

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

**Eighty-first Session
April 23, 2021**

The Senate Committee on Commerce and Labor was called to order by Chair Pat Spearman at 8:10 a.m. on Friday, April 23, 2021, Online and in Room 2134 of the Legislative Building, Carson City, Nevada. [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:

Assemblyman Edgar Flores, Assembly District No. 28
Assemblyman Jason Frierson, Assembly District No. 8

STAFF MEMBERS PRESENT:

Cesar Melgarejo, Policy Analyst
Wil Keane, Counsel
Kim Cadra-Nixon, Committee Secretary

OTHERS PRESENT:

David Boehrer, Nevada Justice Association
Teresa McKee, CEO, Nevada Realtors
Tiffany Banks, Nevada Realtors
Dan Morgan, CEO, Builders Association of Northern Nevada
Brad Spires, President, Nevada Realtors
Susy Vasquez, Executive Director, Nevada State Apartment Association
Tess Opferman, Nevada Women's Lobby

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William Pregman, Battle Born Progress
David Dazlich, Vegas Chamber
William Stanley, Southern Nevada Building Trades Unions
Lewis Ling, Counsel, State Contactors' Board
Joshua Hicks, American Staffing Association
Chris Thompson, American Staffing Association
Mike West, International Union of Painters and Allied Trades District Council 16
Margi Grein, Executive Officer, State Contractors' Board
Richard Daly, Laborers Union Local 169
James Halsey, International Brotherhood of Electrical Workers
Shawn Kinsey, Operating Engineers Local 12
Wendi Newman, Unified Construction Industry Council
Danny Thompson, International Brotherhood of Electrical Workers Local 396 and
Local 1245; Operating Engineers Local 3 and Local 12
Donald Campbell, Southern Nevada Chapter National Electrical Contractors
Association
Greg Esposito, Nevada State Pipe Trades
Robert Benner, Building and Construction Trades Council of Northern Nevada
Rusty McAllister, Nevada State AFL-CIO
Vince Saavedra, Ironworkers Local 118
David Stoffer, Southwest Regional Carpenters Union
Robert A. Conway, International Association of Bridge, Structural, Ornamental
and Reinforcing Iron Workers Local 433
Randi Thompson, Nevada Federation of Independent Business
Victor Aldana, Eastridge Workforce Solutions
Dan Morgan, Builders Association of Northern Nevada
Aaron West, CEO, Nevada Builders Alliance
Lindsay Knox, American Staffing Association
Johnny Skowronek, Vice President, Square One Solutions, Inc.
Matthew Nguyen, PeopleReady; American Staffing Solutions
Mac Bybee, President and CEO, Associated Builders and Contractors, Nevada
Chapter

CHAIR SPEARMAN:

We will open the hearing today with Assembly Bill (A.B.) 130.

ASSEMBLY BILL 130 (1st Reprint): Revises provisions governing insurance.
(BDR 57-780)

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ASSEMBLYMAN EDGAR FLORES (Assembly District No. 28):

I am here today to present A.B. 130 on behalf of my constituents. I will explain three terms: medical payments coverage or MedPay, uninsured and underinsured vehicle coverage. I will also explain the provisions and remedies included in this bill.

Nevada Revised Statutes (NRS) 687B.145 references MedPay, uninsured and underinsured coverage options. Insurance companies are required to offer these three types of coverage. These are triggered without the necessity of claiming fault.

As written in statute, this type of coverage is only offered to owners of motor vehicles. This bill will ensure insurance coverage is also offered to motorcycle owners.

Motorcycle owners told us they were never offered MedPay, uninsured or underinsured coverage. Statute only requires offering this type of coverage to owners of motor vehicles.

Uninsured, underinsured and MedPay coverage provide an extra layer of protection to drivers in the event they are in an accident with a driver who does not have adequate insurance.

The words "or motorcycle" are added in section 1, subsection 2 and subsection 3. We are not changing the process for insurance companies; we are only requiring insurance companies offer insurance to owners of motorcycles. By adding this language to NRS, we ensure this coverage is an option; it is not required coverage.

SENATOR PICKARD:

Why does section 2, subsection 1 exclude motorcycles?

ASSEMBLYMAN FLORES:

Motorcycles are excluded in this section because airbag technology is not available for motorcycles at this time.

SENATOR SETTELMAYER:

Will this bill cover all types of miscellaneous motor vehicles?

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ASSEMBLYMAN FLORES:

No, this bill will not cover all vehicles, such as off-road vehicles. The expansion of coverage is limited to motorcycles.

SENATOR SETTELMAYER:

Will coverage be available for vehicles that are not a motorcycle or a car?

ASSEMBLYMAN FLORES:

I will check with counsel about coverage for hybrid vehicles.

WIL KEANE:

For the purposes of this bill, a motorcycle is defined in NRS 486.041 to travel on not more than three wheels. A passenger car is defined as a vehicle designed to carry ten persons or less, except a motorcycle, electric bicycle, moped or electric scooter.

SENATOR HARDY:

Insurance companies will be required to offer available insurance options as required under statute.

ASSEMBLYMAN FLORES:

Yes, that is correct. Insurance companies will present a form which offers the option of extended insurance coverage for both passenger vehicles and motorcycles.

SENATOR NEAL:

Will umbrella policies cover those riding on a motorcycle?

ASSEMBLYMAN FLORES:

This bill will not change any issue of personal injury law. The same circumstances would apply to a motorcycle just as it does to a passenger vehicle.

In regard to MedPay, \$1,000 is the minimum insurance offered. More coverage can be purchased.

SENATOR NEAL:

What is the average cost of an insurance policy for a motorcycle?

ASSEMBLYMAN FLORES:

We did not engage in the cost of these insurance policies. The cost of the policy will be calculated by the insurance companies. Industry decides on the cost of the policies.

SENATOR PICKARD:

Is it your intent the bill takes effect upon signage by Governor Steve Sisolak? If a motorcyclist is in an accident before the bill takes effect, will the motorcyclist be covered?

ASSEMBLYMAN FLORES:

The insurance must be offered at least once to the insured, however, the insurance is not retroactive.

SENATOR PICKARD:

I would like clarification of the transitory period by legal counsel.

MR. KEANE:

The bill will be effective on October 1. The bill would require insurers to offer this coverage and would therefore make the insured eligible for this option in coverage. This bill would not be in effect during the transitory period unless we change the language of the bill.

SENATOR PICKARD:

I wanted to ensure this bill does not change the normal approach to the application of a new statute to existing contracts.

SENATOR NEAL:

How is MedPay triggered if there is a motorcycle accident and injury involving another person? What is the lineage of the action for this circumstance?

ASSEMBLYMAN FLORES:

Insurance coverage is dictated by many things. We are simply adding coverage of motorcycles to the same rules that apply to passenger vehicles. I do not intend to modify the process in any way.

CHAIR SPEARMAN:

What do the provisions in A.B. 130 solve?

ASSEMBLYMAN FLORES:

This bill will ensure that a person is offered the same coverage for a motorcycle as the person is for a passenger vehicle—MedPay, uninsured and underinsured coverage. Most insurance companies already do this, but some do not.

CHAIR SPEARMAN:

What are the reasons some insurance companies would not offer this coverage to motorcycle owners?

ASSEMBLYMAN FLORES:

MedPay, uninsured and underinsured coverage provides protection whether an accident is your fault or not. MedPay is especially important because it will cover immediate medical costs such as an ambulance. Some motorcycle owners are not offered this insurance.

CHAIR SPEARMAN:

Some may not know this type of insurance exists because they were never offered this coverage by their insurance company. They may only find out about this insurance if they were in an accident.

ASSEMBLYMAN FLORES:

Yes, this is correct. You will realize it was never offered when you need it the most.

CHAIR SPEARMAN:

This bill will ensure motorcycle owners are offered MedPay, uninsured and underinsured coverage.

ASSEMBLYMAN FLORES:

When purchasing an insurance policy, most people assume if they are involved in a motor vehicle or motorcycle accident their medical expenses will be covered. The reality is that this is not always the case. This bill will ensure the consumer knows the options available to them.

SENATOR PICKARD:

MedPay was created to ensure the injured parties were able to get some of their medical bills paid early. With Legislative prodding, there was an offering by insurance companies to protect whomever was involved in the accident and get them on the road to recovery.

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I did not realize this coverage was not made available to motorcycle owners. This bill is about protecting everyone involved in an accident, even before fault is determined. This bill does make sense to me.

DAVID BOEHRER (Nevada Justice Association):
We are in support of A.B. 130. It is important for motorcycle owners to receive the same coverage as automobile owners.

ASSEMBLYMAN FLORES:
I appreciate your help in simplifying this bill.

CHAIR SPEARMAN:
We will close the hearing on A.B. 130 and open the hearing on A.B. 308.

ASSEMBLY BILL 308: Revises provisions relating to landlords and tenants.
(BDR 10-880)

ASSEMBLYMAN JASON FRIERSON (Assembly District No. 8):
I am pleased to present A.B. 308. This bill attempts to further balance the interests of tenants and landlords.

Certainly, the members of this Committee are no stranger to the plight of tenants and property owners today. Even before Covid-19, the influx of new residents and the resulting increase in property values caused a shortage of affordable housing throughout the State.

In 2020, the Aspen Institute estimated that Nevada had the greatest mismatch in demand and supply of affordable housing in the Nation. This study estimates Nevada has only 19 affordable and available units for every 100 extremely, low-income renter households.

In addition, a national survey found 63 percent of Americans have been living paycheck to paycheck since the pandemic started. However, even before the pandemic, 44 percent of Americans were living beyond their means. The harsh reality is before this public health crisis, 40 percent of Americans were unable to cover an unexpected \$400 expense.

As policymakers, we attempt to balance the rights of landlords to secure market value rent for their property while safeguarding the interests of tenants who find

themselves priced out of homes they may have occupied for years. It is against this backdrop that I requested A.B. 308. This bill seeks to provide tenants with additional time before a landlord may increase rental payments. It also institutes a grace period of three days before a landlord can charge late fees and make a technical change to the definition of a security deposit.

Per the National Landlord Association, 23 states and the District of Columbia have notice requirements for rent increases ranging from 15 days to 90 days. Additionally, 7 states and the District of Columbia offer a 4-day to 30-day grace period before late fees are charged.

Housing continues to be a large percentage of a family's monthly expenses. Nevada continues to see slower economic recovery as compared to other states across the Country. We must find ways to help tenants adequately prepare for the unexpected while not placing an excessive burden on landlords.

I will review the sections of the bill. Sections 1, 3 through 6 and 8 through 14 concern a technical change to the definition of security deposit. Section 2 prescribes a landlord may not charge a late fee as long as the rent is paid within three calendar days of the due date.

Finally, section 7 extends the number of days of advanced notice a landlord must provide for a rent increase from 45 to 60 days. For periodic tenancies of less than one month, the number required is extended from 15 to 30 days.

This legislation is a reasonable effort giving tenants ample time to prepare for large expenses, such as housing. We found common ground with the Nevada Realtors to find areas to ease the burden felt by tenants without increasing the burden of landlords.

TERESA MCKEE (CEO, Nevada Realtors):

I am speaking on behalf of Nevada Realtors in support of A.B. 308. Both landlords and tenants comprise the Realtor membership, and we advocate for both groups.

This bill creates a balanced and transparent approach to issues between landlords and tenants. Statute does allow landlords to charge late fees that do not exceed 5 percent of the periodic rent. Most landlords work with tenants

when rent is late, and this bill regulates the period allowed before a late fee may be issued.

The bill also extends the notice landlords must give before raising rent fees. While most landlords are fair in their communications with tenants, this bill will ensure all landlords are fair in their communication with tenants.

SENATOR PICKARD:

This bill presents a reasonable standard in legislation regarding landlords and tenants.

CHAIR SPEARMAN:

Before the pandemic, we referred to some workers as minimum-wage workers. Since the pandemic, we refer to these workers as essential workers. Thank you for bringing this bill on behalf of essential workers.

TIFFANY BANKS (Nevada Realtors):

I speak on behalf of Nevada Realtors in support of A.B. 308. The language of this bill is reasonable. Mom-and-pop landlords have been affected by the governmental moratoriums due to the pandemic. The landlords still need to make mortgage payments, homeowners' dues and taxes. Exhausted landlords may sell properties which in turn reduces the number of available rentals.

Our landlords and property managers can support this bill. Our association, which is comprised of property managers, landlords and tenants, will work together during these difficult times.

DAN MORGAN (CEO, Builders Association of Northern Nevada):

We represent more than 100 builders and developers of single-family and multifamily homes and residential communities in northern Nevada. We support A.B. 308. This bill clarifies the financial relationship between landlords and tenants.

BRAD SPIRES (President, Nevada Realtors):

I testify in support of A.B. 308. This bill exemplifies a fair and balanced approach to the issues we are facing in our industry. This legislation will codify how many landlords and property managers already work with tenants.

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SUSY VASQUEZ (Executive Director, Nevada State Apartment Association):
We echo the comments of those testifying in support of A.B. 308.

TESS OPFERMAN (Nevada Women's Lobby):
One of the priorities of the Nevada Women's Lobby is housing security. We work to ensure women and families are able to maintain affordable and stable housing. This bill helps ensure transparency between tenant and landlord, ultimately helping to protect both parties.

WILLIAM PREGMAN (Battle Born Progress):
We support this bill and agree with those testifying before us. This Legislature should be doing everything it can to help tenants. Economically vulnerable tenants face even more difficult circumstances due to the pandemic.

DAVID DAZLICH (Vegas Chamber):
We echo the comments of the previous speakers in support of A.B. 308. This bill strikes a good compromise and protects both landlords and tenants.

CHAIR SPEARMAN:
We will close the hearing on A.B. 308 and open the hearing on A.B. 227.

ASSEMBLY BILL 227: Revises provisions relating to contractors. (BDR 54-720)

WILLIAM STANLEY (Southern Nevada Building Trades Union):
I am here to present A.B. 227. This bill was requested by the Southern and Northern Nevada Building Trades Unions.

We have worked with stakeholders including the State Contractors' Board, Associated Builders and Contractors, Nevada Chapter, Nevada Contractors Association and Southern Nevada Home Builders Association seeking passage of A.B. 227.

This bill will ensure only a contractor or the contractor's employees can perform work that requires a contractor's license. An employee of the contractor must be an employee who completes an IRS form W-4 and receives a W-2 from the employer.

The language in this bill is important because of a recent court decision, *Legacy Specialties, Inc., v. Nevada State Contractors' Board*, No. CV20-00404

(Washoe Cnty. Ct. Nev. filed Feb. 28, 2020) ([Exhibit B](#)). This decision determined that for a contractor to be held responsible for the actions of those working under his or her direction, they must be an employee of the contractor.

Prior to this decision, the State Contractors' Board allowed both licensed contractors and unlicensed contractors who were subject to the regulations in NRS 624. The case changed this premise. We are here today to follow the judge's directions to ensure the language is clarified to the Legislature.

Homeowners and building owners are protected by a longstanding public policy of the State Contractors' Board which ensures those responsible for construction projects can be held accountable.

Misclassification of employees in the construction industry costs Nevadans millions of dollars in lost construction economic activity. When a contractor misclassifies an employee, the employee is often left responsible for taxes.

Misclassification of employees costs the Nevada Unemployment Trust Fund \$8.2 million in annual lost revenue as determined in the Employee Misclassification Bulletin No. 11-07 by the Legislative Counsel Bureau in January 2011.

The Unified Construction Industry Council commissioned a study that found similar losses to the State's Unemployment and Worker's Compensation Funds. The study also identified lost employee wages. This study was conducted in 2018 and identified \$90 million in lost economic construction activity.

Section 1, subsection 1 adds language to remedy the situation raised in *Legacy*. Section 2, subsection 6 defines employee. In closing, this bill will not cause a loss of construction jobs. This bill simply clarifies who is the employer at a construction site.

SENATOR PICKARD:

Assembly Bill 227 does not clarify the specific type of work that requires a contractor's license. While the *Legacy* decision did require employees to have a contractor's license, another recent decision, *State Industrial Insurance System v. Ortega Concrete Pumping Inc.*, 113 Nev. 1359, 951 P.2d 1033 (1997) did not require a licensed contractor. Will this bill be a disincentive for employment agencies to provide employees for construction projects?

LEWIS LING (Counsel, State Contractors' Board):

In the case mentioned by Senator Pickard, the employee only delivered materials, he was not performing work of a contractor. The judge in *Legacy* asked us to clarify the language in the State's statute. The State now has leased employees on job sites.

SENATOR PICKARD:

I interpret the judge's decision in *Legacy* differently than you explained. The judge stated:

The Board's interpretation of law must be grounded in an objective, knowable standard that allows a contractor to choose compliance or noncompliance. A contractor should not learn of the Board's legal interpretation only after being charged with disciplinary misconduct, and a new ad hoc rule of enforcement should not be created through a retrospective process. While the decision has no precedential influence in this dispute, it is relevant to note the position the Board takes now is different than the position it took in *Ortega Concrete* when it asserted the pumping company was not required to be licensed as a contractor.

I agree with the Court's decision that we need clarity in statute; the language must be clear so that we do not have impromptu rule making. An employment agency is not a contractor. It is providing employees to a contractor.

MR. STANLEY:

We are not attempting to expand the scope of the State Contractors' Board. Some of the work performed at a construction site is not covered by NRS 624. It is good public policy to regulate contractors.

Under the terms of this bill, employment agencies can still recruit and train construction workers. We are only asking that the contractor, rather than the employment agency, pay the employees. It is better for the licensed contractor to act as the employer.

CHAIR SPEARMAN:

Mr. Keane, will you clarify what this bill is about and what this bill is not about?

MR. KEANE:

The bill is not about which construction projects require a licensed contractor and which projects do not require a licensed contractor. The bill is solely about once a project is a project that requires work by a licensed contractor, the work must be performed by a contractor, by one of the employees of the contractor or by the employees of another contractor.

The bill is not about whether or not a project is actually work that requires a contractor's license. It is simply about who does the work on a project which requires a licensed contractor. Once again, the work on projects requiring a licensed contractor must be done by the contractor himself, one of the contractor's employees as defined in the bill or an employee of another contractor.

CHAIR SPEARMAN:

Mr. Keane has set the parameters for discussion of A.B. 227. Committee members, please keep your questions relevant to these parameters.

SENATOR HARDY:

I appreciate the clarification of the purpose of this bill. I want to ensure everyone meets their obligation as it relates payroll taxes, workman's compensation and insurance to the State. How will the temporary agency be paid? We can bring this to a rational solution.

SENATOR SETTELMAYER:

I have worked with private employment agencies. I am most concerned about smaller employers. Some small contractors specialize in spraying weeds on a seasonal basis. Small businesses working in conservation often use temporary agencies. The focus is on larger contractors but is adverse to small licensed contractors, especially on agricultural jobs.

Temporary agencies are required by the Labor Commissioner to pay their employees. Mr. Stanley, what research have you done on small businesses that specialize in agricultural work in the rural counties?

MR. STANLEY:

The average contractor in America employs ten or fewer people. I am concerned about the same small businesses that you are, Senator Settelmeyer. I have not researched work in the agricultural community. I am not sure that the

first example you cited of spraying weeds requires a contractor's license. Other conservation work which involves pouring concrete would probably require a contractor's license.

In the construction industry, temporary employees are hired every day. Under the terms of this bill, the worker would be paid by the contractor rather than the employment agency. I do not see this as a tremendous burden. When an employee is on the job site, he or she will be paid by the contractor who is employing you and directing your activities on the job site.

SENATOR SETTELMAYER:

Agricultural work is seasonal. Sometimes these jobs last for only a month. Even though the fees are higher through an employment agency, companies are able to recruit people who want to work. I am fearful this bill will be a detriment to conservation efforts.

SENATOR NEAL:

I understand the position of those in support and in opposition of A.B. 227. The strikeout of "others" in section 2, subsection 2 changes the business landscape that has existed since 1975. Those in opposition are concerned about their business models and how it affects their business opportunities. Why did the bill go in this direction?

MR. LING:

The intent of the language was to make the bill speak as it was enforced historically by the State Contractors' Board. The word "others" was omitted to present clearer language and use the word employee. It is the job of the State Contractors' Board to enforce statute as it was given to us. The omission of "others" is specifically to employees hired directly by the contractor.

SENATOR NEAL:

In striking out the word "others" from statute, are we now saying a company, like AD Solutions Group, Inc., can no longer supply labor? The judge seems to delineate between the act of contracting and the act of providing labor. How is this statement being interpreted in this bill? If providing labor is acceptable, how does the strikeout of "others" in the bill allow the act of providing labor?

MR. LING:

Work that does not require a contractor's license is outlined in section 1, subsection 2.

SENATOR NEAL:

Under the provisions of this bill, an employee leasing company is no longer able to provide skilled labor. What does this company do for its business model?

MR. STANLEY:

Under the provisions of this bill, an employee leasing company will send employees to a licensed contractor and the licensed contractor will put the employees on their payroll.

SENATOR NEAL:

The court case of *Legacy* was left open-ended. Employee leasing companies have been able to provide skilled labor to contractors since 1975. Assembly Bill 227 will change that model. How will employee leasing companies be impacted by this bill?

MR. STANLEY:

The business model of employee leasing companies will change under the terms of this bill. When employee leasing companies bring skilled laborers to a construction job, those workers will need to be employed by the licensed construction company.

SENATOR SCHEIBLE:

Will this bill allow an employee leasing company to become a licensed contractor and lease or sublease their employees to other licensed contractors?

MR. STANLEY:

Yes, that is an option.

SENATOR SCHEIBLE:

Employee leasing companies can change their business model in several different ways to conform to the provisions of this bill. The employee leasing company can acquire a contractor's license or provide skilled labor to a licensed contractor, who will then employ them or adjust their business model to meet the needs of the new statute.

MR. STANLEY:

Yes, this is correct.

SENATOR SCHEIBLE:

The *Legacy* decision briefly mentions workers' compensation. Is the leasing company or the construction company responsible for an employee injury on a job site?

MR. STANLEY:

In our State, the primary contractor is ultimately responsible for work-related injuries.

SENATOR PICKARD:

Employee leasing companies recruit, train and deliver employees to a contractor. The leasing company is paid through the markup on leased employees' wages. Under the provisions of this bill, the leasing company must transfer the employee to the contractor; this will cause the leasing company to lose its source of income. The leasing company must charge the contractor up-front or stop providing skilled labor in its business model.

MR. STANLEY:

I am unaware of the fee structure between leasing companies and contractors. I am sure there will be a way for leasing companies to recover their costs in this new structure.

SENATOR PICKARD:

Employee leasing agencies handle human resources, recruitment, training and workers' compensation. This benefits the construction company.

MR. STANLEY:

A leasing company is not bound by NRS 624, and the bill proposes contractors are held responsible for the work of employees on the worksite because contractors are bound by NRS 624.

SENATOR PICKARD:

The State Contractors' Board, under NRS 624, has jurisdiction over the work on a construction site; the employee leasing company has responsibility for workers' compensation and other employee costs. In *Legacy*, the employee costs were paid.

JOSHUA HICKS (American Staffing Association):

The *Legacy* decision did not involve a licensed private employment agency. Private employment agencies (PEAs) provide temporary skilled labor to contractors in Nevada. These workers are employees of PEAs and receive W-2s and have unemployment insurance and workers' compensation coverage. All applicable tax withholdings are taken care of by the PEA.

We do not object to a prohibition by the State Contractors' Board of employing private contractors. Our concern is the impact to PEAs if prevented from providing skilled labor to contractors in Nevada.

In *Legacy*, page 25, lines 11 through 13, the judge notes the Boards' position that *Legacy* would not have been subject to discipline if they had used an agency licensed in Nevada.

It is inaccurate to base this bill on the outcome of *Legacy*. The State Contractors' Board did not appeal the case, and if there was a dispute with this position, it should have been brought up through the courts.

Mr. Stanley made an assertion this bill would not impact existing business relationships between contractors and employee leasing companies. That is not the case. Employee leasing companies have been providing workers to contractors for decades and have existing contracts. Agencies and construction companies will be impacted immediately if A.B. 227 passes.

Private employment agencies are valuable to construction companies because they take care of the human resource aspect of the business. This allows construction companies to do what they do best—build Nevada. Private employment agencies are licensed and regulated by the Labor Commissioner; therefore, remedies are available if workers are not paid.

SENATOR PICKARD:

How are skilled laborers used in the construction industry?

MR. HICKS:

Section 1, subsection 2 of the bill restricts PEAs from providing skilled workers to construction companies. We surveyed the membership of American Staffing Association, and there are nine PEAs licensed in this State. Last year, our PEAs provided 4,300 skilled workers to construction companies as shown in our

answer information ([Exhibit C](#)) on page 1. [Exhibit C](#) also contains our conceptual amendment at the bottom of page 2. This bill will have a significant effect on private employment agencies.

SENATOR PICKARD:

If this bill passes and 4,300 workers are no longer employed with PEAs, where will these workers go?

MR. HICKS:

People take jobs with PEAs for a variety of reasons. Because many are just starting out in this line of work, they may leave the construction industry. Others, like teachers, enjoy seasonal employment in the summer. Some of these workers are not looking for full-time employment, and others may seek full-time employment in the construction industry. Under the proposed system, many will not have a job.

SENATOR PICKARD:

As a small contractor, I will lose employees if I do not have full-time work for them. Jobs may disappear if private employment agencies cannot provide skilled workers to construction companies.

SENATOR NEAL:

Nevada Revised Statutes 616B was addressed in *Legacy*; why is it not addressed in A.B. 227?

MR. KEANE:

Nevada Revised Statutes 616B is not addressed in this bill because the construction workers covered under the provisions of this bill would not be employees of a private employment agency.

MR. HICKS:

On a technical note, the judge may have mistakenly cited NRS 616B instead of NRS 611.

CHRIS THOMPSON (American Staffing Association):

I come from a military background and, due to an injury, was medically transitioned out of military service. I was not prepared to find meaningful employment. A friend suggested I work for a temporary agency. I was later offered a job with a staffing agency to travel and recruit for them.

Staffing agencies provide employees a bridge to experience and eventually receive full-time work. I would not be where I am today without first working for a staffing agency. This is a way for workers to transition to fulfilling employment. Our staffing agency provides opportunities to many people.

SENATOR NEAL:

Are there written contracts between PEAs and construction companies?

MR. C. THOMPSON:

Yes, there is always a master service agreement with all customers and a construction labor agreement for job sites. All responsibilities are clearly defined.

SENATOR PICKARD:

Can an employment agency obtain a contractor's license?

MR. HICKS:

It would be difficult for a PEA to obtain a contractor's license. A contractor's license is inconsistent with their business model. Private employment agencies provide workers for many types of industries.

SENATOR PICKARD:

I am looking for alternate paths for private employment agencies.

MR. HICKS:

It would require a complete restructuring of the business model for PEAs to become licensed contractors.

MIKE WEST (International Union of Painters and Allied Trades District Council 16):
A high road contractor is an employer who pays his employees properly and plays by the rules. In my experience as a union organizer, I uncovered a painting job that used janitors at night to do work that required skilled labor.

MARGI GREIN (Executive Officer, State Contractors' Board):

On behalf of the State Contractors' Board, we support the concept of A.B. 227. The Board's longstanding interpretation of NRS 624 has been when the Legislature uses the word employee, it is intended to mean an employee with a W-2 status. The Board has never recognized independent contractors as employees. Leased workers are not recognized as employees of the contractor.

The Board has seen several cases where contractors have used leased labor to unfairly compete. Leased laborers have been left stranded in our State because they were not paid by the leasing company. The quality of the employee and the protection of the public are best assured when the contractor has an investment in the people they hire. We considered the amendment in [Exhibit C](#) requested by Mr. Hicks and Mr. Hardy; however, we do not think the amendment is consistent with the goals of this bill.

SENATOR PICKARD:

I would like to see supporting documents of the cases mentioned by Ms. Grein of the State Contractors' Board.

RICHARD DALY (Laborers Union Local 169):

The bill will address agencies supplying unlicensed employees to do work which requires a contractor's license. To protect the safety of our citizens, our State supports licensed contractors performing the work.

Some work on a construction job does not require a contractor's license and these workers would not be affected by this bill. This bill simply states those performing work that requires a licensed contractor must be a contractor or employed by a licensed contractor. I support [A.B. 227](#).

JAMES HALSEY (International Brotherhood of Electrical Workers):

I speak in favor of this bill on behalf of our 4,000 members. Our members work every day as employees who receive a W-2.

We support this bill to ensure all workers in construction have the same employment protections as those workers employed by a construction company. Those protections include unemployment insurance, future social security benefits, health benefits and workers' compensation.

SHAWN KINSEY (Operating Engineers Local 12):

We testify in support of [A.B. 227](#).

WENDI NEWMAN (Unified Construction Industry Council):

We are a labor management committee comprised of 14 skilled craft trade unions and over 200 contractors. We support this bill on behalf of the contractors who employ over 20,000 skilled trade workers.

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DANNY THOMPSON (International Brotherhood of Electrical Workers Local 396 and Local 1245; Operating Engineers Local 3 and Local 12):
We express our support of A.B. 227.

DONALD CAMPBELL (Southern Nevada Chapter National Electrical Contractors Association):
We align our support with those who testified in support of this bill. We work with the Labor Commissioner and know there are bad players in the construction industry. That is a problem for the good players in this industry.

GREG ESPOSITO (Nevada State Pipe Trades):
I agree with those testifying in support of A.B. 227. I have personal experience as a contract laborer of going hungry because I was not paid and scared because I was not treated for a work injury. There are workers right now under these same circumstances—getting cheated out of pay, getting hurt with no medical care because they are not employees of the contractor.

ROBERT BENNER (Building and Construction Trades Council of Northern Nevada):
We support this bill which will protect workers who do not get paid.

RUSTY MCALLISTER (Nevada State AFL-CIO):
We are in support of this legislation because it is a good step in the right direction of leveling the playing field for all contractors. Under the terms of this bill, the State will receive the revenue needed for unemployment compensation and employee taxes.

VINCE SAAVEDRA (Ironworkers Local 118):
I echo the remarks of those testifying before. We support this bill.

DAVID STOFFER (Southwest Regional Carpenters Union):
We fully support this bill. I have been a carpenter for 44 years. I have seen many scams in my career, especially scams by labor brokers. These scams can affect bids by as much as 30 percent compared to legitimate contractors. We specifically support this bill because it will stop covert and unlawful practices in our industry.

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ROBERT A. CONWAY (International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Local 433):

We testify in support of this bill because this legislation will level the playing field and stop exploitation.

RANDI THOMPSON (Nevada Federation of Independent Business):

I represent the Nevada Federation of Independent Business, the only Statewide association that specifically represents small businesses. On behalf of over 1,900 small business employers and their valued employees, I speak in opposition to A.B. 227. I have submitted opposition testimony ([Exhibit D](#)).

VICTOR ALDANA (Eastridge Workforce Solutions):

I am speaking in opposition to A.B. 227, a bill that would rob Nevadans of opportunities to work. I have submitted opposition testimony ([Exhibit E](#)).

DAN MORGAN (Builders Association of Northern Nevada):

We testify in opposition to this bill. The use of temporary construction labor from licensed private employment agencies is more prevalent in parts of the State with smaller contractors because those contractors are more susceptible to workforce fluctuation caused by staff disruption.

The passage of A.B. 227 will significantly disrupt the construction labor market, especially in Northern Nevada. This will lead to delays in construction projects and increase costs particularly in residential and multifamily construction. The supply of construction labor in northern Nevada is critical. Contractors are struggling to find workers on a full-time or part-time basis. This bill would make this challenge even greater.

Assembly Bill 227 is an impediment to a rebounding and thriving construction market in Nevada. This is especially true for northern Nevada. We ask that you oppose this bill and help our construction market move forward.

AARON WEST (CEO, Nevada Builders Alliance):

While we agree with the sentiment of protecting employees, we are in opposition to this bill. Eliminating an entire opportunity for part-time employment through PEAs is an overreach.

We agree with the judge's findings in *Legacy*—the Contractors' Board overreached its authority, and this bill is an attempt of overreach to rectify this

situation. Private employment agencies serve an important role in the construction industry and provide protections for the employee.

LINDSAY KNOX (American Staffing Association):

The American Staffing Association is a national trade group of employee staffing companies providing workforce solutions to a variety of industries throughout the United States.

We oppose this bill because it will have a negative impact on individuals who work for PEAs and small contractors who need PEAs to stabilize workforce fluctuations. I have submitted opposition testimony ([Exhibit F](#)).

JOHNNY SKOWRONEK (Vice President, Square One Solutions, Inc.):

Our company is located in Reno, and we have provided skilled and unskilled construction labor since 2004. In an already tight labor market, we provide flexible hiring options for our contractors. Many employees have skills but due to a variety of reasons, such as childcare, transportation and physical limitations, they are unable to work full-time permanent positions with a contractor.

Through our service, employees can work temporary assignments while augmenting the contractor's workforce. Many smaller construction companies do not have a human resources department or an in-house recruiter. We are able to provide these services to construction companies.

Employees who need to work part-time are given the opportunity to use their skills without committing to permanent employment. As the PEA, we assume all risks and carry worker's compensation for employees. We pay modified business tax, we issue W-2s to our employees, and we pay unemployment insurance.

We are a legitimate company and licensed by the Labor Commissioner. We hire Nevadans and do not leave people marooned in the State. We pay wages to our employees and offer flexible employment opportunities for our clients and contractors.

MATTHEW NGUYEN (PeopleReady; American Staffing Solutions):

PeopleReady provides general and skilled tradespeople to companies in a wide variety of industries. We provide 100 workers per day to construction contractors in the State.

We recruit our associates through word-of-mouth and by working with the State unemployment agency, schools, colleges and nonprofit organizations. We work with organizations dedicated to finding jobs for veterans and people in underserved communities.

If this bill passes as written, these workers will lose their jobs. The employees of PeopleReady are W-2 employees. When we assign an employee to work for a construction contractor, regardless of skill level, they work under the direction of a licensed contractor. The work is within the scope of the contractor's license. The only difference between working directly for the contractor and working for our agency is we find, hire and assign the employee to businesses whose core competency is building.

Our workers are protected by all State and federal wage statutes that are enforced by the Office of the Labor Commissioner. Some of our clients, especially those in rural communities, do not have full-service human resources departments. Our core competency is finding the right worker for the right job at the right time. Our associates choose to work for us because we find jobs that match their skills. Otherwise, they would always be looking for their next position while working in their current jobs.

Many of our employees have worked for us for years because they enjoy the flexibility, variety and dependability we offer. They can pick the jobs they want based on schedule, pay or the opportunity to learn new skills.

We do not know why you would want these workers to lose their jobs. Please preserve these jobs for the people who most need help finding employment by rejecting or amending the bill to allow employees assigned by PEAs to work under the direction and supervision of properly licensed contractors.

MAC BYBEE (President and CEO, Associated Builders and Contractors, Nevada Chapter):

We hear a lot of discussion about holding bad actors accountable, and we should hold them accountable. However, because of the action of one or two bad actors, we end up in hearings like this which make everyone look bad.

In our view, this bill is faulty because all of the liability falls to the contractor. It is the responsibility of the primary contractor to ensure employees are paid. This is in statute. We have another system in place to handle other types of bad actors. The Labor Commissioner handles violations of labor laws and the licensing of PEAs.

This bill leapfrogs our system. It takes some of the jurisdiction of the Labor Commissioner and places it with the State Contractors' Board. The Board's responsibility is to ensure contractors are living up to the requirements of their licenses and bid limits.

I submitted the application ([Exhibit G](#)) to become a licensed contractor. The application is 18 pages long. Does it make sense for an employment agency to complete this application? Would they even be qualified to receive a license? This bill does not change the requirements to become a licensed contractor but suggests employment agencies apply for a contractor's license. Becoming a contractor is something employment agencies are not qualified to do.

Contractors are responsible for the end product. They are accountable for the work done on the job site, whether workers are on the contractors' payrolls or the employment agencies' payrolls.

MR. STANLEY:

There is nothing in this legislation to increase or decrease the construction labor market. This bill will not cause anyone to lose or change jobs. This bill requires some to change the way they do business.

The Uninsured Employers Claim Account ([Exhibit H](#)) shows there was \$90 million in lost construction activity, and \$31 million of that did not go to the workers' compensation fund. This report represents more than a few bad actors. *Legacy* identified the problem, and the judge asked us to come to the Legislature to remedy this problem.

CHAIR SPEARMAN:

Some of those testifying in opposition mentioned childcare as a reason to work flexible hours through an employment agency. What is your policy on childcare? How is diversity tracked in this industry?

MR. STANLEY:

This is a tough issue for our society. As a member of the Governor's Workforce Development Board and one who recruits in underserved communities, we augment the apprenticeship program by providing tools, childcare and transportation.

We need to do a better job connecting the Workforce Innovation and Opportunity Act funding to underserved communities and those struggling in the construction industry. Improving the service of the Office of Workforce Development is on everyone's radar.

When we bring people from underserved communities into our apprenticeship program, we connect them to resources which will support them during the program. We spend a lot of money on each person in the apprenticeship program, and we want them to succeed. We do not want them to have to choose between taking care of their children and continuing the program.

We are required to check diversity. The membership in our trade union is comprised of 65 percent minorities. We report these statistics to the Bureau of Labor Statistics, U.S. Department of Labor.

CHAIR SPEARMAN:

We know systemic racism is a public health crisis, and we will only get past this if we admit that it exists. We must roll up our sleeves and find viable solutions to end this crisis. We must not just talk about it; we must be about it.

MR. STANLEY:

I know that racism exists, and my position on this is well known. There is no place for racism in our society. We must admit there is racism to get beyond it. Racism must end.

MR. C. THOMPSON:

Our tracking begins during the application process. We ask voluntary questions. We have a diversity and inclusion council for our company and our parent

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company. We also have a veteran's unit. We want to ensure all voices are heard. We want to know and address any problems in supporting our employees.

CHAIR SPEARMAN:

We will now close A.B. 227 and adjourn the hearing at 11:24 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
A.B. 227	B	1	William Stanley / Southern Nevada Building Trades Unions	Court Decision on Leased Employees
A.B. 227	C	2	Joshua Hicks / American Staffing Association	Opposition Question and Answer Information
A.B. 227	C	2	Margi Grein / State Contractors' Board	Opposition Question and Answer Information
A.B. 227	D	1	Randi Thompson / Nevada Federation of Independent Business	Opposition Testimony
A.B. 227	E	1	Victor Aldana / Eastridge Workforce Solutions	Opposition Letter
A.B. 227	F	1	Lindsay Knox / American Staffing Association	Opposition Testimony
A.B. 227	G	1	Mac Bybee / Associated Builders and Contractors, Nevada Chapter	State Contractor's Board License Application
A.B. 227	H	1	William Stanley / Southern Nevada Building Trades Unions	Uninsured Employers Claim Account Data