

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

**Seventy-fifth Session
March 2, 2009**

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 1:36 p.m. on Monday, March 2, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Maggie Carlton, Chair
Senator Michael A. Schneider, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Dean A. Rhoads
Senator Mark E. Amodei

COMMITTEE MEMBERS ABSENT:

Senator Warren B. Hardy II (Excused)

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Carol Allen, Committee Secretary

OTHERS PRESENT:

Jo Moore, Chair, Fernley Long Term Recovery Team
Pastor Paul Theiss, Secretary, Fernley Long Term Recovery Team
Keith L. Lee, Legislative Counsel, Nevada State Contractors' Board
Gary Milliken, Associated General Contractors, Las Vegas Chapter
Paul McKenzie, Building and Construction Trades Council of Northern Nevada
James Sala, Senior Representative, Political Director, Southwest Regional Council of Carpenters

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Marlene Lockard, Subcontractors' Legislative Coalition
Sean Gamble, Builders Association of Western Nevada
Mark Turner, Silver Oak Homes Inc.
Peter Krueger, Subcontractors' Legislative Coalition

Chair Carlton opened the hearing on Senate Bill (S.B.) 127.

SENATE BILL 127: Exempts qualified persons or groups providing services as a project manager or construction manager to a long-term recovery group from regulation as a contractor. (BDR 54-596)

Senator Amodei introduced his bill, S.B. 127, on behalf of people in Lyon County, specifically the City of Fernley, who experienced a break in the Bureau of Reclamation or Truckee-Carson Irrigation District (TCID) levee that produced flooding and resulted in some disaster declarations. The community rallied to access state, federal and local resources and deal with the lessons they learned along the way. He said S.B. 127 seeks to add an additional exemption to the exclusions from *Nevada Revised Statutes* (NRS) chapter 624 which deals with contractors. He said the new subsection 10 of this bill would add limited potential reach to a geographical area. Senator Amodei urged the State Contractors' Board to be proactive in dealing with area-specific and time-specific disasters and the definitions of who could deal with those. He pointed out how one of Nevada's newest incorporated cities dealt with an issue that befell them without being collocated with large amounts of municipal, state or federal assets to deal with it.

Jo Moore, Chair, Fernley Long Term Recovery Team, affirmed being in favor of the bill, stated that in the aftermath of the disastrous 2008 Fernley flood, the need for long-term recovery was recognized and the Fernley Long Term Recovery Team was formed. She said it was comprised of local volunteers and supported by Federal Emergency Management Agency (FEMA), local churches and national and regional volunteer recovery agencies. They undertook the task of assessing and serving the unmet needs of their flooded neighbors. Focusing on those least able to recover without assistance; the elderly, the disabled, low-income families and single parents, they began the rebuilding process. Ms. Moore said they realized early on they would need a competent, volunteer project manager to oversee and coordinate construction projects, but the Fernley Building Department informed her they could not utilize any individual who was not a licensed general contractor in Nevada.

Since they were volunteers, the Building Department modified their requirements saying they could use an unlicensed construction manager, provided he did not receive any compensation. After clarification from the Building Department and the State Contractors' Board, they understood they could not provide even a stipend or reimbursement of personal expenses such as food or fuel, or the Fernley Long Term Recovery Team could be regarded as a general contractor operating without a license in a disaster area and subject to prosecution under NRS 624. She calculated the job of construction management required 30 to 60 hours per week for months.

Ms. Moore then telephoned the Contractors' Board to request an exemption that would accommodate the payment of stipends or reimbursements of personal expenses for a disaster-recovery construction manager but was told an exemption was not possible and that the Contractors' Board would support the Building Department's interpretation of the applicable NRS. The negative impact extended the recovery time and created unnecessary suffering for the flooded residents of Fernley. She said she felt the key word was interpretation. The Building Department could have supplied the opposite opinion, exempting the Fernley Long Term Recovery Team, with the support of the Contractors' Board.

Ms. Moore advised that current Nevada law allows one community to be exempt while a neighboring community operating in the same disaster, could be in violation and risk prosecution for paying a small stipend to a construction manager during a recovery effort. The opinion of the local building official is the only dividing factor in this scenario. As a result, those individuals likely to have unmet needs may or may not have services.

She said the Contractors' Board relies on local officials, who may be influenced by politics or other outside influences, to determine who is or is not acting as a contractor. She added providing the clear exemption proposed in this legislation would resolve the problem.

Ms. Moore further stated that she was able to provide written answers to five questions from Dan Hammack, Contractors' Board, regarding qualifications, contracts, management of subcontractors, unlicensed contractors and protection for the public for anyone they would hire. Without the ability to pay a stipend, no Nevada licensed general contractor was able to volunteer his expertise.

Ms. Moore submitted written testimony ([Exhibit C](#), original is on file in the Research Library, [Exhibit D](#) and [Exhibit E](#)) in support of S.B. 127, wrapping up her testimony by declaring the regulation of unlicensed contractors, especially in a disaster area is serious, necessary, and supported by every disaster recovery agency; however, a volunteer long-term disaster recovery team is not a contractor. They are temporary organizations; they result from a direct post-disaster need and cease to exist when they either run out of funds or have closed all of their client files.

Senator Schneider asked how they handled it in the small towns of Louisiana and Mississippi. Ms. Moore answered the construction manager was not required to be a licensed general contractor with the exception of the federal Department of Housing and Urban Development (HUD) sponsored housing projects. They were volunteer groups getting federal aid and federal grants for their work. Senator Schneider replied he knew there were thousands of volunteers going down South to help and wondered who organized them. Ms. Moore said what Fernley lacked was one local continuous construction manager. She and other volunteers did the work themselves. The City prevented any of its employees from helping, calling it a conflict of interest. She observed that all construction is subject to the same rules and if poorly constructed, would not be passed by the city inspectors.

Senator Rhoads asked if the City of Wells faced the same problem when they had their earthquake. Ms. Moore said Wells did not get a Federal Disaster Exemption and was not eligible for the same recovery teams that went to Fernley. They created their own volunteer team.

Chair Carlton asked why they did not name the construction manager something else so the rules would not apply. Ms. Moore said they tried several tactics and were watched closely. They were afraid of running around the law. Chair Carlton concurred they did not want to lessen the expertise of the construction manager and just have anybody do it; nor did they want someone who was volunteering have to dip into their own pocket. Ms. Moore said they could not do that because of the hours required. Chair Carlton recalled the good advice to always hire a licensed contractor. Ms. Moore referred to the Project Homecoming as a job description for a volunteer construction manager which came out of Hurricane Katrina, [Exhibit C](#). The Fernley Long Term Recovery Team used Project Homecoming as their hiring guidelines.

Chair Carlton informed a similar provision had been put into place with the Board of Medical Examiners for volunteer doctors who wanted to practice in the State. She wanted to compare this bill with what they did for the doctors, to make sure all bases were covered. If there had been a similar volunteer position available through the Contractors' Board, the problem may have been resolved. Ms. Moore mentioned there were organizations that provided grants for volunteer construction management. Fernley was unable to access a \$40,000 grant they had for construction management services.

Senator Copenig asked what type of governmental or FEMA oversight volunteer teams have if a disaster has been declared and there is not enough help to get the job done. Ms. Moore stated normal building inspection procedures still apply. Long-term recovery teams come into existence only when there is a need; when FEMA, Red Cross and state agencies leave. They help homeowners without insurance who have received a few thousand dollars but have a hundred thousand dollars worth of repairs. Senator Copenig questioned who managed the Fernley Long Term Recovery Team and if they had to have Internal Revenue Code (IRC) 501 section (c)(3) nonprofit charity status. Ms. Moore replied yes, Fernley operated under the umbrella of the United Methodists of Nevada and California. Senator Copenig then asked if they were concerned with contractors who had revoked licenses applying for jobs. Ms. Moore replied it could happen, but they had the ability to check the status of a person's license.

Pastor Paul Theiss, Secretary, Fernley Long Term Recovery Team, said he supported S.B. 127. He said his Team was not interested in opening a new class of exemptions to state law as far as unlicensed contractors are concerned and that they were open to adjustments in S.B. 127. They were attempting to clarify the very narrow exemption that exists under subsection 4, where homeowners are allowed to act as their own contractor. They had a memorandum clarifying that position with all of the homeowner flood victims they worked with. He said their Team wanted to make the services of a Nevada-qualified construction supervisor available to the homeowners; then the homeowners could decide whether they wanted to continue using the services of the Fernley Long Term Recovery Team, or not. He added the upper limit of financial assistance offered by FEMA was \$28,000 per homeowner. If repairs cost more, their only recourse is the help of volunteers. He said that was a nationwide standard they were attempting to use in Fernley and were surprised to find it was not available to them under Nevada law.

Keith L. Lee, Legislative Counsel, Nevada State Contractors' Board, declared his opposition of S.B. 127 as it was presently written and presented. Understanding the dire circumstances that occurred when the levee broke, he still had concerns about the bill. He stated present Nevada law does not require long-term recovery groups to be licensed contractors if they are serving in a voluntary capacity, not being paid and not providing consulting or other services with respect to construction. Under NRS 624.020, they would be required to have a valid Nevada contractor's license if they were to receive any professional fee, or other compensation, for their construction management or consulting. He wanted to know how we could protect vulnerable homeowners from unscrupulous contractors without background checks on their qualifications.

Senator Amodei asked Mr. Lee to describe what the Board's policy was regarding emergencies. Mr. Lee said he could not. He was not sure there were any regulations providing for emergency licensure of contractors or construction managers. Senator Amodei asked if he thought the Contractors' Board had any responsibility, as the people who regulate the profession, to respond to the vulnerability in terms of when someone has been put out of their house because of a natural disaster. Mr. Lee said as a statutorily created body, the Board could not find an exemption that legislation had not given them authority to do.

Senator Amodei asked if Mr. Lee disputed Ms. Moore's testimony that there was an opinion requested from the Contractors' Board, and the Board said "absolutely, you have to be licensed." Mr. Lee said he did not dispute that because he believed that was the law. Senator Amodei then asked if the Contractors' Board had done anything proactive to respond to disaster situations where there was a licensing issue. Mr. Lee stated he was not aware of anything. Senator Amodei pointed out the Board had done nothing regarding vulnerability, licensure or a disaster policy. He said he heard nothing from the Board on ideas of how to help fix the problem. Mr. Lee replied he would sit down with the Board and try to find a solution to the issue, but someone must be responsible for checking a person's qualifications to become a construction manager. Senator Amodei said this was about trying to coordinate volunteers.

Senator Copening asked for Mr. Lee's thoughts about the Board having a policy allowing it to recognize a long-term recovery committee. Mr. Lee said the issue is whether the Board should work with long-term recovery groups and other emergency management people in this State, to develop policy that will allow an expedited review. Mr. Lee said this bill proposed to amend NRS 624.031,

subsection 4, which referred to an owner of property not to be licensed, but to apply for and receive an exemption from licensure from the State Contractors' Board. He repeated there has to be some sort of a process in place to assure the public that these people are who they say they are. Senator Copening agreed saying Ms. Moore's suggestion to have the Contractors' Board and long-term recovery groups work together to come up with the specifications was wise.

Chair Carlton thanked Ms. Moore for bringing this issue to the Committee's attention. She said both parties wanted to help the disaster victims but had different ways of going about it. Chair Carlton asked what the requirements would be if a group like Habitat for Humanity came in to build homes. Mr. Lee said he did not know but guessed they probably did not need to be licensed, since they were volunteers. He said he would find out. He was sure they still had to meet the building codes of the community. Chair Carlton said one would assume they would have some type of construction manager or project manager coordinating everything. She suggested the Contractors' Board look at the volunteer provision put into the Board of Medical Examiners; to see if that might suit the situation.

Gary Milliken, Associated General Contractors, Las Vegas Chapter, stated opposition of S.B. 127 and asked if construction manager was the proper term they wanted to use for this bill and what recourse a homeowner has if substandard work is done on their house. He also asked if dealing with unlicensed, unbonded contractors, do the homeowners have a place to seek remedy.

Paul McKenzie, Building and Construction Trades Council of Northern Nevada, in opposition, had two main issues with the bill. First, exempting a qualified person that he hoped would already be licensed; a simple background check could be done. The second issue is the assurance that this is actually volunteer work. There are organizations claiming to be nonprofits that are utilizing this to do projects, while ultimately being compensated. He said they are not against a qualified person who is volunteering to work with long-term recovery groups, receiving funds to reimburse him for his expenses. He said they were opposed to holes in the law that may create areas for abuse. Mr. McKenzie told Chair Carlton the majority of Habitat for Humanity projects in Nevada had been organized by TNT Construction. He said TNT Construction obtained all the permits necessary and coordinated the volunteers. He said to the best of his knowledge, the projects were always run by a licensed contractor.

James Sala, Senior Representative, Political Director, Southwest Regional Council of Carpenters, stated opposition to the bill and said his biggest concern is the terminology of the language, the intent is fine. Many of his organization's members went to Fernley to help out. He said the issue of a construction manager is a lot different than a project manager. Mr. Sala said different cities set up rescue-ready relief programs where a general contractor offers use of his license during a disaster and hires the project manager, so there are checks and balances. His solution was for the Contractors' Board to have a disaster relief exemption where somebody would be an applicant as a general or project manager for a volunteer relief group, under an IRC 501(c)(3) organization, and have them register with the Board so they can do a background check and monitor it for protection.

Senator Copening said she liked Mr. Sala's idea but the problem was once the funds ran out, they could not find someone to volunteer their time. She asked who would pay the construction manager's stipend or salary. Mr. Sala said he was not suggesting a change to the payment structure, he was merely suggesting change in legislation for a quick-process exemption through the Contractors' Board. He said the nonprofit recovery group could still pay the stipend and the Board could still follow up on homeowner complaints.

Marlene Lockard, Subcontractors' Legislative Coalition, stated opposition, and said she was representing union and nonunion labor and contractors concerned for homeowners. She said faulty work by a contractor has consequences; faulty work by a volunteer leaves a big question mark. She said she would hate to see a homeowner suffer yet another loss after experiencing the first disaster, and then finding later that what they thought had been adequate repairs were not adequate. She also mentioned there was a process in place for emergencies where each county has a list of contractors and subcontractors who volunteer and loan equipment to aid the community. Senator Amodei declared there ought to be a way to go to the Contractors' Board and file something to move faster.

Ms. Moore said no matter what you call the construction manager, they are still a volunteer. She said the inability in Nevada to have that person on a long-term recovery team is devastating. She said Ms. Lockard referred to emergency responses, not the long-term recovery process. She said the Fernley flood happened in January 2008 and they were still rebuilding homes at this time. Ms. Moore said the ultimate accommodation would be for the Contractors' Board to develop a disaster process and they provide the individual they believe

is competent. Ms. Moore said if it is that important to them, the Contractors' Board could assure that the citizens of Nevada are well served.

Chair Carlton closed the hearing on S.B. 127 and opened the hearing on S.B. 151.

SENATE BILL 151: Provides for the payment of certain claims from the Recovery Fund of the State Contractors' Board. (BDR 54-702)

Sean Gamble, Builders Association of Western Nevada (BAWN), submitted her written testimony in favor of S.B. 151 ([Exhibit F](#)). She stated the intent of the bill was to prohibit unscrupulous contractors who had taken money for building homes, but not paid the subcontractors, from doing further business in Nevada. She said BAWN wanted those contractors to lose their licenses and be unable to be relicensed. She said they had no problems deleting the new language in section 1, subsection 3, as it was very similar to the language in subsection 2.

Chair Carlton intervened that Committee Counsel would explain how subsections 2 and 3 were not duplicative language. Daniel Peinado, Committee Counsel, referred to subsection 1 of NRS 624.3012, explaining the reason the subsections were divided was that the first subsection discussed the failure of a licensee to pay when he had the capacity, or had received the money. He explained subsection 2 was when a contractor was falsely denying money was due, when he had the money, to purposely extract an advantage or defraud another person to whom money is due. Mr. Peinado said this bill was intended to address the first situation, not the second. He said it was needed language that would help clarify some of the other sections the Committee would be addressing. Chair Carlton said she just wanted that on the record.

Ms. Gamble then spoke about section 2 of S.B. 151 and the expanded definition of an injured person as those who have had to pay twice in order to remove a lien from their home. She said those were now people included in the group who could go to the recovery fund for relief, with proof of the recorded lien. She said section 3, subsection 4, listed a new definition for injured persons. She continued with section 4, subsection 2, the language for disciplinary action, which was to suspend or revoke their license as stated on line 39, and prohibit the renewal on line 41, unless they have repaid for their previous indiscretions. She said some people opposed the wording of "shall" on line 38, page 3 of the bill. She advised it was not their intent to force the Contractors' Board to take

action where there might be mitigating circumstances, so they do not have a problem changing the wording from "shall" to "may." Ms. Gamble continued that section 4, subsection 2, paragraph (b) would allow the licensee to apply for a new license after they made "retribution."

Mark Turner, Silver Oak Homes Inc., said as the economy struggles and homebuilders are going out of business, they are leaving unpaid bills behind and, in some cases, reorganizing very quickly under new corporations and going right back into business. He would like to see those people who damage homeowners be barred from using the bankruptcy laws and other loopholes to relicense themselves and get back into business.

Mr. Lee stated opposition to S.B. 151, and submitted written testimony ([Exhibit G](#)), withdrawing his request to delete section 1, after hearing Committee Counsel's interpretation of subsection 3. He asked the Committee to consider on page 3, line 38, changing the wording "shall" to "may" in regard to suspending or revoking the license of a contractor, in case the Board does not know if a licensee paid a subcontractor. He said the Board wanted to reserve discretion in limited cases. Chair Carlton said she understood where he was trying to go, but was confused over the discretion part because if a company walked away with the money, then regrouped, she did not want to see them go back into business. Mr. Lee said if the Committee gave the Board that discretionary authority, it would be exercised very seldom. Chair Carlton added she also did not want to promote litigation from the public.

Mr. Milliken said section 1, subsection 3, refers to commercial as well as residential and the Supreme Court of the United States recently upheld the "pay when paid clause." He said when you insert "the capacity to pay," that it interferes with the "pay when paid clause" and interprets differently. He is opposed due to that reason. He had no suggestions for better language in the bill.

Peter Krueger, Subcontractors' Legislative Coalition, said he too was opposed. He referred to section 4, lines 41 through 45, that prohibit the renewal or reinstatement of a license of a residential contractor. He said his Coalition was fine with that, but then "any officer, director, associate, partner thereof" was way too broad language for the bill. Investors, not involved in the day-to-day operations, with no specific knowledge, should not be denied a license at a

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future date. Chair Carlton asked if the change of "shall" to "may" addressed his concern. Mr. Krueger said yes, but he still had concerns.

Chair Carlton asked Daniel Peinado, Committee Counsel, if he needed to do any research on the issue. Mr. Peinado said "the capacity to pay" language was not newly drafted into the bill, it was preexisting in NRS. If it was an issue that needs to be resolved, it needs to be resolved in the proposed subsection 2 and the new subsection 3. Chair Carlton asked him to look into it. She then closed the hearing on S.B. 151.

There being no further business, the meeting of the Senate Committee on Commerce and Labor was adjourned at 2:53 p.m.

RESPECTFULLY SUBMITTED:

Carol Allen,
Committee Secretary

APPROVED BY:

Senator Maggie Carlton, Chair

DATE: _____