MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-third Session
May 4, 2005

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:01 a.m. on Wednesday, May 4, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Sandra J. Tiffany
Senator Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

GUEST LEGISLATORS PRESENT:

Assemblyman Joe Hardy, Assembly District No. 20

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Jeanine Wittenberg, Committee Secretary
Scott Young, Committee Policy Analyst
Jane Tetherton, Committee Secretary

OTHERS PRESENT:

Jason D. Geddes, Ph.D., Environmental Affairs Manager, Environmental Health and Safety, University of Nevada, Reno
Judy Stokey, Sierra Pacific Power Company; Nevada Power Company
Karen D. Dennison, Lake at Las Vegas Joint Venture
Renny Ashleman, Southern Nevada Home Builders Association
Mary C. Walker, City of Carson City; Douglas County; Lyon County
Joe L. Johnson, Toiyabe Chapter Sierra Club

Jim Morris
Robert C. Cooper, Senior Regulatory Analyst, Bureau of Consumer Protection, Office of the Attorney General
Scott Doyle, District Attorney, Douglas County
Gary Carsten
Mark Fiorentino, Focus Property Group
Richard L. Peel, Sheet Metal and Air Conditioning Contractors' National Association of Southern Nevada; Mechanical Contractors' Association of Nevada; National Electrical Contractors' Association, Southern Nevada Chapter
Barry Duncan, Southern Nevada Home Builders Association
Steve G. Holloway, Associated General Contractors, Las Vegas Chapter
Kim W. Gregory
Margi A. Grein, Executive Officer, State Contractors' Board
John Madole, Nevada Association of Mechanical Contractors
Margaret Cavin, Vice Chairman, State Contractors' Board
George Lyford, Director, Investigations, State Contractors' Board
Peter Krueger, Sheet Metal and Air Conditioning Contractors' National Association of Southern Nevada; Mechanical Contractors' Association of Nevada; National Electrical Contractors' Association, Southern Nevada Chapter

CHAIR TOWNSEND:
The discussions are now open on Assembly Bill 236.

ASSEMBLY BILL 236 (1st Reprint): Makes various changes relating to energy systems that use certain types of renewable energy. (BDR 58-248)

ASSEMBLYMAN JOE HARDY (Assembly District No. 20):
I have presented the Committee with proposed amendments relating to A.B. 236, as well as a detailed report titled: "Developing Small and Community-Scale Wind in Nevada" (Exhibit C). These should be considered all-inclusive. Even though one of the handouts came from Mr. Doyle, from the Office of the District Attorney in Douglas County, I am familiar with it. I struck out the word "minimum" in the second paragraph of that handout because the parcel size is up to the zoning individuals.

The most important thing about this bill is to read section 8 before reading section 7. Section 8 has to come after section 7, simply because of the way *Nevada Revised Statutes* (NRS) 278 is written. If you were to read section 7 by itself, it would sound like it precludes section 8.

CHAIR TOWNSEND:
It looks like the amendments are to protect local jurisdictions' ability to deal with zoning, et cetera. Will you agree to the changes that our Legal Division, Legislative Counsel Bureau, would do on your amendments?

ASSEMBLYMAN HARDY:
Yes.

CHAIR TOWNSEND:
To summarize, you have two amendments; make sure we read section 8 before reading section 7 and add the suggested amendment to this bill from the office of the district attorney in Douglas County.

JASON D. GEDDES, Ph.D. (Environmental Affairs Manager, Environmental Health and Safety, University of Nevada, Reno):
I am a member of the Nevada Wind Working Group. I believe Assemblyman Hardy provided you with a copy of our final proposal in Exhibit C. I will briefly go over the changes. What we have tried to do, is expand on the renewable energy relating to the solar and wind provisions. One of the issues we struggled with was whether or not to include one State standard for installing wind units. The decision was made to allow the local cities and counties to determine the local ordinances. Please reference page 20 of Exhibit C which refers to model legislation that has been adopted throughout the country. This allows other cities and counties out of state to also determine the local ordinances relating to the installation of wind units.

CHAIR TOWNSEND:
Mr. Geddes, could you address section 3, subsection 2 of this bill with regard to net metering and usage time.

MR. GEDDES:
In the 2003 Legislative Session, we raised the net metering cap from 10 kilowatts (kw) to 30 kw. Net metering is a meter that sits in conjunction with a standard meter and calculates the renewable energy you generate; then

you subtract that from what energy you receive from the power company. Based on the contact with the utility company, the company uses those renewable credits to meet the renewable portfolio standard (RPS). We are raising the 30 kw to 150 kw to help expand and make some of the small wind turbines possible. The wind working group determined that 150 kw would work for the agricultural settings. I have also provided the Committee with the technical specifications (Exhibit D).

With regard to usage of time, I would refer you to Ms. Stokey from the Nevada Power Company. Their company helped in the language on this bill with relation to recovering costs and time of use.

JUDY STOKEY (Nevada Power Company; Sierra Pacific Power Company):
Our companies have worked with the sponsors of the bill and thoroughly support what is in the bill. We wanted to make sure the residential customers would not have to subsidize or pay for any hard costs that are normally incurred by commercial developments. The solar demonstration project has been very successful and we anticipate net metering will also increase.

CHAIR TOWNSEND:
Would it be possible for the Nevada Wind Working Group to give the Committee a demonstration on the effectiveness, et cetera?

MS. STOKEY:
Certainly, that would be fine.

MR. GEDDES:
One important function of this bill is to facilitate the installation of these systems. Right now every one of the systems has to go through a special-use permit process. The basic problem is that the city and county building departments are not familiar with the process so it is difficult for them to implement the process of installations.

CHAIR TOWNSEND:
Do you need a special-use permit for a satellite dish?

MR. GEDDES:
I do not know.

CHAIR TOWNSEND:
I think the answer is no. Why would you need a special-use permit for installations? I think rationale needs to be considered here. I have seen people who have very large satellite dishes, but they are no longer using them because the dishes are not connected to cable.

MR. GEDDES:
The goal is to make sure that there is not an outright prohibition but that reasonable restrictions are put into place. I brought an example of a turbine today that I want to install on my house. It will generate 10-25 percent of the electrical needs for my home. The unit will extend six feet above my roof. I performed a decibel test on the system versus my air-conditioning system and it is actually quieter than the air-conditioner.

SENATOR HARDY:
How much does the turbine cost?

MR. GEDDES:
The turbine by itself is $600 and the tower is another $800. The inverter is extra; I do not have the exact price. The unit installed with the inverter would cost approximately $1800 to $2500.

KAREN DENNISON (Lake at Las Vegas Joint Venture):
The Lake at Las Vegas Joint Venture and Summerlin homeowners associations have worked with Assemblyman Joe Hardy in dealing with section 6 of this bill which deals with common-interest communities (CIC). We are in support of the bill as it is written. Of particular importance to us is the 2-acre minimum coupled with the fact that a unit's owner must obtain the written consent of their neighbors that are within 300 feet from the home where the unit will be installed.

SENATOR SCHNEIDER:
Under section 6, subsection 2, paragraph (b), subparagraph 4, it states, "... the unit encompass 2 acres or more ... ." If a cul-de-sac amounted to a total of two acres, would all the neighbors in the cul-de-sac be able to install one of these units?

MS. DENNISON:
My understanding of the definition of "unit" as used in NRS 116 includes a lot or any type of unit that is capable of single ownership. The individual lot would have to be two acres.

SENATOR SCHNEIDER:
If a homeowners association decided that the homeowner could install a wind system, the homeowner would go forward with the installation, is that correct?

MS. DENNISON:
The existing law in this bill would require that if an individual put in a wind system, they would have to comply with the procedures set forth in the homeowners' guidelines with respect to design. It would have to be designed to the maximum extent practicable and be compatible with the style of the CIC.

SENATOR SCHNEIDER:
But there would still have to be two acres in a CIC, is that correct?

MS. DENNISON:
That is correct.

SENATOR SCHNEIDER:
Could the language in this bill include a situation where the homeowners association could vote to approve the installation of a wind energy system?

MS. DENNISON:
In our negotiations on this bill, we have agreed to just leave that to the surrounding owners, those who would be most affected within 300 feet of each boundary line of a lot. That would take in quite a wide swath of surrounding owners who would have to give their written consent before a wind system could be installed.

CHAIR TOWNSEND:
Senator Schneider's questions are valid ones, since most of the lots in homeowners associations are smaller than two acres.

RENNY ASHLEMAN (Southern Nevada Home Builders Association):
What the two acres modifies is part of the bill, under section 6, subsection 2, paragraph (a) which states, "An association may not: Unreasonably, restrict,

prohibit or otherwise impede ... .” I do not see where this modification would prohibit an association from changing their Covenants, Conditions and Restrictions (CC&Rs) and bylaws to allow that to go forward.

MS. DENNISON:
Then I misunderstood the question. No, if the homeowners got together and amended the CC&Rs, then I would agree with Mr. Ashleman.

SENATOR CARLTON:
If a homeowner is not under the CC&Rs of a homeowners association, they would not have to be on a two-acre lot, is that correct?

MR. GEDDES:
It depends on local city and county zoning ordinances.

MARY C. WALKER (City of Carson City; Douglas County; Lyon County):
We do support A.B. 236 with the amendment from the Douglas County District Attorney’s office. For the record:

> There were several citizens in Douglas County who are concerned about this bill, because there is an individual with an 80-foot tower, ready to be erected, as soon as this bill is passed. Some of our citizens were very concerned so they sent a petition around, collecting signatures. I will provide the petition (Exhibit E) to the Committee. I believe, based on the amendment from the District Attorney’s office, that everybody is agreeable to the bill.

JOE L. JOHNSON (Toiyabe Chapter Sierra Club):
I would like to go on record as being in support of A.B. 236 and address the issue of net metering and the new splitting of the billing and how the credits are credited to the net-metered customers. There are concerns that this measure may not accomplish exactly what we want and we will come back next Legislative Session if need be.

CHAIR TOWNSEND:
That is one of the reasons why we want Ms. Stokey or the appropriate individuals to give the Committee a demonstration to make sure we are going in the right direction on the intent of this bill.

MR. JOHNSON:
We have been working with the sponsors on this bill.

JIM MORRIS:
I have been working with the Nevada Wind Working Group for approximately one year. The group, along with a task force, came up with a proposed demonstration program which would be in place for approximately five years and encompasses schools, residential units, small businesses and community buildings. It does cost more money to install renewable energy systems. For some reason, the demonstration program was left out of the legislation in the bill-drafting stage, and I have been trying to have this issue reviewed. Nevada has zero measurable wind generation. I have provided the Committee with my proposal of changes to A.B. 236 (Exhibit F). Most of the other states that have developed wind-energy projects have incentive programs for wind developers.

CHAIR TOWNSEND:
Your handout reads: "Yearly program forecast would be approximated at 150 homes, 50 small businesses, 100 school sites and 50 public buildings, with an annual allocation of $350,000 total five-year cost would equal $1,750,000." "... Energy Task Force ... re-allocate the balance," "... yearly allocations would be $200,000 to residential, et cetera." Where do you think this money will come from?

MR. MORRIS
This would be the same as the solar demonstration program. It would be approximately a quarter or a third of the funding that was used for the solar program. Right now the wind community has to compete with solar, because they already have an incentive program.

CHAIR TOWNSEND:
Let me ask again, where will the funding come from?

MR. MORRIS:
It will come from the ratepayers.

CHAIR TOWNSEND:
Have the consumer advocates agreed with you on this issue?

MR. MORRIS:
A Bureau of Consumer Protection (BCP) representative is here today and I have discussed the issue with the Chief Deputy Attorney General, Adriana Escobar-Chanos. We believe they will assist in this matter.

ROBERT C. COOPER (Senior Regulatory Analyst, Bureau of Consumer Protection, Office of the Attorney General):
We just received a copy of Mr. Morris' proposal this morning.

CHAIR TOWNSEND:
Are you not familiar with his handout yet?

MR. COOPER:
That is correct.

CHAIR TOWNSEND:
Since the BCP represents the ratepayers, I would suggest that we give them some time to review the issues with the Public Utilities Commission of Nevada (PUCN) and then meet with the Committee. Is that acceptable to the BCP, Mr. Cooper?

MR. COOPER:
Yes.

CHAIR TOWNSEND:
Is that acceptable to you, Mr. Morris?

MR. MORRIS:
Yes. I think it is important that the Committee realize how successful the solar program was, and we would like to see the same results with the wind-energy program.

CHAIR TOWNSEND:
What I do not understand is that the turbine is a relatively small unit and then there was testimony about the tower being 80 feet high. Is that to capture more wind? Is the turbine the same size as what you brought in today?

MR. MORRIS:
It could be. The wind unit needs altitude to get unobstructed airflow. A turbine like that would work better where there is a lot of airflow. The particular turbine that we will be manufacturing will be a low-wind-speed turbine.

CHAIR TOWNSEND:
I believe the bill was drafted along with the amendment in Exhibit C to allow local jurisdictions to make these determinations. An 80-foot tower is not included in the bill, is it?

MR. MORRIS:
It could be, if they agree to it.

CHAIR TOWNSEND:
Yes, but are the individuals who signed the petition against the installation of a tower? Additionally, you are requesting funding, so these are separate issues, correct?

Mr. Morris:
Yes.

CHAIR TOWNSEND:
Have you spoken to Mr. Doyle about the potential of local government in Douglas County allowing a tower for these purposes?

MR. MORRIS:
I spoke with the Douglas County Building Department and they allow 75-foot-high communication antennas.

CHAIR TOWNSEND:
Mr. Doyle, how many 75-foot-high communication towers does Douglas County have, and what are they used for?

SCOTT DOYLE (District Attorney, Douglas County):
I believe there is one at the Douglas County public-safety building and in two or three other locations in Carson Valley.

MR. MORRIS:
They actually allow higher antennas in commercial-zoned properties that are as high as 120 feet. Residential properties allow 75-foot towers.

CHAIR TOWNSEND:
Yes, but those are commercial properties you are talking about.

GARY CARSTEN:
I am a Carson Valley resident and a neighbor of Mr. Morris who is the one who wants to put up an 80-foot tower. The Committee should have my handout (Exhibit G). I was going to speak in opposition to A.B. 236, but after discussions with Assemblyman Hardy and Douglas County representatives I am agreeable to the amendment from the Douglas County District Attorneys' Office. I will speak in favor of the bill at this point. However, I still have concerns about the height of the tower and the size of the blades that could be used on the unit. I think property values will be affected by the installation of these units.

CHAIR TOWNSEND:
Mr. Doyle, if an individual wants to install units such as these, is there an ordinance in place to handle these issues?

MR. DOYLE:
We would have to create an ordinance. The way amendments are structured, it would be part of our master plan review and annual overhaul of our zoning codes. A master plan review has just begun in Douglas County. The review is a noticed, public-hearing process.

CHAIR TOWNSEND:
The hearing is now closed on A.B. 236. The Committee will now hear discussions on A.B. 193.

ASSEMBLY BILL 193 (1st Reprint): Revises provisions relating to contractors. (BDR 54-920)

MARK H. FIORENTINO (Focus Property Group):
Mr. Chairman, I know Assemblywoman Marilyn Kirkpatrick wanted to make a brief introduction to the Committee, but she is in another committee this morning.

CHAIR TOWNSEND:
We can accommodate you by discussing A.B. 501 before this bill, would that help? Otherwise, we will put Assemblywoman Kirkpatrick on record if she is able to attend the hearing.

ASSEMBLY BILL 501 (1st Reprint): Revises certain provisions governing contractors. (BDR 54-636)

MR. FIORENTINO
No, that is fine. The purpose of the A.B. 193 is to clarify what we think is an ambiguity in existing law, and it encompasses a simple concept. The concept is, if you are an owner of real property, you the owner do not need to obtain a contractor's license to build certain infrastructures on that property. This can be done if you meet a very narrow set of parameters. Those parameters include: hiring of a general contractor to do all construction, the general contractor must be a prime contractor, and the owner cannot construct or enter into contracts for the sale of residential units.

The Focus Property Group is interested in this bill, because they are developing master-planned communities; however, they are not in the business of building. They do not enter into the sale of houses to the general public. What they do is put in the infrastructure such as roads, pipes, sidewalks, et cetera. The group will hire a general contractor to do the work; so in those instances, the owner should not need a contractor's license. We have worked with several different agencies and companies on this bill. I would like to make a specific reference to Mr. Robinson on behalf of Associated Builders and Contractors, who wanted to speak in favor of this bill and he authorized me to use his name. He is unfortunately in another committee working on another bill. I would like to discuss the proposed amendment that I have provided the Committee (Exhibit H).

SENATOR HARDY:
Is that Richard Peel's amendment?

MR. FIORENTINO:
It is mostly Mr. Peel's amendment. We had three primary objectives with this amendment. The first is to make sure that we did not do anything to affect contractors' and subcontractors' right to stop work if they did not get paid for a project. That is the first proposed amendment listed in section 1 of Exhibit H

which includes a legislative declaration addressing that point. The second objective was to make sure that the language and terms used in the bill be consistent with not only existing law but with S.B. 300 which is now pending in the Assembly. Those changes are in section 4 and section 7. They are the same definitions that were used in S.B. 300.

SENATE BILL 300 (1st Reprint): Revises provisions governing regulation of contractors. (BDR 54-1061)

CHAIR TOWNSEND:
Did you or someone else submit this amendment to Mr. Powers yesterday?

MR. FIORENTINO:
The handout we distributed to the Committee this morning contains one minor change. We were attempting to address a concern raised by the State Contractors' Board between the time I originally submitted it to your staff and this morning. The final objective of this proposed amendment is at the bottom of the first page. The language that begins with, "A contractor does not include ... ." Subsection 1 in section 6 is different than what we submitted to Mr. Powers yesterday afternoon. And it reads: "Does not construct or enter into contracts for the sale of residential units; ... ." Again to clarify, we are not affecting the State Contractors' Boards' right to defend the public and to defend the consumer. The bill would not provide any protection to an owner who is building residential units or entering into contract for sale of those units, even if someone else ultimately builds them. We ask that the Committee support the bill with these amendments.

CHAIR TOWNSEND:
Mr. Peel, is this amendment your drafting provisions?

RICHARD L. PEEL (Sheet Metal and Air Conditioning Contractors' National Association of Southern Nevada; Mechanical Contractors' Association of Nevada; National Electrical Contractors' Association, Southern Nevada Chapter):
Yes. There is one modification. It involves that the word "building" in section 6, subsection 2, where it reads: "general building contractor," the word "building" should be omitted or deleted.

I attended a previous hearing on S.B. 300, and one of the main things the bill did was modify the right-to-stop-work statute, which is codified as part of NRS 624. It helps clarify, make consistent and strengthen to some degree, contractors' and subcontractors' right to stop work when they are not paid for a project. When A.B. 193 was initially drafted, it would have been argued that the right-to-stop-work statute did not apply to owners of planned-unit developments, which could include an owner of any commercial, industrial or private development. At this point, we are neutral on this bill. It is our concern and our hope A.B. 193 will not be construed to diminish, reduce or get rid of any of the rights, remedies, obligations or duties set forth in the right-to-stop-work statute. My understanding from talking with Mr. Fiorentino is that this is not the case, and they agree that would be the intent of the amendment as is set forth.

SENATOR CARLTON:
Has Assemblywoman Kirkpatrick seen this amendment and understand what is being done here?

MR. FIORENTINO:
Yes, she has seen it and she supports the amendments.

BARRY DUNCAN (Southern Nevada Home Builders Association):
The Southern Nevada Home Builders Association would like to go on record as supporting A.B. 193.

STEVE HOLLOWAY (Associated General Contractors, Las Vegas Chapter):
The Associated General Contractors supports the amendment and support A.B. 193 as amended.

KIM W. GREGORY:
I have been a member of the State Contractors' Board for the past 12 years and of those, 5 years as the past chairman. I am somewhat confused as to the changes on this bill. A developer was never required to hold a contractor's license if they did not act in the capacity of a contractor. Developers have always had the right to hire a licensed contractor to perform any work in developing a project without being the contractor unless they acted in the capacity of a contractor. An individual has always had the right to hire a general contractor. I do not understand the point of the bill.

MR. FIORENTINO:
I believe this bill does speak to the issues. What brought this matter to our attention is a situation with the latest two projects that will be developed by the Focus Property Group. One project is in Henderson, currently known as South Edge, and the other project is in northwest Las Vegas. The entity that will develop the infrastructure is broader than the entity that includes just the Focus Property Group. In the Henderson project, for example, we will form a new entity, called South Edge Limited Liability Company (LLC), to develop infrastructure, roads, streets, et cetera. In that particular instance, the entity is made up of both Focus and home-builder partners who bought the land from the Bureau of Land Management together as a partnership. One of the partnership's legal counsel in the case stated that South Edge LLC., who is the owner, needs a contractor's license as they understand the statute. So, reasonable people may differ on the intent, which is why we are trying to clarify the issue.

SENATOR HARDY:
So you are not trying to do anything beyond Mr. Gregory's interpretation of the law; you are just trying to clarify it for those who may not interpret it the way that Mr. Gregory just interpreted it. Is that correct?

MR. FIORENTINO:
That is correct.

MARGI A. GREIN (Executive Officer, State Contractors' Board):
We do understand the Focus Property Group's intent but believe it does create a loophole. Based on the definition of a "planned-unit development" which is one or more planned-unit residential developments, one or more quasi-public commercial or industrial areas or both. Under NRS 278A.240 it reads: "A planned unit residential development may consist of attached or detached single-family units, town houses, cluster units, condominiums, garden apartments or any combination thereof." Also under NRS 278A.250 it states, "The minimum site area is 5 acres, ..." We believe that creates something totally different than what the Focus Property Group is proposing and we need the ability to regulate the industry. We believe the law is already clear as it is written. I have provided the Committee a handout regarding this bill (Exhibit I).

SENATOR HECK:
What is the loophole that you believe is being created?

MS. GREIN:
We believe that it is possible, that it would be up to anyone whether they are licensed or not licensed, to call themselves the owner of a planned-unit development. For example, an individual could take five acres, split the acreage, hire multiple contactors and then the homeowner could contract with that developer or so-called exempt owner. They would have no recourse through the State Contractors' Board, unless they contracted with a licensed contractor.

SENATOR HARDY:
How is the loophole you are speaking of bigger than the exempt-owner loophole? Can they not do the same thing by claiming to be an exempt owner?

MS. GREIN:
I believe it does create a bigger loophole, Senator.

SENATOR HARDY:
How?

MS. GREIN:
If you look at the definition of a contractor, there is an exemption for an owner-builder who builds their own residence, but there is not an exemption for an owner of a planned-unit development. Although we all know that if they hire a licensed general contractor, they do not need the exemption or you do not need to change the definition of a contractor.

SENATOR HARDY:
The exempt-owner statute has not only been used by an individual homeowner but it has been used in building major hotels.

MR. GREGORY:
I think what Ms. Grein is trying to say is that if a developer proceeded to act in the capacity of a general contractor; for example, hired numerous other licensed contractors with no general contractor at the helm, that would be an issue. At some point in time, there is a general contractor coordinating the project.

SENATOR HECK:
I understand the loophole issue, but as I read the current wording, they have to enter into a contract with a general contractor to be exempt. It seems like the loophole is closed.

JOHN MADOLE (Nevada Association of Mechanical Contractors):
In response to your question, Senator Heck, you could have a large development and they could hire a general contractor to do a very small portion of the job, such as the construction of curbs and gutters. At that point, they have adhered to the law. Now they can contract with several contractors directly and they do not have to pay them. I think this is a bad piece of Legislation and should not be passed.

MR. PEEL:
My testimony has been to try to clarify the record. I want to make certain that we do not use the wrong term for what we are discussing. A general contractor is either an "A" or "B" license holder under the State Contractors' Board's rules and regulations. For the exemption to exist for a commercial owner to not have to be licensed, they have to contract with a prime contractor. A prime contractor is the person who is going to enter into subcontracts for that project. I want to make certain that the record is clear that it is the prime contractor who contracts with the owner. Then the exemption would be applicable, and that prime contractor would then subcontract with applicable subcontractors and other trades for the improvement to a project.

CHAIR TOWNSEND:
I thought you were also addressing whether someone was paid or not?

MR. PEEL:
That is correct. Our concern is making certain that contractors and subcontractors get paid for work, materials and equipment they furnish for a project. I believe with the amendment that the main concerns will be satisfied. As I stated before, I am not in support of or against A.B. 193.

MS. GREIN:
In the 2003 Legislative Session, there was extensive testimony from individuals who incurred great losses because of the acts of certain persons. That case has now gone to the United States Supreme Court. We have reciprocity with the state of California on disciplinary actions and California has stated that they are

not the ones that contracted with the homeowners; it was our development company, and they are not licensed. That is one of the things we need to make sure does not happen again. We ended up having to settle the case, because we could not prove the case.

SENATOR HARDY:
I think we conceded that point. How do we fix the language so that does not occur?

MR. GREGORY:
The way the statute is currently written, if you contract with an unlicensed contractor, the contract is void by Nevada law. If a judge was to interpret that a contract existed between two individuals and one of them was unlicensed, essentially that contract would be void. The important point to remember is that there should never be an unlicensed contractor involved in a working project.

SENATOR HARDY:
In section 6, subsection 5 of the bill, it states, "A contractor does not include an owner of a planned-unit development who enters into a contract with a general contractor to perform any service or conduct any activity described in subsection 2 or 4." Does there need to be clarification on "any activity" in subsection 2 or 4? I think the issues are clear in terms of what you are saying.

MR. GREGORY:
Again, if no one has had a problem with the current law, why are we changing it?

SENATOR HARDY:
I think the point is that we are not changing it, we are trying to clarify it, because some individuals do have questions as to whether it is applicable or not.

MS. GREIN:
Senator Hardy, to address your comment on section 6, subsection 5, that section is deleted according to the amendment in Exhibit H and replaced with a new section 6.

MR. PEEL:
Senator Hardy, the version you were reading was the current bill, the new language is in the handout that Mr. Fiorentino gave to the Committee.

SENATOR HARDY:
I think the amendment further clarifies the issue under section 6, subsections 1 and 2 which read as follows: "Does not construct or enter into contracts for the sale of residential units; and enters into an agreement with a general contractor ... ".

MS. GREIN:
Mr. Chairman, if it is the Committee's desire to pass something with this bill, I think it could be summed up by saying, "The licensure requirements of this chapter do not apply to an owner of a planned-unit development who hires a Nevada-licensed general contractor to perform the services described in subsection 2 or 4 for all construction relating to the planned-unit development." That was language suggested by the State Contractors' Board's legal counsel, if the Committee decided to pass something. The Board, however, is opposed to A.B. 193.

CHAIR TOWNSEND:
Has Mr. Fiorentino seen your handout?

MS. GREIN:
No.

MARGARET CAVIN (Vice Chairman, State Contractors' Board):
Mr. Chairman, I would like to go on the record with regard to A.B. 193. I am wearing two hats, and I am here today on behalf of the Nevada Association of Mechanical Contractors. The Association is opposed to A.B. 193 and its amendment. I am a current member of the Board and the Board voted unanimously in opposition to this bill. I think the confusion is without merit. I do not think the Board has ever wavered on their opinion on the difference between a developer and a contractor. If in fact there is confusion on Mr. Fiorentino's part, I think the appropriate thing to do is come forward to the Board and ask for an advisory opinion. If the Board determines he will need a license, we can work with him to make those accommodations.

CHAIR TOWNSEND:
The hearing is now closed on A.B. 193. Discussions are now open on A.B. 501.

GEORGE LYFORD (Director, Investigations, State Contractors' Board):
I have provided a handout to the Committee (Exhibit J) which supports our reasoning behind A.B. 501. This is basically a housekeeping bill to help address some issues that have come up the last couple of years. One of the issues deals with advertising by some contractors, which in my opinion has been deceptive and deceiving. The new wording of the State Contractors' Board is similar to wording in the trade practices. It gives the Board the opportunity to take action based on one or two instances. The Board could always refer the cases to the Office of the Attorney General, but their Office would need multiple violators to successfully prosecute that type of case. What we have seen is mass mailing to homeowners in which they receive these communications and the homeowner believes it is from the contractor with whom they have been working, which is misleading. Some firms have used telemarketing agencies' scripts which I provided to the Committee. Sometimes, these scripts are also misleading.

CHAIR TOWNSEND:
What part of the bill are you referring to?

MR. LYFORD:
I am referring to section 2 of the bill which includes the issues involving the advertising by contractors. Section 3 extends the statute of limitations for two years to a contractor without a license violation. There is another section in the bill that will give the Board a little more latitude when requesting financial statements from contractors.

CHAIR TOWNSEND:
With regard to section 3, I do not understand why the Board wants to go back two years.

MR. LYFORD:
The primary reason for that is when the Board receives a complaint against an unlicensed contractor, many times the Board does not get the complaint until three or four months later. It sometimes takes a couple of months to identify the contractor. The Board has to file the cases with the district attorney's office and those cases have approximately an eight-week lead time. In the past year, the Board has come across at least 25 instances where the completion of the

whole process was outside the statute of limitations because of various reasons. The increase in the time limit will give more time to achieve restitution from unlicensed contractors through the court system.

CHAIR TOWNSEND:
It looks like the language is being repeated in the bill.

MR. LYFORD:
The Board is using the same language throughout the statutes so it is standard.

CHAIR TOWNSEND:
In section 9, subsection 10, it reads: "An administrative fine ... ."

MR. LYFORD:
What the Board has found with regard to administrative fines is that if the Board levies an administrative fine against a contractor, they will generally leave the State of Nevada and try to get licensed in another state or just ignore the fine indefinitely. When a contractor tries to get licensed in another state where there is reciprocity with Nevada, or they just try to get their license back in Nevada, the Board still has the initial fine on record. The Board is asking that there be a penalty for the time period in which the fine was outstanding.

CHAIR TOWNSEND:
Why did the Board pick an interest rate of 10 percent?

MS. GREIN:
I reviewed what other states were charging for their interest and I felt 10 percent is a number the Board would not have to continually adjust.

CHAIR TOWNSEND:
If you set a specific amount and the financial market changes, it may not be to the Boards' advantage. A better solution may be to set up an interest amount as a prime-plus number.

MS. GREIN:
I understand.

SENATOR HECK:
On page 9, subsection 3, on line 8, it shows a substantial jump in administrative fine from $20,000 to $50,000.

MS. GREIN:
The purpose for that was that the Board has had several large projects in Nevada where the contactor has come from out of state and started a project without a contractor's license. In those cases, the Board wants to have leverage so that it will be a deterrent for contractors not to come to Nevada and not follow the law.

SENATOR HECK:
I see that it reads in that same subsection, "... not more than ... ". Is there objective criteria that the Board uses to determine what the amount should be or is the amount subjective, based on what the Board determines at the time?

MS. GREIN:
Initially, the Board used the amount of $1,000 or up to 50 percent of the project. There were objections from the contractors' industry on that issue and when the bill was first drafted it stated $50,000 or 50 percent whichever is greater. The Board did not want the language "whichever is greater" because a fine would be quite high if it turned out to be a large project.

SENATOR HECK:
Thank you, but I do not believe that you answered my question. In section 9, subsection 3, line 8 it states, "... in an amount that is not more than $50,000." How does the Board determine the amount if it is not more than $50,000? Is there objective criteria that the Board goes by?

MS. GREIN:
It could be a repeat offender; it could be the size of a project. It depends on the circumstances.

CHAIR TOWNSEND:
In section 10, subsection 2, the language has been added as follows: "... or a conviction in this State or any other jurisdiction ... ."

MR. LYFORD:
That language was added because the Board does deal with some contractors who have criminal violations in other states. The Board feels that this wording clarifies the reason an action will be taken and the Board wanted the ability to take action against a contractor in Nevada as well.

CHAIR TOWNSEND:
Please explain the changes in section 13.

MR. LYFORD:
Section 13 goes back to the issue of false and deceptive advertising. The language makes it a violation so the Board can take specific actions.

CHAIR TOWNSEND:
In your handout, Exhibit J, is there an example of the type of advertising you are talking about?

MR. LYFORD:
Yes.

CHAIR TOWNSEND:
Please explain the service request on page 2 of your handout.

MR. LYFORD:
This is an example of a mailing to a homeowner. When the homeowner asked our Board what service records the advertisers were talking about, the Board reviewed the telemarketing scripts and noticed the homeowner was being told by the telemarketers that it was the homeowner's service records from prior services the homeowner had with a particular company. When the homeowner called, the homeowner would be told that the service department had changed hands and the company doing the mailing had been given the homeowner's records for future service contacts. Some of the service companies even use a state seal.

CHAIR TOWNSEND:
Did you turn these over to the Attorney Generals' Office for review?

MR. LYFORD:
The Board did turn those cases over to the Consumer Affairs Division at the Attorney Generals' Office. Basically, the Board was told they need several violators to review a complaint.

PETER KRUEGER (Sheet Metal and Air Conditioning Contractors' National Association of Southern Nevada; Mechanical Contractors' Association of Nevada; National Electrical Contractors' Association, Southern Nevada Chapter):
In regard to the fines in section 9 and section 11, we are concerned about the fine amounts and we would like to see the fine levels decreased. We feel that the 10-percent interest rate is usurious and that using a different calculation factor, such as the consumer price index (CPI) or other type of factor, would be more appropriate.

CHAIR TOWNSEND:
I agree with you; standards need to be the same.

MR. DUNCAN:
The Southern Nevada Home Builders Association has worked closely with the State Contractors' Board on this bill and my comments in no way reflect any opposition to the bill. I would like to clarify a point on page 3, starting with line 24: "A financial statement ... Prepared by a certified public accountant ... ." Then on page 4 it states, "... independent certified public accountant ... ." I did not know what that meant or why one section has the word "independent" in it and the other section does not.

CHAIR TOWNSEND:
That is interesting because it is old law.

MS. GREIN:
The Board made those changes in the Assembly at the request of the Southern Nevada Home Builders Association and Mr. Wadhams. The language the Board had was not accepted; so the Board amended the language.

MR. DUNCAN:
I understand that; I did attend that hearing. Does the new language and the old language confuse the issue?

CHAIR TOWNSEND:
Is your question dealing with the term “independent”?

MR. DUNCAN:
Yes.

MS. GREIN:
The word “independent” would mean it is not an in-house accountant.

MR. DUNCAN:
I understand that term, but I am asking whether the terms “certified” or “independent” have the same meaning?

KEVIN POWERS:
> Mr. Chairman, the issue is simply, with regard to section 4 in the existing language, the use of certified public accountant, is whether we should just insert the word independent to be consistent with the remaining sections of the bill which use independent certified public accountant. This may have been a drafting oversight when it was originally enacted or there may have been an intent to have it different, but I suspect it was probably a drafting oversight.

MR. DUNCAN:
Many of our companies are publicly traded, they have their own in-house certified public accountants (CPAs), so I am wondering why they would have to use an independent firm, if they are publicly traded and they have an in-house firm?

CHAIR TOWNSEND:
This is current language, and now you are bringing this to light? It has nothing to do with this bill.

MR. DUNCAN:
I am just confused that it was in existing law, but now it has been changed to “certified public accountant” in the Assembly, not realizing that the word “independent” was also being used in similar context.

CHAIR TOWNSEND:
Unless I am reading this incorrectly, nothing has changed. Before the Session began, line 25 on page 3 of the bill stated: "Prepared by a certified public accountant," and on page 4, lines 38 and 39 it stated: "A financial statement that is prepared by an independent certified public accountant." It has nothing to do with the amendments. "Independent" means cannot be an in-house accountant, even if they are a certified public accountant.

MR. DUNCAN:
Thank you for clarifying that.

CHAIR TOWNSEND:
I would ask that the subcommittee review two subsections in this bill. Under section 9, subsection 3 which reads: "... the Board may impose for each violation an administrative fine in an amount that is not more than $50,000; and find out if there is alternative criteria that could be used. Then, review subsection 10 regarding the interest rate. I would ask that the Committee meet with the individuals involved with this bill to try to work out some of the issues.

The hearing is closed on A.B. 501. Committee, let us go back to the discussions on A.B. 236. Assemblyman Hardy came forward with amendments, two proposed by him and one proposed by the district attorney's office in Douglas County. Are there any further questions?

SENATOR HARDY MOVED TO AMEND AND DO PASS A.B. 236.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
The hearing is opened again on A.B. 193. Mr. Fiorentino, did Assemblywoman Kirkpatrick want to be on the record for this bill?

MR. FIORENTINO:
I do not think it is necessary. I did speak to her regarding the discussions this morning.

CHAIR TOWNSEND:
Are there any other questions?

SENATOR HARDY:
I think the discussions today have been very clear on the intent of this bill.

SENATOR HARDY MOVED TO AMEND AND DO PASS A.B. 193.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
The hearing is closed on A.B. 193. The hearing is open again on A.B. 501. Mr. Lyford, did you have any suggestions on solving the two concerns that were addressed by the Committee?

MR. LYFORD:
One way to possibly address the issue of fines is to set, by regulation, the fine criteria. We are reviewing the issue of the interest rate and looking into the wording that can be used for prime plus a number.

MR. POWERS:
Just for guidance purposes, NRS 99.040 establishes a rate of interest when it is not agreed to by parties by contract. That might be a starting place for the State Contractors' Board to look for language. Right now, that rate of interest, when it is not established by the parties by contract, is the prime rate plus 2 percent.

CHAIR TOWNSEND:
Senator Heck, would you be at all comfortable with having the Legal Division draft regulations for purposes of setting standards for fines?

SENATOR HECK:
I would be comfortable with the cap of $50,000 and having the standards put into regulation.

SENATOR HARDY:
Mr. Chairman, I just want to make sure Mr. Lyford is comfortable with that, or do they need additional time to review it?

MR. LYFORD:
I think we can work with the wording on it. I have not read the NRS 99.040, but we are willing to do what it takes to address the issues.

SENATOR HARDY:
Do you want a chance to review the language?

MR. LYFORD:
Yes, I would like the opportunity to review it.

CHAIR TOWNSEND:
That is fine. The meeting of the Senate Committee on Commerce and Labor is now adjourned at 9:55 a.m.

RESPECTFULLY SUBMITTED:

_____
Jane Tetherton,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chair

DATE:_____