

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Eighty-first Session
March 10, 2021**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 8:01 a.m. on Wednesday, March 10, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Pat Spearman, Chair
Senator Dina Neal, Vice Chair
Senator Melanie Scheible
Senator Roberta Lange
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Keith F. Pickard

GUEST LEGISLATORS PRESENT:

Senator Chris Brooks, Senatorial District No. 3

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Policy Analyst
Kim Cadra-Nixon, Committee Secretary

OTHERS PRESENT:

Brian Reeder, Nevada Contractors Association
Sean Stuart, Nevada Contractors Association
Peter Krueger, National Electrical Contractors Association
Warren Hardy, Urban Consortium
Michael Hillerby, Regional Transportation Commission of Washoe County
Marla Williams, Churchill County
Paul Moradkhan, Vegas Chamber
Lindsay Anderson, Washoe County School District
Anthony Ruiz, Nevada State College
Darren Schulz, Director, Carson City Public Works

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Denise Baclawski, Associate Vice President, Facilities Services, University of Nevada, Reno
Chris Koenig, Kiewit Infrastructure West Co.
David Frommer, Associate Vice President of Planning Construction and Real Estate, University of Nevada, Las Vegas
Kanani Espinoza, American Council of Engineering Companies of Nevada
Don Campbell, National Electrical Contractors Association
Justin Harrison, Clark County
Steve Walker, Carson City; Lyon County; Storey County
Mary Pierczynski, Nevada Association of School Superintendents
Chaunsey Chau-Duong, Southern Nevada Water Authority
Chris Caluya, Mason Contractors Association of America; Martin-Harris Construction
Aileen Pastor, Regional Transportation Commission of Southern Nevada
Alexis Motarex, Associated General Contractors of Nevada
Brad Keating, Clark County School District
Andy Donahue, Southern Nevada Laborers-Employers Cooperation and Education Trust
David Cherry, City of Henderson
Richard Daly, Laborers Union Local 169

CHAIR SPEARMAN:
We open the hearing with Senate Bill (S.B.) 141.

SENATE BILL 141: Revises provisions relating to public works. (BDR S-44)

SENATOR CHRIS BROOKS (Senatorial District No. 3):
Senate Bill 141 will remove the statutory expiration and allow for the continued use of Construction Manager at Risk (CMAR) by our State's public entities.

This is an important bill because CMAR has proved to be a valuable construction method; it allows public entities to control costs and budgets on some of our most unique and complex public projects. Recent CMAR projects include the National Guard Speedway Readiness Center; the Pennington Engineering Building at the University of Nevada, Reno; and the Las Vegas Convention Center expansion.

Upcoming projects include the University of Nevada, Las Vegas (UNLV), Advanced Engineering Building; the Clark County Water Reclamation District

Flamingo Water Resource Center; and the Grant Sawyer State Office Building remodel.

Construction Manager at Risk allows the builder to collaborate with designers and public agencies early in the project design state. This helps to avoid costly missteps or unforeseen design challenges. The process also requires the builder to agree to construct the project for a guaranteed maximum price, lessening the risk of cost overruns.

Construction Manager at Risk is just one of the tools available to public entities to help them deliver construction projects. When we invest in public infrastructure, it is critical we apply the best, most efficient and effective method of delivering the project.

By allowing public entities to use CMAR, as well as other delivery methods, we are giving them the tools they need to plan, design and build projects efficiently.

We have submitted a conceptual amendment ([Exhibit B](#)). Brian Reeder will explain the importance of this bill and answer any questions.

BRIAN REEDER (Nevada Contractors Association):
We are in support of S.B. 141.

Nevada Contractors Association (NCA) represents general contractors as well as subcontractors and businesses affiliated with the commercial construction industry in southern Nevada. Construction became the No. 1 employer in our State during the pandemic. The construction industry kept people working safely.

Public agencies find the CMAR delivery method a valuable tool. This bill extends the ability to use the CMAR delivery method.

The many entities using the CMAR delivery method are listed in the exhibit titled Letters to Governor Steve Sisolak ([Exhibit C](#)).

The CMAR process was authorized in Nevada in 2007. Since that time, NCA and the contractor community have worked with stakeholders to amend the law and extend the ability to use CMAR. This delivery method is a valuable tool for our public infrastructure, and we should seek legislation to remove the sunset.

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Former Assemblyman Skip Daly requested an amendment [Exhibit B](#); it clarifies the definition of horizontal and vertical construction. The NCA views this as a friendly amendment.

SENATOR PICKARD:

I am in support of this bill and have experience working with CMAR. The State will save money if we work properly with this organization.

I have a question regarding the amendment. Why are we deleting the definitions of horizontal construction and vertical construction? The amendment changes those definitions.

SENATOR BROOKS:

Most of the Construction Manager at Risk clauses are located in *Nevada Revised Statutes* (NRS) 338.1685 through 338.16995.

In 2013, A.B No. 283 of the 77th Session was enacted. The CMAR provisions were repealed in section 14.7, and the provisions became effective on July 1, 2017. In 2017, S.B. No. 246 of the 79th Session extended the statute until June 30, 2021.

Additionally in 2013, A.B No. 283 of the 77th Session amended various sections of NRS as technical changes to remove references to CMAR provisions since CMAR provisions were expiring on July 1, 2017. The amended sections were NRS 2.3, 2.5, 3.5, 4.5, 5.5, 5.7, 6.5, 13.5 and 14.1.

These sections are repealed in S.B. 141 to allow CMAR to remain in NRS. The definitions of horizontal construction and vertical construction were added in section 2 of A.B No. 283 of the 77th Session.

Section 2.3 of S.B. 141 was included in the bill to remove those definitions on the expiration date of CMAR, July 1, 2017, now July 1, 2021.

SENATOR PICKARD:

Do the definitions change the way existing or future CMAR structures are used? How does this work under the new provision?

SENATOR BROOKS:

Senator Pickard, are you speaking to the proposed conceptual amendment?

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SENATOR PICKARD:
Yes, that is correct.

SENATOR BROOKS:
The proposed conceptual amendment would not change the way existing or future CMAR structures are used. The proposed amendment clarifies the definitions of horizontal construction and vertical construction.

The added and deleted language does not change the intent of any of the projects covered; it further defines covered activities on a construction site.

SENATOR PICKARD:
My main concern is the change to NRS 338.010 created by the proposed amendment. I am, however, in complete support of this bill.

SENATOR SETTELMAYER:
I am also in support of this bill, but I do not think we need the proposed amendment.

The words in the proposed amendment are different than the definitions in NRS 338.010, subsections 13 and 24. One subsection includes the language "without limitation" and the other subsection does not.

SENATOR BROOKS:
In NRS 338.010, subsection 24, "without limitation" is part of the existing language. In NRS 338.010, subsection 13, the proposed amendment adds "without limitation" to the definition as well. This will add parity to the definitions of horizontal construction and vertical construction projects.

SENATOR SETTELMAYER:
Thank you for the explanations; however, I am concerned about the language in the proposed amendment.

SENATOR NEAL:
For the record, why has legislation concerning CMAR never been permanent?

SENATOR BROOKS:

When CMAR was first put in place, it was the first time this type of contract delivery method was used on public projects in Nevada. This is the contract delivery method of choice for many private projects.

We first tried CMAR as a contract delivery method in 2007. A sunset clause was put in place because we wanted to see if it was successful. Construction Manager at Risk proved to be successful. The expiration date was extended because we wanted to see a long history of success with CMAR.

In 2017, there was a desire to insert other items into this statute, and that impeded ending the expiration. It was more of a logistics issue than a policy issue.

Now we have a long history of successful delivery of projects to public entities. We want to remove the sunset clause and use this delivery method.

SENATOR NEAL:

I understand CMAR is sometimes inconsistent with federal procurement procedures. How will this be addressed?

SENATOR BROOKS:

Construction Manager at Risk is one of many contract delivery methods we have in statute.

This bill does not change the design-bid-build process or design-build process as a project delivery system.

Projects with federal guidelines may not be appropriate for CMAR. Construction Manager at Risk is not necessary in small projects or those with clearly defined parameters. Other contract delivery methods are untouched by this legislation.

CHAIR SPEARMAN:

Why was CMAR used in the Nevada National Guard Readiness Center? The answer to this question may lend insight into when to use CMAR and when other delivery methods are more suitable.

SEAN STUART (Nevada Contractors Association):

This project did not have a complete design in place and had challenges relocating utilities. The CMAR method allowed the contractor to work with both the National Guard and the State Public Works Board. In situations like the Nevada National Guard Readiness Center, CMAR was an excellent choice for delivery method.

PETER KRUEGER (National Electrical Contractors Association):

We are in support of this bill because it maintains readiness in public works projects. Electrical contractors working as sub-contractors find this delivery method beneficial. We stand in support of the bill as introduced, and we stand in support of the amendment.

WARREN HARDY (Urban Consortium):

I testify on behalf of Las Vegas, Henderson, Reno and Sparks in support of this legislation. We find CMAR to be a valuable tool in our toolbox.

In response to Senator Neal's question, I was Chair on the Senate Government Affairs Committee when CMAR was accepted as a Committee introduction. Senator Brooks was correct in his response. This was the first time we moved away from accepting the lowest bid in projects.

Many were concerned about the implementation of CMAR, but it has proven to be an effective tool for local governments. Many of the concerns we had have not come to fruition.

The Legislative Counsel Bureau's explanation of the amendment was very helpful. May it be provided to the public?

The Urban Consortium is in full support of this bill.

MICHAEL HILLERBY (Regional Transportation Commission of Washoe County):

We are in support of this bill and agree with the support testimony of others.

MARLA WILLIAMS (Churchill County):

Churchill County wishes to testify in support of S.B. 141.

PAUL MORADKHAN (Vegas Chamber):

The Vegas Chamber has supported CMAR efforts in the past because it allows more tools for local governments. The Construction Manager at Risk system is efficient and benefits the taxpayer. We are in support of S.B. 141.

LINDSAY ANDERSON (Washoe County School District):

We are in support of S.B. 141. Washoe County School District began many large construction projects in 2017. We are building three middle schools, a high school and several new elementary schools. We also have several renovation and expansion projects underway.

Construction Manager at Risk has been an important part of using taxpayer dollars in an efficient way. This is true for renovations, new build projects, complicated remodels and central services, such as our food production facility.

We continue to use design-build and other project delivery methods when it makes sense. Construction Manager at Risk is an important option for us as we continue our construction projects.

ANTHONY RUIZ (Nevada State College):

We are in support of S.B. 141 as amended. The College supports CMAR as a viable contracting option for construction.

DARREN SCHULZ (Director, Carson City Public Works):

I testify in support of S.B. 141 and agree with those testifying before me. We received federal approval to use the CMAR method on a project which is partially funded with a federal grant.

The CMAR delivery method is used in complicated design projects that impact the public during construction. We need to have the contractor involved in the planning stages of these types of projects. Water treatment facilities that must remain active during construction are an example of this type of project.

DENISE BACLAWSKI (Associate Vice President, Facilities Services, University of Nevada, Reno):

The University of Nevada, Reno, is in full support of S.B. 141. I have submitted written testimony ([Exhibit D](#)).

CHRIS KOENIG (Kiewit Infrastructure West Co.):

Kiewit has been designing and building important infrastructure projects in Nevada for over 50 years. We served as the construction manager under a CMAR delivery method in Phase 1 of the SouthEast Connector in Washoe County. This project was later named Veterans Parkway.

This project involved several physical and logistical challenges, and the CMAR method allowed the project to be a success. Through the collaborative CMAR process, we were able to offer engineering solutions to mitigate risk and drive value. This process resulted in a \$7 million savings and completion of the project, three months ahead of schedule.

For public entities and the industry in general, CMAR is a great procurement option. I ask the Committee to approve S.B. 141.

DAVID FROMMER (Associate Vice President of Planning Construction and Real Estate, University of Nevada, Las Vegas):

I testify in support of S.B. 141. It is important to UNLV to have CMAR available as a construction delivery method. The University of Nevada, Las Vegas, regularly uses all three major construction delivery methods available to us: design-bid-build, design-build and CMAR.

A number of circumstances warrant CMAR as a delivery method. Construction Manager at Risk is helpful in planning and managing the impacts of technical budgeting, scheduling, risk management and other matters.

This delivery method is also significant in construction planning and delivery in projects involving significant or unique building and facility conditions.

Construction Manager at Risk is an excellent delivery method when planning the construction process in operating facilities with ongoing activities and project phasing.

The University of Nevada, Las Vegas, has successfully used CMAR in projects since this delivery method has been available. These projects include renovations or expansions of the Thomas and Mack Center and the Fertitta Football Complex. We also used CMAR in our campus electrical system conversion from 4kV to 12kV, the Beverly Rogers Literature and Law Building renovation, and the vertical expansion of the Cottage Grove Parking Garage.

Construction Manager at Risk offered unique benefits to support the project planning, design, construction and delivery of projects in preconstruction planning, project phasing and construction of operating facilities.

On behalf of UNLV, I express my thanks to Senator Brooks for sponsoring S.B. 141 and to the Committee for hearing this bill.

KANANI ESPINOZA (American Council of Engineering Companies of Nevada):
We represent our State's design and engineering community and are in support of S.B. 141.

DON CAMPBELL (National Electrical Contractors Association):
On behalf of the National Electrical Contractors Association, we testify in support of S.B. 141. We also agree with other testifiers in support of this bill.

Construction Manager at Risk is a good tool to have in our toolbox because this delivery method allows coordination. The test period is over, and we need to allow public agencies to use CMAR as a delivery method.

JUSTIN HARRISON (Clark County):
Clark County has used CMAR as an effective project delivery method with our Department of Aviation. We used CMAR on critical airport projects and operations were not impacted.

We look forward to the passage of this bill and the option to use this project delivery method.

STEVE WALKER (Carson City; Lyon County; Storey County):
We agree with those testifying in support of S.B. 141.

MARY PIERCZYNSKI (Nevada Association of School Superintendents):
Many of our school districts have used CMAR as a delivery method, and we are pleased to see this bill brought forward.

CHAUNSEY CHAU-DUONG (Southern Nevada Water Authority):
We agree with those testifying in support of S.B. 141.

CHRIS CALUYA (Mason Contractors Association of America; Martin-Harris Construction):

I thank the participants for their testimony on the positive attributes of the CMAR delivery method. I have worked with this process since 2007.

The CMAR prequalification process resulted in stronger safety records and lower recordable incident ratings on our projects. This process allowed us to vet the safety records and qualifications of subcontractors.

I ask the Committee to support S.B. 141.

AILEEN PASTOR (Regional Transportation Commission of Southern Nevada):
The Regional Transportation Commission of Southern Nevada supports S.B. 141 because CMAR manages risk and fosters collaboration.

ALEXIS MOTAREX (Associated General Contractors of Nevada):
We testify in support of S.B. 141 as introduced and with the proposed conceptual amendment.

We support this bill for the reasons already stated.

BRAD KEATING (Clark County School District):
Our school district spends over \$400 million every year on construction projects. Taxpayer resources and project efficiencies are maximized with the use of CMAR.

We ask the Committee's approval of S.B. 141 so school districts may continue using this delivery method.

ANDY DONAHUE (Southern Nevada Laborers-Employers Cooperation and Education Trust):

This bill will remove the sunset clause, making CMAR another delivery option for entities to use. This delivery method will allow contractors and owners to resolve complex issues.

Labor also likes this delivery method because CMAR projects use a higher number of qualified workers than low-bid projects. This makes sense for Nevada.

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DAVID CHERRY (City of Henderson):

We support S.B. 141 and thank Senator Brooks for bringing forward this valuable legislation.

In our experience, CMAR provides flexibility in project delivery methods and serves as an excellent tool in project planning, development and cost control.

Removing the sunset will ensure we have the ability to continue using CMAR for important projects in our community. Using CMAR will help the City of Henderson continue to be a thoughtful steward of our financial resources.

RICHARD DALY (Laborers Union Local 169):

We testify neutral on S.B. 141. We are in support of the amendment.

I sponsored A.B. No. 283 of the 77th Session. At this time, CMAR required the contractor to perform 25 percent of the work in horizontal construction. There were no contractor requirements in the work of vertical construction. Definitions were required to determine when the contractor clause was applicable.

The Legislative Counsel Bureau examined the definitions in S.B. No. 207 of the 80th Session. This bill covered the use of apprentices on public works projects.

As Senator Brooks stated, the definitions are important to this legislation, and the amendment will clarify provisions of CMAR.

SENATOR PICKARD:

Will the cost structure of CMAR projects be increased because of the number of specified apprenticeships?

SENATOR BROOKS:

Senate Bill No. 207 of the 80th Session required a certain number of apprenticeships on public works projects. In this legislation, we included a provision to ensure apprentices on public works projects. This legislation will create continuity in the construction industry and create opportunities for apprenticeship programs.

Many statutes govern public works projects. The definition in the proposed amendment would be another factor in NRS 338 regarding apprentices in public works projects.

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In my experience in construction, the more apprentices you have on a project, the lower the labor cost.

SENATOR PICKARD:

When we had more apprentices on a project, we often had more rework.

SENATOR SETTELMAYER:

Chair Spearman, if you will accept a motion on S.B. 141, I will gladly give it.

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CHAIR SPEARMAN:

I prefer to wait until our work session on S.B. 141. We will adjourn the hearing at 9:05 a.m.

RESPECTFULLY SUBMITTED:

Kim Cadra-Nixon,
Committee Secretary

APPROVED BY:

Senator Pat Spearman, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B. 141	B	1	Senator Chris Brooks	Conceptual Amendment
S.B. 141	B	1	Brian Reeder / Nevada Contractors Association	Conceptual Amendment
S.B. 141	C	1	Brian Reeder / Nevada Contractors Association	Letter to Governor Steve Sisolak from Nevada Contractors Association
S.B. 141	D	1	Denise Baclawski / University of Nevada, Reno	Written Testimony