a hearing, but only mentions a hearing officer or panel. You also mentioned the use of an administrative law judge, or the use of the hearing officers on your staff. I would like to understand what your policy is, and where it is written that the use of such judges and staff is permitted. I want to ensure that the hearing officers and the people on these panels are qualified and competent, and will not abide by a different set of rules in the future.

Margi Grein:

The provision in the law to delegate the authority to a hearing officer or panel was set forth in 1993. Only within the last five to seven years have we delegated hearings to an administrative law judge (ALJ). Although there is nothing currently established in statute or

regulation, we have our own internal qualifications established for the ALJs. We have relied on guidelines established by The National Judicial College, which include but are not limited to: being authorized and licensed to practice law in the state of Nevada; having at least five years' experience as a licensed attorney preparing for, participating in, or reviewing hearings or trials involving litigation or administrative law at the federal, state, or local level; or having at least five years' experience as a licensed attorney with experience in construction law, contractor licensing law, and bankruptcy law, requiring compliance with the Nevada Rules of Professional Conduct established by the State Bar of Nevada. Compensation for this position is determined by the terms of the contract. None of our ALJs are employees of the Board. We have contracts with a variety of ALJs that we use depending on the case and the location.

Assemblyman Daly:

Would you be opposed to establishing those qualifications in regulation, or in the bill? I know this would give you less flexibility, but we want to be confident that people will appear in front of a judge who has expertise on the subject matter of which they are being judged.

Margi Grein:

Certainly, we would have no opposition to establishing the qualifications in regulation or in law. We have actually talked about it within the last six months as well.

Assemblyman Daly:

Excellent. I understand your intent, but the intent is not worth anything in the future if the law does not support it.

Section 2, subsection 6 states that the contractor must have four years of experience within the last ten years to qualify for a license. Someone in another profession who was in the industry over ten years ago will have experience in the industry, but will not have four years' experience as a journeyman because it has been more than ten years since he has practiced. Does he still have to take the current exam and meet all the current qualifications and financial requirements? How many potential applicants have been denied based on this provision?

Nancy Mathias, Licensing Administrator, State Contractors' Board:

We do not have statistics on the number of applicants that have been denied. Sometimes the applications are withdrawn if someone cannot meet the experience requirement. But what we see most often is those that are returning to the industry, typically within 10 to 14 years. We do require those individuals to take the trade exam, as well as the business and law exam, so they are tested on current codes as well.

Assemblyman Daly:

To clarify, someone could either go back into the trade to gain another four years' experience in the field, or he could take the test and be the contractor on a project, but would have to have a qualified employee who meets the experience requirements?

Nancy Mathias:

That is correct, yes.

Assemblyman Daly:

Section 3 states that the residential construction contractors will not have to submit financial statements for the first two years of licensure. What is the financial requirement for non-residential contractors? How often do they have to submit CPA-prepared financial statements?

Nancy Mathias:

Those licensees are only required to establish financial responsibility at the time of licensure, if there is a disciplinary action taken against the licensee in the future, or if we find cause to review their financial responsibility.

Assemblyman Daly:

Would they have to establish financial responsibility if they applied for a change in license limit as well?

Nancy Mathias:

Yes, they would.

Assemblyman Daly:

To clarify the difference between the two, nonresidential contractors do not have to submit financial statements for the first two years of licensure. Is that correct?

Nancy Mathias:

Correct. The residential contractors are required to submit a financial statement each year for the first two years of licensure. As Ms. Grein mentioned, this can be very costly for the licensee, as well as for the agency that reviews the statements, and we have not seen any significant results from it. Most licensees support their current limits, and are not the subject of discipline during that time.

Assemblyman Daly:

The proposed change will repeal the requirement except for the first two years. Is that correct?

Nancy Mathias:

The proposed change states that licensees will not have to submit financial statements for the first two years. They will only be subject to subsequent financial reviews if they apply to increase their limit, or are the subject of discipline.

Assemblyman Daly:

In the current language of section 4, if a licensee goes inactive, they can be inactive for up to five years. Under the current law, what happens after five years? In the proposed bill, a licensee can be inactive indefinitely. In order to reactivate, they have to pass the test and

meet all the financial requirements again. Why have a licensee inactive indefinitely if they will have to start over?

Nancy Mathias:

That is correct. The licensee may reactivate their license at any time. After five years, if they have not applied to return the license to active status, the license is automatically canceled. If they wish to practice in the future, they will have to file a new application and complete all the requirements of a new application. Currently, many licensees are returning their license to active status after the five-year term, and then immediately putting it back on inactive status because it is not their intent to practice. They have to renew the inactive licenses every two years, which provides us with an opportunity to ensure that they want to hold the license in inactive status, and that it is a viable business in the future. That is why we are asking to remove that provision. But anytime someone puts their license on active status, they are required to prove financial responsibility and have a qualified individual on staff.

Assemblyman Daly:

In section 5, you are proposing to waive the fee for reinstatement, but only the additional fee for late reinstatement is waived, not the entire fee. Is that correct?

Nancy Mathias:

That is correct, yes.

Assemblywoman Jauregui:

I want to clarify some of the points that Assemblyman Daly brought up. In section 2, subsection 6, the bill deletes the language "within the 10 years immediately preceding the filing of the application for licensure." Does that mean that a journeyman, for example, can have their four years' experience in any period of time? Their experience could have been 20 years ago?

Nancy Mathias:

That is correct with the way the language is currently crafted.

Assemblywoman Jauregui:

Are there requirements that the journeyman has to keep up with, in case the industry changes within that 20-year period?

Nancy Mathias:

Taking the trade exam would ensure that they are up-to-date on current codes and practices.

Assemblywoman Jauregui:

The bill removes a large portion of section 3, subsections 3 and 4 relating to submitting financial statements. You initially stated that there were 67 licensees that were not granted licenses or had licenses revoked by this financial provision. Were the 67 licenses revoked in one year?

Nancy Mathias:

It was over a five-year period.

Assemblywoman Jauregui:

Why was this provision put into place in 2003? Being that that was not too long ago, it must have been put in for a reason.

Margi Grein:

In 2003, we were experiencing some severe problems with a particular residential contractor in northern Nevada. We looked into a number of different ways to address the problem and to better protect the public. At the time, the Recovery Fund had only been in place for a short time. Since a lot of licensees were going out of business within five years, we felt that this provision may provide further protection to the public. There was no concrete evidence that it would, but we felt it was something we could do. However, over the past 14 years, we have found that it did not serve any useful purpose. It was a burden on the licensees, it was not providing additional protection for the public or other contractors, and it created additional work for the Contractors' Board.

Assemblywoman Jauregui:

You stated that there were 67 licensees that were not granted licenses or had licenses revoked because of the financial statements they submitted within their first two years in business, which could have ultimately been 67 claims against the Recovery Fund. Would it not be more cost-effective to have the licensees go through this process than to have a claim submitted?

Margi Grein:

No, because the 67 licensees had no complaints on their records, perhaps because they were not doing business at the time. When a complaint is received, we request a licensee to establish financial responsibility separately from the Recovery Fund investigation. But the 67 licensees were not involved in complaints, and the request for financial statements was initiated by staff. Many of them did not show up for their hearings, did not contest their hearings, and were likely out of business. As far as we could see, the provision did not provide any additional protection for the public as there were no harmed parties.

Assemblywoman Neal:

In regards to section 2, you seemed to imply that the provision caused public policy issues. We saw professionals that had been out of state wanting to reenter and find work, but their work history in this state did not fall within the ten-year period. But there has been no change in the law until now. Why was this not addressed during the recession, for example, when we definitely had a reason to make changes to the law? My question seems to apply to the financial review portion of this bill as well. I would like some clarification on what is occurring in this space, and why we are making these changes now.

Nancy Mathias:

I believe that we are seeing this as an issue now because the economy is improving. We are seeing a number of individuals wanting to join the construction industry again. During the economic downturn we were losing licensees, and did not have applicants with issues in their experience requirements.

Assemblywoman Neal:

I can recall a couple of disparity studies that pointed out issues with experience requirements. These studies were not necessarily specific to contractors' boards, but they stated that individuals who did not have all of the required experience were unable to qualify for licensure. I am not saying there is a specialized treatment going on, but it seems like maybe there is. I think there is more to why we are making these changes now, besides there being more work.

Nancy Mathias:

Over the last few years, we have noticed that we seem to be having this conversation with applicants more frequently than we have in the past. This is why we felt that it might be appropriate to bring the issue forward now. When people apply to reenter the construction industry, they are required to submit references and a resumé. We are finding that a portion of their experience falls within the past ten years, but not all of it. When an individual is informed that they do not qualify, they often withdraw their application and either enter into a different industry or obtain employment with a licensed contractor. I do not have statistics, but we did not notice this issue a couple years ago.

Assemblywoman Neal:

In removing the financial review requirement, what information will we no longer be able to review?

Nancy Mathias:

Under this requirement, when a residential contractor obtains a license, they are required to submit a CPA-prepared financial statement on their anniversary date after the first year and second year. Our staff uses that to conduct a financial evaluation, check their records, and ensure that they can support their current monetary license limit. We have found that over 98 percent of the licensees subject to that provision meet the requirement. Only a small percentage of them do not, which results in the suspension or revocation of their license. And as Ms. Grein mentioned, most of those licensees are not responding to our request, and the license is revoked by default.

Assemblywoman Neal:

The purpose of the CPA-prepared financial statement is to prove that a licensee is financially sound and can handle the work that comes their way. I know of one of Assemblyman McCurdy's constituents that, by default, was required to submit a CPA-prepared financial statement. The requirement was in place to determine that, if he took on another job, he was financially sound and could handle the risk. The requirement is being removed for the first two years of business, but are the first two years of business not when many struggle the most?

Nancy Mathias:

That can be the case.

Chair Spiegel:

We will now hear testimony from those in support.

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

I would first like to thank the Contractors' Board for reaching out to us, and working with us to amend this bill to be more reasonable. One of the things that we appreciate about this bill, and this speaks to some of Assemblywoman Neal's comments, is that we believe it will help remove some of the barriers to entry for smaller firms and less affluent people, so they could obtain their contractor's license without the required financial statement. To Assemblyman Daly's points, it has been difficult for licensees to maintain their experience with the lack of construction projects since the recession. We believe that section 2 of this bill will allow qualified employees and owners to obtain licenses and continue to grow their companies. There are several of our members' firms that are looking to use this provision to do exactly that. Overall, we appreciate this bill and we think, in its current form, it is very reasonable.

Brian Reeder, representing Nevada Contractors Association:

We also support this bill with the amendment, and appreciate the Contractors' Board working with the industry on this measure.

Chair Spiegel:

Is there anyone else who wishes to testify in support of this bill?

Aaron West, Chief Executive Officer, Nevada Builders Alliance:

We appreciate the Contractors' Board bringing this bill forward. We think that it helps remove some barriers to entry by putting people on a positive trajectory toward establishing themselves and building a business. The only concern we have is in section 1, to one of Assemblyman Daly's points, regarding the hearing officer or panel. Section 1 does not necessarily indicate the qualifications of that individual, or determine whether or not their decision is final.

Chair Spiegel:

Is there anyone here who wishes to testify in neutral? [There was no one.] Is there anyone in opposition to this bill, either here or in Las Vegas? [There was no one.] With that, we will close the hearing on A.B. 25 and open the hearing on Assembly Bill 26.

Assembly Bill 26: Revises provisions governing payments from the Recovery Fund by the State Contractors' Board. (BDR 54-237)

Margi A. Grein, Executive Officer, State Contractors' Board:

The Residential Recovery Fund was established in 1999 to provide financial recourse to owners of single family residences who incur damages from a contractor during the course of their construction project when all other remedies have failed. Assembly Bill 26 (A.B. 26) seeks to increase the payout amount from the residential Recovery Fund for an individual from \$35,000 to \$40,000, and increase the payout for claims submitted against a single contractor from \$400,000 to \$750,000, or 20 percent of the account balance on the date the Board approves payment of all claims, whichever is the lesser amount. In many cases, the contractor hired by the homeowner is no longer in business at the time the complaint is filed with our office, has abandoned the project, or has had his license revoked.

In recent years, the State Contractors' Board has experienced several significant cases where multiple homeowners have filed claims for recovery of damages against a single contractor in excess of the \$400,000 limit. Although the Fund was financially healthy, we were unable to make these claimants whole based on this limitation. Most notably was a case of a rogue solar contractor in southern Nevada. In a short period of time, prior to going out of business, the contractor entered into as many contracts as possible with homeowners prior to shutting its doors, took downpayments for solar systems, and performed little or no work before abandoning the project. In total, we had over 130 claims filed by harmed homeowners on this particular case, and the damages incurred were over \$1 million. Because the current law limits the maximum payout for claims against a single contractor to \$400,000, we were only able to award the harmed homeowners a prorated amount of their actual losses, which was about 32 cents on the dollar. This amendment would provide increased protection to the public, and allow the Contractors' Board to better meet the needs of harmed homeowners when significant cases like these come before us, as long as the Recovery Fund is solvent enough to meet the demand.

Assemblywoman Jauregui:

I want to commend you for the Recovery Fund. I know some people who have been able to access it because they have been wronged by a contractor. I am happy to see that you are in a position to raise the limits.

Assemblywoman Carlton:

To clarify, \$35,000 was the original payout amount that was established 20 years ago. And after 20 years, we are only raising the amount \$5,000. Is that correct?

Margi Grein:

That is correct.

Assemblywoman Carlton:

The total amount that can be paid out in a claim against a single contractor is \$750,000 or 20 percent of the account balance. If the constituents are unlucky enough to file two large claims in a short period of time, 20 percent of the account may not cover their claims, depending on the balance of the account. If the account balance has been depleted, I am concerned that 20 percent of the account balance is not enough, especially with the many changes in Assembly Bill 25. Have there been discussions about this? What happens when there is not enough money in the account to award a large claim?

Margi Grein:

We have conducted an analysis on the Recovery Fund to determine what an appropriate account balance should be. We watch the account very closely on a monthly basis, and when we do receive an abundance of claims, we take note of that. In 2014-2015, we awarded 12 claims that totaled \$109,800, and the average claim was \$18,300. In 2015-2016, we awarded 56 claims that totaled \$797,500, and the average claim was \$14,240. The account balance at the end of the fiscal year was \$6.189 million. In 2016-2017, we awarded 169 claims that totaled \$677,100, and the average claim was \$4,006. The account balance at the end of the fiscal year was \$5.897 million. In 2017-2018, we awarded 35 claims that totaled \$404,000, and the average claim was \$11,540. The ending balance in the Fund was \$6.167 million. We have tried to remain conservative in our analysis while still maintaining a reasonable balance in the Fund. There is also a provision in the current law that states if the Fund balance decreases to a certain amount, we can increase the fees that the contractors pay, so we do closely monitor the balance.

Assemblywoman Carlton:

To clarify, the Recovery Fund currently has a \$6 million balance. Is that correct?

Margi Grein:

That is correct. We have a balance of \$6.1 million.

Assemblywoman Carlton:

Over the years, it seems as though the balance has remained at approximately that amount.

Margi Grein:

That is correct.

Assemblywoman Carlton:

However, we are only raising the award limit by \$5,000 to a \$40,000 maximum, even though you have a \$6 million balance. Is that correct?

Margi Grein:

That is correct. The maximum award is based on the average dollar amount of awards that we have seen over the years, which range from \$4,000 to \$18,000 per claim. Most of the claims that come in are for small projects—kitchen remodels, patios, landscaping, roofing, and swimming pools. We have not seen an entire house that needed to be claimed. We felt that it was conservative to increase the limit to \$40,000. There have only been a few claims that have exceeded the \$35,000 maximum in the past, but overall the awards have been well within that limit.

Assemblywoman Carlton:

This fund is used for assessments on all contractors, is that correct?

Margi Grein:

It is only used for assessments on residential contractors.

Chair Spiegel:

Are there any other questions from the Committee? [There were none.] We will now hear testimony from those in support.

Joshua J. Hicks, representing Nevada Home Builders Association:

We are here today in support of this bill. As it was noted, this fund has been in place since 1999. It is paid for by residential contractors, and has turned out to be an effective way for many homeowners who have problems to get quick and efficient responses and remediation when they are unable to get that from their contractor. We believe most contractors are good and responsive. Unfortunately, some are not, and the Recovery Fund is a great way for homeowners to seek remediation. The program has been very successful and we think it is due for an increase in both its individual and aggregate limits, and we are here in support of that.

Aaron West, Chief Executive Officer, Nevada Builders Alliance:

We are here in support of the bill, and think it is appropriate to increase the limits. I appreciate the testimony of Ms. Grein as well. It should be noted that, with over 13,000 licensed contractors in our state but only 100 claim requests from the Recovery Fund, it is serving its purpose. We have a lot of great people in the industry, but occasionally there is a bad actor, and we have a nice safety net in that event.

Chair Spiegel:

Is there anyone else who wishes to testify in support? [There was no one.] Is there anyone who wishes to testify in opposition? [There was no one.] Is there anyone who wishes to testify in the neutral position? [There was no one.] With that, we will close the hearing on A.B. 26 and open the hearing on Assembly Bill 27.

Assembly Bill 27: Revises provisions governing cease and desist orders issued by the State Contractors' Board. (BDR 54-240)

Margi A. Grein, Executive Officer, State Contractors' Board:

Assembly Bill 27 (A.B. 27) seeks to provide persons served with an order to cease and desist a process to contest the order, thereby enhancing the due process afforded to them. Should this language be enacted, the Contractors' Board would engage in rulemaking to add regulations similar to those contained in *Nevada Administrative Code* (NAC) 624.725 that provide persons issued a cease and desist order information on their rights to contest the order.

Chair Spiegel:

Are there any questions from Committee members?

Assemblyman Daly:

I agree that there should be due process when a cease and desist order is served. If I read *Nevada Revised Statutes* (NRS) 624.212 correctly, you can issue a citation or penalize a contractor for not having a license, or operating over their license limit. What actually happens when you serve them a cease and desist order?

Paul Rozario, Director of Investigations, State Contractors' Board:

Cease and desist orders are only issued to unlicensed contractors that have violated the law. If we come across an unlicensed contractor, not only is that person cited, but they are also issued a cease and desist order within a reasonable time frame, usually within a week.

Chair Spiegel:

It seems as though there are no requirements in the current law in regards to cease and desist letters which state how someone can contest. Is that correct?

Margi Grein:

Yes, that is correct. Currently, there is no appeal process for the cease and desist orders. There is nothing to inform them of their rights to appeal, because there are no rights at this time. However, if this proposal is enacted, we will modify our regulations and the cease and desist order itself to provide that information.

Assemblyman Daly:

We require licensed contractors in order to protect the public and to ensure we have qualified, financially responsible professionals in the field who are experts in their area of discipline. But if an unlicensed contractor is found and issued a cease and desist order, they do not have to stop work for up to five days. From my perspective, and I know this is an issue for many of my colleagues in northern Nevada building trades, why do we not have a stronger ability to truly penalize an unlicensed contractor? Why do we not have the ability to force them to stop working immediately? And if they have an application pending but jumped the gun on working, their application should be denied, and they should be prohibited from submitting another application for a time. We have similar issues with contractors who are operating over their license limit, or operating outside of their license's scope. These offenses are surely not occurring by accident. This is an area that has caused a great deal of frustration for many years. I am hoping that we can work with you to strengthen the process.

We need better enforcement for the people that violate the law, and I am hoping you can work with us on that.

Margi Grein:

We will be happy to work with you, or any interested parties. If we need an amendment to this bill, we would be happy to work through it with you.

Assemblywoman Carlton:

Currently, when you issue a cease and desist order, how long do the contractors continue working? What actually happens when the cease and desist order is issued?

Paul Rozario:

We first tell them that they are violating the law, to leave the premises, and that they cannot work there anymore. We do not issue a cease and desist order at that time. The cease and desist order is prepared in the office, signed by the Executive Officer, and then mailed to the defendant.

Assemblywoman Carlton:

Technically, the violators could continue working. They could stay on the jobsite where there is likely no workers' compensation and no unemployment insurance. If the contractor will work without a license, they are likely going to violate a number of other laws. We have seen unlicensed contractors with huge workers' compensation claims in the past. I have real concerns that the cease and desist orders are not issued quickly enough, and we are not protecting the people on the jobsite who may not even know that the contractor they are working for is unlicensed. The people working for criminals are the people I am worried about. I do not think that sending a letter is aggressive enough. I hope we can work on this as we move forward.

Assemblyman Yeager:

I was looking at NRS 624.212, which is referenced in the bill in regards to cease and desist letters. I noticed that the cease and desist letter can be served personally or by certified mail. Can you shed some light on how often these are served personally, as opposed to via certified mail?

Paul Rozario:

They are served personally. The defendant would be called into the office and issued the cease and desist order at that time. They are also mailed. As far as percentages of each, I would say it is close to 50 percent for each.

Chair Spiegel:

We will now hear testimony in support of A.B. 27. Do we have anyone in northern or southern Nevada who wishes to testify in support? [There was no one.] Is there anyone who wishes to testify in opposition?

Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada:

When Ms. Grein started her presentation at the beginning of this meeting, she read from the legislative intent of NRS Chapter 624. One of the most important points is that the Contractors' Board is developed to protect the public. It is not developed to protect the contractors who are either legally or illegally performing construction work in our state. I have been a labor representative in northern Nevada for 20 years, and in my experience, the Contractors' Board tends to protect the contractor, not the public, from unlicensed contractors. The Legislative Counsel's Digest of this bill states that the State Contractors' Board has the option of issuing a cease and desist order, which contradicts NRS. *Nevada Revised Statutes* (NRS) 624.212, subsection 1 states:

The Executive Officer, on behalf of the Board, shall issue an order to cease and desist to any person: (a) Acting as a contractor, including, without limitation, commencing work as a contractor; or (b) Submitting a bid on a job situated in this State, without an active license of the proper classification issued pursuant to this chapter. The order must be served personally or by certified mail and is effective upon receipt.

A properly licensed contractor is one that has a license, is within their bid limit, and is properly licensed for the scope of work that they do. There have been numerous occasions in which I have personally filed a complaint with the Contractors' Board concerning an improperly or unlicensed contractor. The contractor was cited, but the Contractors' Board expedited a correction to their license so that they could continue performing work, and a cease and desist order was never issued for the project. The latest example of this was in downtown Reno, at Tri-Properties, when an unlicensed general contractor with two unlicensed subcontractors were cited by the Contractors' Board and were never issued a cease and desist order. It was front page news in the *Reno Gazette Journal*. Within five days, the contractors had a license to continue work on the project. They never left the jobsite, and were never issued a cease and desist.

I do not believe, until the Contractors' Board follows the law, that we should provide them tools to weaken their enforcement. When you discover an unlicensed contractor, an improperly licensed contractor, or a contractor that has bid above his limit, he needs to be removed from the job. When a contractor bids within \$1 of his limit on a public works project, knowing that the limits will change as the project progresses, the general contractor accepts his bid, and he ultimately exceeds his limit. The Contractors' Board issues a temporary increase in limit, rather than removing him from the project, and the contractor is not penalized.

There are issues enforcing the laws in this state. The Board is established to protect the public, not to protect the contractors that act badly in our state. I urge this Committee not to amend this bill, but to deny this bill from moving forward. If there is anything that should move forward, it is the strengthening of the enforcement responsibility of the

Contractors' Board and the penalty for the Executive Officer should they not fulfill the obligations that are required under this statute.

Chair Spiegel:

Is there anyone else who wishes to testify in opposition? [There was no one.] Is there anyone who wishes to testify in the neutral position? [There was no one.] Ms. Grein, do you have any final comments you would like to make on A.B. 27?

Margi Grein:

To Mr. McKenzie, I am happy to sit down with him to discuss the specifics of the cases he has concerns with. I am happy to work with him going forward as well.

Chair Spiegel:

With that, we will close the hearing on A.B. 27 and open the hearing on Assembly Bill 29.

Assembly Bill 29: Repeals certain provisions relating to general building contractors. (BDR 54-241)

Margi A. Grein, Executive Officer, State Contractors' Board:

Assembly Bill 29 (A.B. 29) seeks to restore some of the original language contained in *Nevada Revised Statutes* (NRS) 624.215 prior to the passage of Senate Bill 458 of the 69th Session. The intent of the language added in S.B. 458 of the 69th Session, as a whole, was to ensure that a general building contractor did not self-perform plumbing, electrical, HVAC, or fire protection work without the proper specialty license. In 2005, the Prompt Payment Act added NRS 624.6086, which defined a prime contractor as a contractor who enters into a contract with an owner. The new definition affected the 1997 language in NRS 624.215, subsection 3, which also uses the term "prime contractor." The new language, in effect, changed the meaning of the statute, so a licensed general building contractor could never hire another licensed general building contractor to assist with the management of a large project.

This issue has become more problematic over the past several years as Nevada's economy has recovered and our state has attracted large industrial and manufacturing businesses, sporting franchises, and is seeing growth at our gaming properties. These large projects can often consist of multiple buildings or complex structures, and as such, can require more than one general building contractor. Additionally, since the definition of contractor under NRS 624.020, subsection 4 includes "a construction manager who performs management and counseling services on a construction project for a professional fee," it is feasible and, in fact, it is a common practice on large commercial projects for a general building contractor to hire another general building contractor to perform construction management services. The proposed amendment (Exhibit G) will correct the issues created by the additions of NRS 624.6086, while preserving the effectiveness of the Prompt Payment Act and providing the protections sought by S.B. 458 of the 69th Session.

Chair Spiegel:

Are there any questions from the Committee members?

Assemblyman Daly:

Many times, a prime contractor will self-perform certain segments of work and subcontract others. Sometimes a licensed building contractor will self-perform some subclassifications if they are part of the work they normally self-perform. I hope to avoid a situation where a specialty contractor is hired, as long as that is his main scope of work. Having a prime contractor on the job is not required in that case. But if the specialty contractor's job is part of a larger project, then a prime contractor would be required to be on the jobsite for the work to be performed. The prime contractor would also be responsible for the actions of the subcontractors and the insurance, and they are the main point of contact for the owners and others. Will this bill have a negative impact or unintended consequences on specialty contractors?

Margi Grein:

We have spent a considerable amount of time on the language of this bill to ensure that specialty contractors would not be affected.

Nancy Mathias, Licensing Administrator, State Contractors' Board:

We do not believe that this will be the effect of the legislation. In fact, this language is very similar to the language that was in place previously, dating back to probably 1953, until it was changed in 1997.

Assemblywoman Neal:

Based on the example given, I understood that two general contractors would be able to partner to work on one project together. Is that how the example should be viewed for real life application?

Nancy Mathias:

There are a couple of examples where a general contractor might hire another general contractor on a project. One example that we have seen is in a large gaming construction or remodel project, where there is construction of both a hotel tower and a gaming facility. The general or prime contractor on that project has wanted to hire another general building contractor to construct, for example, the gaming floor while he focuses on the hotel construction. Under the current language, that is not permitted. We have also encountered issues with engineering projects, such as waste water treatment plants or large park projects, where the general engineering contractor is the prime contractor. The prime contractor has wanted to hire a general building contractor to construct buildings, such as maintenance buildings, office buildings, or restroom facilities. Under the current language, that is not permitted. These are some of the issues that we are seeking to correct.

Assemblywoman Neal:

I am trying to understand the effect of this. I understand the desire to partner on a project, but will it effectively limit the subcontract work that a person may receive if there was only

one general contractor, or will it expand the opportunities for subcontract work that come about under a project?

Nancy Mathias:

We do not believe it will have an effect on the subcontractors of a project. Projects which require two general contractors in order to provide proper management and oversight are typically very large projects.

Assemblywoman Neal:

When there are several projects at play, I am always thinking about how people of all races can participate. I always filter legislation to determine if it is opening a door, or closing a door, and whether or not it is providing an opportunity for people at all levels to engage. When looking at A.B. 29, I kept trying to figure out who is benefiting. I want to ensure that those who have been trying for years to get their foot in the door are not being inadvertently eliminated.

I bring this up to try to provide some context as to why I ask certain questions. I am suspicious, so I always want to know who will benefit and who will not. I come off really strong because this has been a fight for a long time. I know that when I was pushing legislation in 2011 and 2013 that tried to open doors and bring up these issues, my bills were dying. I can promise you, if I find out that any of these bills are closing doors for minority participants or people of color, I will be your worst enemy, and you will hope that I do not get reelected.

Nancy Mathias:

We do not believe it would have a negative impact on those individuals.

Margi Grein:

I do not know what to say in response to that. We are simply trying to correct some problems that we find in the law, open doors for certain people, and allow due process for others. We are trying to open doors to the Recovery Fund with all four of these bills. I understand your concerns, and I will take them to heart.

Assemblywoman Carlton:

To clarify, a large entity with a B license may have a project that they are not willing to take on alone. They need someone else with a B license with a more specific skillset. For example, a large casino with that license may do some things on their own, but may hire someone else to do some work, because the project is more than they want to tackle on their own. This legislation would allow them to hire someone else. Currently, they would not be allowed to do that. It does not affect anyone downstream, but it allows two licensees to have a relationship. Is that correct?

Nancy Mathias:

That is correct, yes.

Chair Spiegel:

We will now hear testimony in support of A.B. 29.

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

Once again, I would like to thank the Contractors' Board for working with us to produce this amendment, which we think exactly addresses Ms. Neal's concerns. In my mind, it was the intent of this bill to allow general contractors on large projects to make smaller projects out of it, exclusively hire another contractor to perform that work, who can then hire their own subcontractors. For example, if you are building the Raiders stadium [Las Vegas Stadium], and a small office building is required, you no longer need the unlimited license for some of these larger projects. Through the adoption of this language, you can hire smaller contractors and increase participation from smaller firms. It is my opinion, from The Associated General Contractors of America's perspective, that this would open doors for many contractors who do not have a large, sophisticated operation. This would provide them with more opportunities to build their business and ultimately become a larger contractor. This is why we support this bill, and we think that this is a very necessary change to the law.

Brian Reeder, representing Nevada Contractors Association:

We support this measure because our members in southern Nevada have encountered the issues that were outlined by the Board. We are happy to see it come to fruition.

Aaron West, Chief Executive Officer, Nevada Builders Alliance:

We are here in support of the bill.

Joshua J. Hicks, representing Nevada Home Builders Association:

We are here in support of the bill as well.

Chair Spiegel:

Do we have anyone here to testify in opposition? [There was no one.] Do we have anyone here to testify in neutral?

Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada:

Conceptually, we support the bill. However, the current language has influenced legislation in the construction industry since 1995. I would like to understand how this change will impact other legislative measures. *Nevada Revised Statutes* (NRS) Chapter 338 addresses, ad nauseam, prime contractors. If my trust fund is pursuing a subcontractor that is not paying fringe benefits, we have to go to the prime contractor. If we eliminate the prime contractor on the project, what will happen to the other provisions in the law? I hope that the Legislature will look at this issue closely, and answer those questions before we move forward with this bill, so we do not have an adverse effect on other sections of the NRS.

Chair Spiegel:

Is there anyone else who would like to testify? [There was no one.] Ms. Grein, do you have any final comments?

Margi Grein:

I would just like to thank you and the Committee members for allowing us to testify and present our bills, and present on the State Contractors' Board.

Chair Spiegel:

We appreciate your presentation, and your presentation of the bills as well. With that, we will recess before we hear public comment.

[The meeting was recessed at 3:07 p.m. and reconvened at 3:35 p.m.]

Chair Spiegel:

We will open the floor for public comment. Do we have any public comment, either here in Carson City or in Las Vegas? [There was none.] The meeting is adjourned [at 3:35 p.m.].

RESPECTFULLY SUBMITTED:

Katelyn Malone
Committee Secretary

APPROVED BY:

Assemblywoman Ellen B. Spiegel, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

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

[Exhibit C](#) is a document titled "Nevada State Contractors Board 2019 Legislative Package," presented by Margi A. Grein, Executive Officer, State Contractors' Board.

[Exhibit D](#) is a document titled "Nevada State Contractors Board Constituent Services," presented by Margi A. Grein, Executive Officer, State Contractors' Board.

[Exhibit E](#) is a document titled "Nevada State Contractors Board Operational Highlights FY 2017-18," presented by Margi A. Grein, Executive Officer, State Contractors' Board.

[Exhibit F](#) is a proposed amendment to [Assembly Bill 25](#) presented by Margi A. Grein, Executive Officer, State Contractors' Board.

[Exhibit G](#) is a proposed amendment to [Assembly Bill 29](#) presented by Margi A. Grein, Executive Officer, State Contractors' Board.