

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Third Session
April 12, 2005**

The Committee on Government Affairs was called to order at 7:46 a.m., on Tuesday, April 12, 2005. Chairman David Parks presided in Room 3143 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. David Parks, Chairman
Ms. Peggy Pierce, Vice Chairman
Mr. Kelvin Atkinson
Mr. Chad Christensen
Mr. Jerry D. Claborn
Mr. Pete Goicoechea
Mr. Tom Grady
Mr. Joe Hardy
Mrs. Marilyn Kirkpatrick
Mr. Bob McCleary
Mr. Harvey J. Munford
Ms. Bonnie Parnell
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Richard D. Perkins, Assembly District No. 23, Clark County

Assemblywoman Debbie Smith, Assembly District No. 30,
Washoe County

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Eileen O'Grady, Committee Counsel
Nancy Haywood, Committee Attaché

OTHERS PRESENT:

Major General Giles E. Vanderhoof, Adjutant General, Nevada National Guard; and Homeland Security Administrator, State of Nevada
Jason Geddes, Environmental Affairs Manager, Environmental Health and Safety, University of Nevada, Reno
Scott M. Craigie, Legislative Advocate, representing Arizona Public Services Company, Sierra Pacific Resources, Arizona
Colleen Janes, Purchasing Officer, Division of Purchasing, Nevada Department of Administration
Robin Reedy, Deputy Treasurer, Debt Management, Office of the State Treasurer, State of Nevada
Jay Johnson, Arizona Public Energy Services, Sierra Pacific Resources Division, Las Vegas, Nevada
Lori Bagwell, Chief of Fiscal Services, Nevada Department of Corrections
Joe Johnson, Legislative Advocate, representing Sierra Club, Toiyabe Chapter
Danny L. Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO [American Federation of Labor–Congress of Industrial Organizations]
Jack Jeffrey, Legislative Advocate, representing Southern Nevada Building and Construction Trades Council, Las Vegas, Nevada
John Madole, Legislative Advocate, representing Association of General Contractors, Reno, Nevada
Richard Daly, Business Manager, Laborers International Union of North America, Local No. 169, Northern Nevada
Richard Houts, Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO, Sparks, Nevada
Michael Kinney, Member, Laborers International Union of North America, Local No. 169, Northern Nevada
John Russell, Laborer and Private Citizen, Reno, Nevada
Ron Carpenter, Laborer and Private Citizen, Washoe Valley, Nevada
Pat Sanderson, Legislative Advocate, representing Laborers Union Local No. 872, Carson City, Nevada
John Seymour, Legislative Advocate, representing International Brotherhood of Electrical Workers, Local No. 401; and Nevada State Electrical Workers Association, Reno, Nevada

John Martin, Legislative Advocate, representing Associated Builders and Contractors, Sierra Nevada Chapter

Randy Robison, Legislative Advocate, representing Associated Builders and Contractors of Southern Nevada

Justine Chambers, Contract Coordinator, Carson City Purchasing Department, Carson City, Nevada, and Member, Nevada Public Purchasing Study Commission

Roc A. Stacey, Manager, Contract Compliance Division, Nevada Department of Transportation

Rose McKinney-James, Legislative Advocate, representing Clark County School District, Clark County, Nevada

Mark P. Elicegui, P.E., Chief Construction Engineer, Nevada Department of Transportation

Mary Walker, Legislative Advocate, representing Carson City, Douglas County, Lyon County, and Carson-Tahoe Hospital

Jenny Welsh, Policy Analyst, Nevada Association of Counties (NACO)

Ted Olivas, Director, Government and Community Affairs, Office of the City Manager, City of Las Vegas, Nevada; and Member, Nevada Public Purchasing Study Commission

F. Alex Ortiz, Financial Analyst, Department of Finance, Clark County, Nevada

J. David Fraser, Executive Director, Nevada League of Cities and Municipalities

Bob Erickson, Legislative Advocate, representing the City of Fallon, Nevada

Michael Tanchek, Labor Commissioner, Nevada Department of Business and Industry

Derek Morse, Member, Regional Transportation Commission, Washoe County, Nevada

Michael Langton, Attorney, representing Washoe County Employees Association and the Carson City Employees Association, Reno, Nevada

Paul McKenzie, Legislative Advocate, representing Operating Engineers Local Union No. 3, AFL-CIO, Reno, Nevada

Liz Sorenson, Legislative Advocate, representing Communication Workers of America Local No. 9413, Reno, Nevada

Gary Wolff, Business Agent, International Brotherhood of Teamsters Local No. 14, Reno, Nevada

Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada

Tommy Ricketts, President, Las Vegas City Employees' Association, Las Vegas, Nevada

Chairman Parks:

[Meeting called to order and roll called.] We have six bills scheduled for today. We will open the hearing on Assembly Bill 376.

Assembly Bill 376: Provides for various benefits for members of Nevada National Guard who are called into active service. (BDR 36-1072)

Major General Giles Vanderhoof, Adjutant General, Nevada National Guard; and Homeland Security Administrator, State of Nevada:

I met with Speaker Perkins yesterday, along with some of our guardsmen who have been deployed to Iraq and Afghanistan. He wanted more information from the people who were involved in some of the problems regarding this bill. As a result of that meeting, he found that the mortgage provision would be almost impossible to control because the companies keep selling their mortgages to other companies.

In our discussion, we came up with some ideas a little bit different from how the bill reads. We want A.B. 376 amended as on the sheet that I have in front of me.

Assemblyman Richard Perkins, Assembly District No. 23, Clark County, Nevada:

I am here to present A.B. 376. [Submitted written testimony ([Exhibit B](#)).] Since September 11, 2001, life has, in many ways, become uncertain. We have lived under a color-coded system, we have endured multiple wars, and we have had to learn to adapt to uncertainty. This transition has not been easy for our National Guard members. For no other group have these times been more uncertain. Nearly 4,000 Nevada National Guard members and reservists have served in conflicts over the past few years. When they are called up, they are not only faced with the threats that lie ahead as they fight for our freedom, they must also think of the difficulties they will face personally, leaving behind family, friends, and jobs—in essence, putting their lives on hold. This, unfortunately, is inevitable. Nonetheless, we should, as a state, do everything we can do now, while thousands are faced daily with these challenges, to help our Nevada National Guard members while they are deployed.

Assembly Bill 376 takes practical steps to help Nevada National Guard members when they are called to active duty. The genesis of the bill came after I had many discussions with General Vanderhoof, spoke with many guard members, and talked with the business community as well as others.

[Assemblyman Perkins, continued.] I met again with the general and his staff and several guard members yesterday and found additional small ways to help. This bill still needs a little tweaking, which can be done probably in the Assembly Committee on Ways and Means if this Committee finds it has the merit to continue on.

We found three ways we can help guard members have fewer worries about the home front when they need to be focusing on family and the challenges ahead. When guard members are called to active duty, our citizen soldiers' families often take a large cut out of their pocket book. They serve out of a sense of dedication, not because of monetary gain. When they leave, this pay cut can create a hardship for family members who are left behind.

To alleviate this concern, A.B. 376 would create a system whereby guard members and family members would be exempt from paying sales tax. This change would mean fewer dollars to the state but would give an extra boost to these families. In addition, I'm proposing to create a Patriot Relief Fund, to which would be appropriated \$2.5 million each year of the biennium. This will help in several ways.

First, the fund will aid with life insurance. Active guard members are offered life insurance when they are called up; they are required to pay the premiums themselves. We, as a state, who have asked these members to risk their lives, should be obligated to ensure that in the horrible event that one of our guard members should be killed, their families would be protected. Thankfully we have not yet lost a single member of our guard. This is a testament to their dedication and excellent training. But, we must act now to ensure that from now on all are protected.

Second, the fund will pay for the textbooks of the members of the guard who are enrolled in college. We need to help ensure that our guard members are prepared for the working world when they are not ensuring our safety. As the Committee may be aware, there is already a tuition waiver bill moving through this Legislature that passed last session, and I believe it holds widespread support.

In our discussion yesterday with several guard members, it was brought up that books often are \$80 to \$100 apiece; paying for them seems like a small token of our state's appreciation. Additionally, the Patriot Relief Fund will help guard members and their families when they encounter difficulties with their bills while mobilized. The shift to the Patriot Relief Fund came after my desire to create a mortgage amnesty program. In our discussions with financial institutions, however, we found that there are so many financial institutions that deal with

mortgages throughout this country, many of whom are not based here in Nevada and that we were not able to have a relationship with, it would be impossible for us to have any continuity. Rather than put off the mortgages through cooperation with the financial institutions, this Patriot Relief Fund could be there for those members in need.

[Assemblyman Perkins, continued.] As I mentioned before, when guard members are called to duty, they often take a significant unplanned pay cut. We need to be there for them, given the real possibility of foreclosure on their homes or the myriad of other difficulties that families can face. Despite federal legislation protecting active duty members, I've seen articles lately that relay horror stories of military families with the bread winner deployed being given the runaround by mortgage lenders trying to foreclose on their homes. Our guard members should never have to get to that point.

The Adjutant General will be given the responsibility of deciding where and how the funds will be best used. After meeting with the General and the members yesterday, we learned about a few other concerns we can help with.

Currently, State employees are not given sufficient military leave days for their training. Assembly Bill 376, as amended, would increase their military leave days to 39. Another slightly perverse regulation slighted members with pay. Currently guard and other military members who are State employees are given the difference between their State pay and their military pay if the military pay is less. The way the regulation is written, though, hazard pay is included in the calculation, so members see no increase in pay from their hazard pay that is offset by the State. This bill will correct that so they would receive the increase of their hazard pay.

The sales tax exemption, guaranteed life insurance, and the Patriot Relief Fund will give guard members and their families the peace of mind to focus on what is important—their loved ones—rather than unforeseen financial crises.

Assemblyman Christensen:

I heard you mention an increase to 39 days. Would you go through that again?

Major General Vanderhoof:

Right now, 15 days of military leave is allotted for military training and duty. Military leave is not chargeable to your vacation time or your sick leave—this is in addition to that. The figure of 39 days is the number of days you would have to go to drill and to your annual training. Our members who talked with the Speaker yesterday were primary police for the State and for the guard, too. They work shift work and end up using their 15 days, not just for the 2 weeks

of required training but also for the drill weekends. That is where that total of 39 days comes from.

[Major General Vanderhoof, continued.] Members are actually using their vacation time to go to drill and taking annual leave from the State. That was an item of interest with them. If somebody just works an 8-hour day and has Saturday and Sunday off, it is not quite the same thing. For police and firemen working for the State, it is a hardship because they are actually using their annual leave to perform their military duties. This does not have anything to do with the mobilized people. This is just for their normal guard duty. That was a big concern to them.

Assemblyman Grady:

Is that 39 days considered active service, or would the active service be outside of those 39 days?

Major General Vanderhoof:

It is active service, but it depends on who you are talking to as to what active service means. When I was speaking with Assemblyman Perkins yesterday, I said it might be wise, when you're thinking of people who are going on active duty or being called up, to use the term "mobilized," as that clarifies everything in our minds. There is a big difference between that and active service. Every guardsman is in active service whether there is a war or not. It's the ready reserve and considered active service, and all of those terms get confusing to people.

If you think of the people we are sending overseas, they have been mobilized. If you focus on that term, then that distinguishes between the people who have not been mobilized who are still coming 2 days a month and 15 days a year. Very few guardsmen, however, only put in 39 days a year.

Another concern that I am having right now is also for the employers. I do not expect what is happening now to end soon. The employers have been very supportive. I'm concerned that down the road, when employers keep losing people—even the same people over and over—maybe that support could wane because of the hardship it places on their businesses. I'm just mentioning that here if there were some benefit for employers that might lessen it.

We all know that the law protects guard members who are mobilized, that they have to get their jobs back, et cetera. But we also know that there are quite a few subtle ways that an employer has to avoid that—some wouldn't hire a guardsman but would not use that for a reason. I'm not having that problem now. The employers are solidly with us. Any problems are strictly isolated, and

we are able to handle it. If this goes on for another 3 or 4 years, I see employers having understandable problems. That's one element of this whole thing that may deserve a little consideration, too. Assemblyman Perkins and I talked about this and may need to have a conversation with some employers to see what might be helpful in keeping it attractive to have a guardsman employed. We sell it on the fact that we give them leadership training and we train them in specific skills that carry over to the private sector, but when you keep losing people, it does get tough. The employers are also a factor that I think should be considered if there is a way that would help them.

Assemblyman Perkins:

I want to bring together a group of employers or employer representatives and talk about what would continue to motivate them to be good employers and have that relationship with the guard. Assuming this Committee finds some merit in this bill and passes it on, that conversation will happen during the next couple of weeks.

Chairman Parks:

Is there any particular industry that is adversely affected by the deployment of National Guard service members?

Major General Vanderhoof:

The one that comes immediately to mind is the police forces. As you might expect, a lot of the military police and security police in the Army and Air Guard throughout Nevada are downtown policemen or policemen from the state. We also have a lot of prison guards. On our first mobilization, I think we took nine guards out of the Ely prison, which was significant. In this particular call-up, police training has been in demand.

Assemblyman Christensen:

How many people are there in the National Guard overall in Nevada, and how many of those are deployed?

Major General Vanderhoof:

We have over 3,000 members in the Army and Air Guard. We've had over 2,000 mobilizations; some of those have been mobilized twice. For instance, our military police were mobilized for 13 months, released for 2 months, then remobilized for another 11 months and sent to Iraq. It sounds like two-thirds of our members—and it is close to that—but some of those represent multiple mobilizations. Right now we have—and the figures change daily—approximately 500 people in Afghanistan, Iraq, and Kuwait.

Chairman Parks:

The hearing on A.B. 376 is closed; the hearing on A.B. 304 is now open.

**Assembly Bill 304: Revises provisions relating to certain public contracts.
(BDR 27-257)**

Assemblyman Hardy:

Basically, A.B. 304 addresses A.B. 398 of the 72nd Legislative Session in fixes and facilitations in the State departments and the cooperation of the State Departments of Energy and Purchasing and the Treasurer's Office.

Jason Geddes, Environmental Affairs Manager, Environmental Health and Safety, University of Nevada, Reno:

Performance contracting, in regard to energy conservation, water conservation, and waste minimization was the goal of A.B. 398 of the 72nd Legislative Session. That allows you to upgrade your heating and/or air conditioning system or to make other improvements in the building that will save energy and to use the payments you would be making on your power bill—the difference from your base pay and the savings that you get back—to pay off the equipment upgrade. This allows you to do these equipment upgrades without capital improvement expenditures.

After we approved A.B. 398 of the 72nd Legislative Session last session, we ran into problems in implementing the bill. This bill, A.B. 304, seeks to correct those problems.

Section 2 defines the approving agencies. Sections 4 and 5 deal with inspection, approval, and the types of audits. Section 6 allows people, when they go out to get an energy retrofit, to hire a third-party independent person who can provide expertise to evaluate the retrofit and advise the using agency as how to go there. Sections 7 through 17 are all financing: securing the finances and how the State Treasurer's Office, State Purchasing Division, and State Bond Counsel want to deal with the financing options. That's all language they brought forward to rectify problems that they were having with it. Section 22 is actually language that Dr. Hardy and I didn't ask to have put in, so we ask that it be stricken and that you consider only Sections 1 through 21 of the bill.

In the interim, you received an audit report from the State of Nevada on lease/purchase and energy retrofits that had a lot of negative criticism and negative comments on energy retrofitting. That is a part of *Nevada Revised*

Statutes (NRS) Chapter 338 and not part of any projects that occurred under NRS 333A, which is the purchasing section of energy retrofitting that we're talking about with this bill. There may be some criticism, critiques, or concerns about that, and I think they are all valid and need to be addressed. We tried to address them when we created NRS 333A. We tried to address a lot of these problems that we knew were out there before the audit came out. You will see tighter restrictions in NRS 333A and these amendments so that these types of problems won't occur under this section. In one of the areas, they specifically reference NRS 338. That should be changed to match NRS 333A, as that is monitoring and verification that the savings are out there.

Chairman Parks:

I think a lot of NRS 332 and 333 should be folded together and consolidated. Maybe that's another good interim project for the public purchasing officials in the State to take on as their next challenge.

You indicated that Section 22 was not something you had requested in the bill, but is it something you have a problem with? Why would you like to have that removed?

Jason Geddes:

When we dealt with A.B. 398 of the 72nd Legislative Session, one of the issues that came up was prevailing wage. In the audit report, you'll see paying prevailing wage and how the contracts go in on these projects. There are several issues in the audit where there wasn't good documentation on whether it was occurring or not. We specifically put language into NRS 333A to make sure prevailing wage was paid, and I am supportive of that. I'm not very supportive of using prison labor on the projects, especially as a cost-saving measure. I think the projects are good for rehabilitation, but I'm not a big fan of it when not all the safety and health considerations are followed.

Assemblyman Hardy:

We have written testimony from Dick Burdette, Governor Guinn's Energy Policy Advisor and former Research and Marketing Analysis Manager to the Nevada Public Utilities Commission (Exhibit C), which states the purpose of A.B. 304.

Scott Craigie, Legislative Advocate, representing Arizona Public Services Company, Sierra Pacific Resources, Arizona:

The company has been doing the work in Nevada under the original statutory construction that we passed during the last legislative session. They do a huge amount of the work with public sector entities, especially the university and community college systems in the state of Arizona. They have been very

aggressive here and have brought us some very positive programs. Jay Johnson, the person assigned to the State of Nevada, will talk about some of the projects they've done and the importance of them.

[Scott Craigie, continued.] In the letter by Richard Burdette ([Exhibit C](#)), the very last paragraph is important for the record. It points out that the Governor and the Nevada State Office of Energy supported these previous efforts. They agree with the Assembly authors and the principal sponsor, Assemblyman Hardy, that the changes proposed in [A.B. 304](#) are in the public interest and should be enacted. This is a very appropriate position for the Governor to take, since he helped us design these particular changes, which, in some cases, were made at the request of those in the State government who thought they would be worthwhile.

Colleen Janes, Purchasing Officer, Division of Purchasing, Nevada Department of Administration:

The Purchasing Division is facilitating the competitive procurement process for the first three pilot projects under this legislation or under the original legislation. We support the passage of [A.B. 304](#), primarily for three reasons. It would help streamline the request for qualifications process within the State Board of Public Works, which would save both State resources and vendor resources; it would fix an inherent conflict of interest having to do with a third party; and it would greatly streamline the approval process.

First of all, because of the way the original legislation was worded, the Attorney General's Office had advised us that Public Works had to do a request for qualifications for each specific project, as opposed to a general qualifications process. We are now having the vendors submit almost identical statements of qualifications on each of these projects, and a State team has to review each one. By doing a general process, we would develop a list of qualified vendors and then, each time a project came up, we would go to that list and issue the RFP [request for proposal] to those pre-qualified vendors.

The inherent conflict of interest with the third-party consultant is really important to fix because, as the legislation now stands, the third-party consultant can be paid directly by the Energy Services Company. We want to change that. Also, if the third-party consultant were to tell the State not to award a contract, then the third-party consultant would receive no payment. Therein lies the conflict of interest. This allows the State to negotiate up front with the third-party consultant. That way, if the third party consultant recommends a no award, they still receive some payment.

Robin Reedy, Deputy Treasurer, Debt Management, Office of the State Treasurer, State of Nevada:

I have been involved in energy retrofit from its inception because of its original inclusion as debt with the State Treasurer's Office. I have continued that participation because this original legislation showed that it was under the lease/purchase process. The lease/purchase process, which is NRS 353, was originally brought forth by the Office of the Treasurer and through the Supreme Court to make sure it was not debt. We also recognized the large amount of money involved in lease/purchase, so we did burden it with many approvals. Energy retrofit is not a similar process; it does not necessitate long-term debt, going out to the public, and getting the approvals there. That actually impedes the process because the financing entity will have to give a rate. However, it may be several months before the final approval process is done, and then they may not be able to live up to that rate.

In order to respond to the market and get the best rate, we are in support of this bill by removing the Board of Finance's and Interim Finance Committee's approvals from the lease/purchase legislation. It still requires agencies to go in, analysis to be done, and Board of Examiners to approve it. There is still oversight in that area.

The majority of the changes we have recommended in this legislation, are to enable us to respond to the market. There have been several instances where we would have had refunding opportunities, but we could not take advantage of refinancing the debt created by this—and I use debt in a very loose term here, just saying as we all do with our home mortgages and payments that we make, but not debt under the *Constitution*. We hope we can respond to the market, and we have asked our bond counsel to put in refunding language so that, should an opportunity arise, we would be able to go through a very simple process to reduce what we have to pay and help the taxpayer in the process.

Scott Craigie:

I know that some of our friends from the unions are here, and they have a question about the last section that has already been withdrawn by Mr. Geddes. There is also a concern about the issue of prevailing wage. We have agreed to sit down with them today to work out language on that issue. We do have some concerns, even about the section that was removed already because, as you will hear, prisons want to be able to use prison labor to a certain extent. Part of the advantage for them in having these programs is not only the energy savings but also the opportunity to use prison labor in each of these projects. We will leave that if we can. We can negotiate and discuss the issue with the others to see if we can come up with appropriate language.

**Jay Johnson, Arizona Public Energy Services, Sierra Pacific Resources Division,
Las Vegas, Nevada:**

I wanted to share with you some of the benefits and the successes that NRS 333 has had for public agencies in the state ([Exhibit D](#)).

This is an excellent opportunity for public agencies to upgrade their facilities, to improve the learning environment for students and teachers, to improve safety, and to fund this out of savings from reductions of energy. We have eight projects in process since the bill was approved in 2003. We have three school districts that are in process, two counties, one community college, Northern Nevada Correctional Center, and, just recently, a project with the Department of Human Resources in Las Vegas. These projects are competitively bid, and we go through the energy service companies' selection of the RFQ [Request for Qualifications] and the RFP. When we deal with subcontractors and finance companies, we put together specifications and solicit bids from those agencies. This is creating new jobs and bringing new money to fund these retrofits and facility upgrades.

The last two pages of the handout ([Exhibit D](#)) are from White Pine County School District. There it talks about the benefit that the program has had for them—it has allowed them to reopen their middle school downtown by installing a new heating system, it has significantly improved the learning environment for the students, and it has lowered their overall operating costs, which is the equivalent of five teachers' salaries. This has been a tremendous boost to this small community. The same thing has been done at Pershing County Schools and Western Nevada Community College, and all of these public agencies are benefiting significantly as a result of us being able to implement these programs under this bill.

Lori Bagwell, Chief of Fiscal Services, Nevada Department of Corrections:

We would appreciate your support on [A.B. 304](#). The prior legislation has afforded us the opportunity to do a major project at Northern Nevada Correctional Center. We look forward to getting about \$3.9 million worth of retrofits for much-needed projects for which there was not sufficient CIP [capital improvement project] money available. It's been a wonderful avenue for updating our facilities, and we look forward to doing it with some of our others.

Chairman Parks:

Would you care to comment on Section 22, which was the section that was requested to be removed?

Lori Bagwell:

The Department of Corrections requested Section 22. We feel strongly that, when we are doing projects that involve a prison facility, we should use our own resources. People assumed we were going to take inmates outside of our facilities to do these public projects. That was not our intent. Our intent is to use inmates within our own facilities and to be able to not pay them prevailing wage when they are within the prison grounds. For the project that we're doing, we really believe we should, whenever possible, employ our own inmates for security reasons. We also prefer not to bring in many outside contractors. We certainly have crews and labor that work within our prisons everyday. We would like to not pay prevailing wage for that, but, again, we never intended to go work on a city or county project.

Chairman Parks:

Thank you for that clarification.

Joe Johnson, Legislative Advocate, Sierra Club, Toiyabe Chapter:

I simply want to go on record as supporting the bill.

**Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO
[American Federation of Labor–Congress of Industrial Organizations]:**

We are adamantly opposed to this bill. I can tell you that inmates are used more frequently than you realize, and it has become a problem. Let me tell you about changing light bulbs. Unless you're changing light bulbs worth \$100,000, you are not using inmates to change light bulbs.

During the construction of the parking lot across the street, we came upon a crew of inmates removing asbestos in that building. That should have been a prevailing wage job that should have gone to a contractor from Nevada and should have used employees from northern Nevada. Those inmates were being paid \$2.10 an hour. We went to the Department of Corrections and said we had a problem with that because they were displacing taxpayers. Any time you use an inmate to do the work of someone in the workforce, you are displacing taxpayers. Mr. Craigie said he's going to try to negotiate; in my opinion, there is no negotiating on this issue. We got them to agree to take those inmates off of that job after we threatened to go to the Legislature. To add insult to injury, we train the people that, by law, must be certified by the State to remove asbestos. The State certified those inmates to do that work. When those inmates get out of prison, they join our union, and we put them to work. They don't go back to prison because they get a good job with good benefits, such as insurance and retirement.

[Danny Thompson, continued.] On that day, I had five people sitting on the bench in Reno who were certified. We are opposed to this bill. We are, however, willing to talk about it. Another concern is about prevailing wage not being in this bill, but I would urge you not to vote on this bill today and to wait until we work out some sort of agreement.

Assemblyman Christensen:

Mr. Thompson, you mentioned the workers, and I agree with you. If I understood correctly, were those who were working on asbestos removal in that building certified?

Danny Thompson:

They were.

Assemblyman Christensen:

They were certified, and they were paid \$2.10 an hour? What is that compared to?

Danny Thompson:

It is compared to whatever the prevailing wage is on a public works project, not to mention that you knocked a contractor out of a job that he could be working on as well. Our members work for contractors who work in this community and who pay taxes. Having somebody who is in prison because they committed a crime displace a taxpayer by knock somebody out of a job just doesn't make sense to me.

Assemblyman Christensen:

If we are using taxpayer dollars to do government work, then we are able to have that labor cost be less expensive, and we can buy textbooks for kids. It sounds to me like we are saving money. I understand your point about workers, but in a situation like this, how does it not make sense to try to keep the tax dollars going right to the sources where we are trying to find money to fund education, for example? To me, that makes sense.

Danny Thompson:

It's your job, Mr. Christensen, to find the textbooks for the children. That is the law of the State as well. It certainly isn't your job to displace workers who have to live in this community and pay taxes. I have kids in school in Las Vegas who don't have textbooks right now. It is offensive to me that you haven't fixed that. It's very offensive to me that you would suggest that you're going to displace workers, who are taxpayers, with prisoners.

Chairman Parks:

Mr. Thompson, are there any particular sections of this bill that you have a problem with, such as Section 22, or is it greater issues throughout the bill?

Danny Thompson:

We are concerned about prevailing wage in the bill and the section regarding the inmates.

Jack Jeffrey, Legislative Advocate, representing Southern Nevada Building and Construction Trades Council, Las Vegas, Nevada:

The Legislature decided years ago that Prison Industries would not compete with local business or labor, and that was a position that we were very careful to uphold, whether it was in the furniture business or whatever. That committee was made up of community leaders, business people, and labor. I wasn't on the committee as a labor representative but as an Assemblyman. It was broad representation. We had to turn down several projects because they did displace local businesses and labor. I don't know if that philosophy has changed, but it wasn't in the law. It was in the policy of that committee.

The problem that I have with inmate labor, aside from the areas that Mr. Thompson was talking about, is that local unions have a very strict hiring hall practice that's governed by federal law. We have a book system that we have to use. An inmate would have to qualify to sign one of those books, and the only book that he would be qualified to sign would be, in my local union, Book 4. Most people who sign that book are people without experience, and they go to work after the people from Book 1, Book 2, and Book 3 are sent out. When they do go out, they earn the same money that anybody in that trade does. They are usually the last to be hired and the first to go because they have no experience.

We have had inmates on work release programs and in the building trades for years. They were qualified workers who went through the book system the same as anybody else, and they were referred to jobs the same as anybody else.

I've always been a strong supporter of work release programs, but you just created a lot of problems. What are these people? Are they trainees or casual labor? What are they? I think the unions would be in trouble if they tried to refer them, and the contractor would be in trouble if they tried to hire them. If there are areas that are non-technical in nature, that an inmate is able to do without any training, I think that could be worked out in the contract with the vendor. Those things—changing light bulbs, for example—could be excluded from the

contract, and they could change light bulbs. But to try to integrate them into the workforce, I think, is going to cause a lot of problems.

[Jack Jeffrey, continued.] We found, through prison industries throughout the country, that prisoners have a tough time competing in the workforce. If it doesn't work, what are you going to do with him, send him to jail? It just doesn't work. It sounds good on the surface, but it's an area that I'm certainly not willing to get into.

Robin Reedy:

Under the lease/purchase legislation, we do use prevailing wage. That is something that has been removed from this bill by exempting it from lease/purchase legislation. That energy retrofit is a performance contract, and it's where we can do a lot of maintenance projects, a lot of projects to save energy and natural resources without costing the taxpayers additional funds. That is its design. If the numbers don't work, we don't have an energy retrofit contract.

Chairman Parks:

Thank you, Ms. Reedy, for that clarification.

Assemblyman Hardy:

For clarification purposes, at the initiation of the testimony, we recognized that Section 22 of the bill addressed NRS 338 on prevailing wage, and we do not want to open up that statute in A.B. 304. That would allow some comfort level, I think, because we are not going to address NRS 338. If we look at this bill, it deals with NRS 333A.150. All the sections deal with that particular section of NRS except Section 22 of the bill. To deal in particular with the prevailing wage requirement, we would address NRS 333A.120, which is not amended in this bill, and NRS 333A.120 is the prevailing wage requirement. We are not changing that requirement.

Chairman Parks:

I appreciate that clarification.

John Madole, Legislative Advocate, representing Association of General Contractors, Reno, Nevada:

I would just echo the same remarks, but I have concerns on the language in Section 22 on the inmates. If that were to remain in the bill, we would object to it.

Chairman Parks:

I hope Mr. Craigie can provide any other changes to us expeditiously.

We will close the hearing on A.B. 304, and open A.B. 409 and A.B. 552. They tend to go together.

**Assembly Bill 409: Revises various provisions relating to public works.
(BDR 28-988)**

Assemblyman Jerry D. Claborn, Assembly District No. 19, Clark County:

Today I bring you A.B. 409 at the request of Richard Daly. This bill is an act relating to public works.

**Richard Daly, Business Manager, Laborers International Union of North America,
Local No. 169, Northern Nevada:**

We have some amendments to A.B. 409 ([Exhibit E](#)). Apparently, there seems to be a great deal of controversy over the first section, and I think the amendment language is clearer. I gave bill drafters an idea, they came up with the paragraph, and then I took their idea and clarified it a bit.

People are going to testify that they disagree, that prevailing wage should be applied to these projects, that we are going to kill economic development, and people won't use the conduits in the projects that are done. I think that argument is not properly brought forward in the context of this bill. If they want to have that discussion, I think they should take up the provisions of the law that already require prevailing wage on those types of projects.

On the various projects, the Labor Commissioner's Office, in my opinion, has taken a position against the workers in this state. It has taken the position that prevailing wage doesn't apply to these. The law in all of these sections listed at the bottom clearly state that the provisions of NRS 338.010 through 338.090 apply to these projects ([Exhibit F](#)).

We are not trying to change the definition of a public work. A public work is a project financed in whole or part from public money. The financing is the key that brings us to a lot of these provisions where these laws—NRS 244A.763, for instance—is a conduit to economical development bonds issued by the county. The payment of prevailing wage is required when those bonds are issued to finance the project.

People are trying to relieve themselves of paying prevailing wage by saying that a public work is not defined as that private project using public financing, and therefore the Legislature intended for these provisions not to apply, which is an

absurd conclusion to the clear intent of the law, which was to have these projects covered.

[Richard Daly, continued.] That's the intent of subsection 1, in the law. I think the amendment makes it clear. I added in the words "complying with" rather than "paying prevailing wage," because there are other provisions, other than just paying the prevailing wage, in NRS 338.010 to 090. I added the words to the same extent as if the public body had awarded the contract for the project to clarify that. That language is also included. Actually, I took it from NRS 279.500, which is other language that goes along the same lines.

Section 2, subsection 20, was the attempt to clarify what a supplier can and can't do and the definition. There have been some issues on public works jobs on what a supplier is. People were trying to list suppliers, and then have them do more than just drop off the material. As you will see in the amendment, we clearly try to say that the supplier can bring and make the delivery and leave. If that is what a supplier is doing, he is not performing anything more. He is not doing any subsequent handling or distribution of the material. Now they have stepped over and are doing more than just delivery. What I was trying to get across in my amendment clarifies what our intent was in the first place.

In subsection 21, under Section 2, we are trying to clarify what a bona fide fringe benefit is and, not by getting into what an insurance policy pays, what the deductible is, or any of these types of things. In my opinion, a bona fide fringe benefit would be a benefit paid under the collective bargaining agreement. I would eliminate the proposed language that's in the original bill to say "benefits provided workmen under the Labor Management Relations Act." When I researched that, I think people could construe it as only being benefits provided under a collective bargaining agreement. That's not my intent, and that's why I proposed taking that out and substituting that with subsection 2 in the amendment, where the entire cost to the premium or contribution for pension or eligible welfare be paid for by the employer.

The third criteria for a benefit provided as bona fide would be that he gets paid for all hours that an employee works, whether he's on public or private work. There are contractors out there now who, when they're on a public job, have a program to pay into some type of pension program and health and welfare, but only on the public jobs, for that money is non-taxable. They don't have to pay unemployment compensation on that. When they are on a private job, they don't pay any benefits at all. The intent is to say that if they are going to provide any insurance, they provide it for all hours worked, so the employee actually has an opportunity to have some benefits on a bona fide program.

[Richard Daly, continued.] On subsection 22, I had all of the supplier language all in one section. The Legislative Counsel Bureau (LCB) split it into two to define the supplier and the work they perform. Then they added language in subsection 22 to say that a workman may also be a supplier if he performs this other work. I made the same changes in my amendment to clarify what we intended to do.

Subsection 3 was the Labor Commissioner's surveys. Our intention there is to put into law what the Labor Commissioner is supposed to survey for and what are recognized in the construction industry as a craft. LCB put in "includes any other classification the Labor Commissioner may deem appropriate." We propose to take those words out. We want to have the Labor Commissioner survey to recognize these types of crafts. This is what he already surveys for, so there is not any ambiguity as to what the recognized class of workmen is for the purposes of the survey. We can come back and amend the law if needed. We want to have certainties as to what the classifications are.

Chairman Parks:

You indicated taking portions out. Could you give us the pages and line numbers?

Richard Daly:

In subsection 3, page 6, we propose to amend lines 12 through 15 to read, as in the amendment ([Exhibit E](#)), "for the purpose of." We would take out "survey" and "contractors" and substitute "the survey as required pursuant to subsection 2, Labor Commissioner shall use the following classifications of workers," and then remove "any other classifications the Labor Commissioner would deem appropriate." These classifications listed are the classifications he currently surveys for. We have tightened some of them up. For "carpenter," for instance, we say the carpenter includes millwrights, pile drivers, and drywall installers. Currently he surveys separately for all three of those, but they are all carpenters.

The last thing that we added was on page 7, lines 43 and 44, where it mentions "supplier" again. In NRS 338.450, we just made those concur with the intent of what we had purposed in the first place to conform to the other two definitions of "supplier."

Assemblyman Goicoechea:

You have the definition for each particular job description. If we are going to amend that or put a name in or delete one, it's going to require legislation. I think the language of "other classifications that the Labor Commissioner may

deem appropriate" might make it a lot cleaner than having to wait every two years to revisit this bill.

Richard Houts, Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO, Sparks, Nevada:

In the interest of time, I just want to say that the Nevada Building Trades Commission is in support of A.B. 409.

Michael Kinney, Member, Laborers International Union of North America, Local No. 169, Northern Nevada:

I've been a laborer in Nevada for 12 years, and I think that something has to be done with those classifications because of the undermining of the construction industry as a whole. I'm for that bill.

Danny Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO [American Federation of Labor-Congress of Industrial Organizations]:

We are wholeheartedly in support of this bill.

John Russell, Laborer and Private Citizen, Reno, Nevada:

You can just put me down as a "me, too," as with Mike Kinney.

Ron Carpenter, Laborer and Private Citizen, Washoe Valley, Nevada:

I also support this bill.

Pat Sanderson, Legislative Advocate, representing Laborers Union Local No. 872, Carson City, Nevada:

If there wasn't a need for this bill, we wouldn't bring it up to waste your time. I've been working out of this labor union for 42 years. I retired in December. Never in the history of Nevada have I seen a labor commissioner and the attorneys come to try to keep people from having prevailing wage after it's dictated in law. This is what has happened here in Carson City on the Carson-Tahoe Hospital project. Some of the things in this bill are needed because, without defining it, it's going to vary with the ideas of whoever is in power at the time. That's not what law should be. If it wasn't needed, we would not have brought it before you.

John Seymour, Legislative Advocate, representing International Brotherhood of Electrical Workers, Local No. 401; and Nevada State Electrical Workers Association, Reno, Nevada:

We also would like to add our support to this bill and thank those who brought it forward for looking out for us.

John Martin, Legislative Advocate, representing Associated Builders and Contractors, Sierra Nevada Chapter:

I do public work. I don't have a problem with the prevailing wage laws as they are written, but, as I read through some of this, I can see how this could have far-reaching effects on things that are not currently covered under prevailing wage. I'm concerned about it. My firm pays health insurance on our employees on a regular basis—not just on a prevailing wage job, but on all projects we do. We take care of them by mandating that everybody should have health insurance and vacations.

Construction is, by nature, somewhat transient. You hire for a particular job or jobs, and, as work slows down, hiring slows down. The only way a person can really take care of the health insurance situation as it is addressed in here is if everyone is a union member. If an employee works for me and then goes someplace else, trying to continue that health insurance in the next place gets to be a huge paperwork problem. Most of the time we have no idea where to transfer or forward his insurance coverage. It is extremely difficult, from a business standpoint, to track this and try to make sure that everybody who worked for me yesterday has health insurance the day after tomorrow if they have left my employ.

I support the prevailing wage rates. There are times I think that they add cost to a project, but that's how law was written years ago. I see those as not being a problem. But when mandating benefits for employees, my fear would be that somewhere along the line we would end up with everybody having to be a union member in order to make this happen. I support those people who choose to be union, but I also support those who choose not to be. We simply want to go on the record that it does make us a little nervous as far as what the results may be. After reading the bill a number of times, I see why suppliers, as long as they drop a load—bring the load just to the job site, offload it, and leave—would not be covered under this. As long as that is the pure intent, I wouldn't have a problem. Prevailing wage laws should apply to the workforce.

I find it ironic this bill talks about union wages. Those who bring this bill forward don't have to deal with the paperwork that would be involved. On prevailing wage rate, we just did \$3.1 million last year. Somebody in my office deals three days a week with nothing but prevailing wage rates and prevailing wage forms that subcontractors send to us. I would hope that this Body would take a look at whether we need to add more paper to what we are already handling on a daily basis.

Randy Robison, Legislative Advocate, representing Associated Builders and Contractors of Southern Nevada:

We have reviewed the bill and had a chance to look at the amendments. We still have tremendous concerns, many of which were elucidated by Mr. Martin, so we still have to register our opposition. However, we can continue to work on the bill, review it, and see if it is something we can work out.

Justine Chambers, Contract Coordinator, Carson City Purchasing Department, Carson City, Nevada, and Member, Nevada Public Purchasing Study Commission:

We had just a couple of concerns about the bill. Specifically, on page 5, there is a section that talks about the wages, what is included in the wages, and about bona fide fringe benefits and what they include.

Currently it says they include benefits provided to workmen pursuant to a collective bargaining agreement and workmen under a plan established pursuant to the Labor Management Relations Act, as well as benefits provided by the employer of the workmen for hours worked.

My concern is that it should say "or" instead of "and." It would be hard for a contractor to comply with all three of those sections on page 5. The change I'd like is on line 22.

The other concern is with the supplier. I'm confused about the definition that has been changed. We would like some kind of clarification from the originators of the bill.

Roc A. Stacey, Manager, Contract Compliance Division, Nevada Department of Transportation:

One of my duties is to enforce the prevailing wage requirements on all of our contracts. I would just like to defer my comments for a few minutes until my administrator and the Labor Commissioner speak.

Rose McKinney-James, Legislative Advocate, representing Clark County School District, Clark County, Nevada:

The bill as written appears to have some significant fiscal implications for the District. We believe it has potential for dramatically increasing our administrative costs. We attempted to do an estimate of the impact. The District has a fairly aggressive building and construction effort. We are trying to build schools efficiently and on time, and we then have to rely on the availability of a pool of contractors we can work with. To the extent that measures like this increase the cost for them, those costs are passed on directly to us. The estimate that we have, just looking at our building projects for the last 4 years, which totaled

about \$45 million, would suggest that, if this measure were approved, it could result in an increase of about \$13.5 million.

[Rose McKinney-James, continued.] We are always concerned about fiscal implications. We comply with the prevailing wage laws and require our contractors to comply as well. We are just concerned about the potential for unintended consequences and wanted to bring that to your attention.

Mark Elicegui, P.E., Chief Construction Engineer, Nevada Department of Transportation:

I would like to echo some concerns about the definition of “supplier” that Ms. Chambers talked about. As we interpret that definition, we believe it could throw manufacturers and other producers of products on our jobs under the prevailing wage definition, which would cause some difficulties in enforcement.

Right now the language says a supplier is defined as a person who does not perform any labor or work other than to actually deliver the product to the job site. There are manufactured products on our contracts that have work performed at a commercial facility off the site of work and, in many cases, out of state, such as concrete pipe, bridge girders, and others, where these products are fabricated and built and work is required. Right now they are delivered to the projects by a supplier. Those facilities are not required to pay prevailing wage under the current federal regulations. We feel there is a conflict there, and we feel there would be some enforcement problems for us given the current verbiage in the bill.

Roc Stacey:

There are two things that I’d like to bring up in the proposed amendment ([Exhibit F](#)) that I received this morning.

On page 5, lines 7 through 10, the amendment reads as follows: “. . . does not perform any labor or work in connection with the construction project that would require any subsequent handling, distribution, or spreading, apart from the first drop, delivery of materials, equipment, or supplies to stockpile at the site of the construction project or to another location designated for such first drop delivery.”

This changes the original writing of the bill, and the difficulty that I see is that they have added the words “distribution” and “spreading” within that. Currently, for example, a trucker hauling hot mix from bituminous material comes from a commercial facility and places material in a windrow—a steady even flow of material— in front of a paver, and they are not due prevailing wage at this point in time.

[Roc Stacey, continued.] Should this language be adopted, is that considered spreading or is that first drop? At present, we call it first drop and prevailing wage is not required. If it is considered spreading, then would we have to come in and monitor that truck from the time it arrives on that project until it leaves? There just is not the manpower available to do that; we would have to increase our forces substantially to pay the prevailing wage while that truck driver is actually on that project. It also conflicts, I believe, with several legal decisions that have been made through the U.S. Department of Labor and how we enforce our federally funded contracts or partially federally funded projects.

The second part is Section 2, subsection 2: benefits, where the entire cost of the premium or contribution for the pension or health benefits is paid by the employer. I don't believe that, under a collective bargaining agreement or under the prevailing wage, the entire cost of the benefits is paid by the employer. The prevailing wage, especially in the State prevailing wage, is put out there as a single figure. If there are health benefits or other benefits paid, that amount is subtracted from the prevailing wage published by the Labor Commissioner. That would be an enforcement question that we would have to work through, should this language be adopted.

Assemblyman Claborn:

Mr. Stacey, you mentioned a hot cargo pack when you haul materials from one place to another and spread it. Would that depend on where that comes from? If it came from a pit designated by the Nevada Department of Transportation (NDOT), would that not be prevailing wage?

Roc Stacey:

Possibly. At the present time, our language states that if NDOT has control of a pit on a BLM lease, and we have control of that material, and the contractor is required to ask our permission to disburse that material anywhere other than an NDOT job, then it is, in fact, prevailing wage. I believe that decision was made by the Supreme Court several years ago, in a court case my office initiated that went to the Labor Commissioner. If it's a commercial facility, no, there is no prevailing wage required. The specific concern I have with this amendment is the use of the words "distribution or spreading." That is open to interpretation.

Assemblyman Claborn:

Would you have to get a determination after you bid the job? When you bid a job for NDOT, they designate what pit you can haul out of, where the aggregate is, and where you can set up your batch plants. If they do, indeed, use a borrowed pit or use the pits that you designate, then it does come under prevailing wage. Is that correct?

Roc Stacey:

Sometimes, but not always.

Mary Walker, Legislative Advocate, representing Carson City, Douglas County, Lyon County, and Carson-Tahoe Hospital:

The primary concern we have, besides the concerns the purchasing people have brought forward, is with Section 1 of this bill and even the amendment itself.

Local governments, cities, and counties, as well as the State, use economic development bonds. That is basically a pass-through, a paper transaction where private companies, through economic development efforts, would be able to access lower interest rates through county, city, or State industrial development bonds.

It's one of the few economic development tools we have in Nevada that we can use to attract and expand business. Douglas County has recently used it in two examples: One was their Barton Memorial Hospital; Carson Valley Medical Center used these bonds in order to expand their smaller local hospital in Douglas County. Also, their local sanitation company used it in order to build a transfer station. By using these bonds, they got lower interest rates and, therefore, were able to have lower trash fees for the public.

Section 1 codifies into law that these private companies are now going to have to pay prevailing wage on private projects. We do not oversee them, and we do not have anything to do with these projects at all.

We are concerned about what the realistic effect of these changes to Section 1 will be. We believe it is not going to increase prevailing wage for anybody. These companies that we have been able to attract here or have been able to help with expansion are not going to use this mechanism anymore. The small amount of interest savings they would get by going through the mechanism, which actually is a lengthy mechanism with a lot of paperwork to fill out, would be outweighed by having to pay an extra 20 to 25 percent prevailing wage in a construction project. They are simply not going to use this mechanism anymore. We are not going to get any more prevailing wage, and we're not going to be able to use this economic development tool. When you look at the big picture, I think it's actually going to hurt labor in the end because we are trying to attract the higher paying jobs here and expand those kinds of businesses.

Jenny Welsh, Policy Analyst, Nevada Association of Counties (NACO):

The Nevada Association of Counties opposes the bill for the reasons previously stated.

Ted Olivas, Director, Government and Community Affairs, Office of the City Manager, City of Las Vegas, Nevada; and Member, Nevada Public Purchasing Study Commission:

We had not considered that this could have an effect on our economic development opportunities. Of course, our city council members are proponents of those opportunities, and if this would, in any way, minimize those opportunities, that would cause us some concern as well.

Alex Ortiz, Financial Analyst, Department of Finance, Clark County, Nevada:

We also agree with the others in opposition to the bill. This would definitely have a fiscal impact on Clark County. However, at this time, we do not have an actual estimated figure. We are also in agreement with Mr. Olivas and with Mary Walker that this bill could limit our abilities to receive some of those funds.

J. David Fraser, Executive Director, Nevada League of Cities and Municipalities:

The Nevada League of Cities and Municipalities is in opposition to A.B. 409. While we certainly share some of the concerns with technical points that have been voiced previously, our primary concern with the bill is that it would place the State at a disadvantage in its economic development activities. It would appear to exempt or to apply the prevailing wage to private projects that use private activity bonds. Testimony by Doug Walther, Manager, Office of Business Finance and Planning with the Department of Business and Industry, has been submitted to you ([Exhibit G](#)). There are also letters in support of that testimony from Robert Feyer of Orrick's Public Finance Department and Lawrence Tonomura, Managing Director of Banc of America Securities. The bill again would appear to apply the prevailing wage requirements rather than taking advantage of the economic development tool of the private activity bonds for otherwise fully private projects. The State had put that program into effect for the purpose of being competitive with other states, not only for attracting businesses but to retain our businesses, and expand them.

Whether you agree or disagree with those kinds of economic development incentives, other states are employing them, and to any degree that we erode our ability to offer those, we put ourselves at a competitive disadvantage with other states. By attracting those businesses and by growing our businesses, we increase our job base and thereby increase the quality of life for the citizens of Nevada.

Assemblyman Claborn:

Isn't the money on activity bonding public money?

J. David Fraser:

Yes. As I read the statutes, projects that employ public money are still subject to the other definitions of a public work in order for prevailing wage to apply, except that Section 1, even as amended, appears to apply that definition even to projects that don't meet the definition of public work under that very section, including the private activity bonding in the statute.

I think that prevailing wages are meant to be applied to projects where public funds are used, where the project is, in fact, a public project and not a private project, which is using a statutorily-defined economic development incentive.

Assemblyman Claborn:

I would just define public money as public money, whether you put it in on activity bonding or you put it on prevailing wage. Sometimes the federal government adds a grant in there, too. Public money is public money, and that is what we are talking about here today.

Mary Walker:

The private activity funds are not public monies. What we are talking about is when a city, county, or the State says that a company can get low-interest loans. It's a paper transaction. It goes through the public process, and then that company is able to access these financing tools. It is the company itself that pays it off. There is not one dollar that goes into it, so it is not public money.

In redevelopments and other types of private projects, there are times when you actually do, as an incentive, give monies, land, or assets to that project in order for it to go. In that case, that is public money. There are dollars that go into it, and that would be prevailing wage. But all they are doing is a paper transaction. They are accessing this tool, and not one dollar of public monies goes towards these private activities bonds that cities, counties and the State use.

Assemblyman Claborn:

That's probably true, but this bonding does get incentives, and they still do public buildings and so on. Isn't that true? Otherwise it would have gone to public works.

Mary Walker:

Let's take, for example, trying to build the transfer station in Douglas County. They didn't get any incentive for that. There are cases where you do give incentives and if one dollar goes into that project of public monies, even through incentives, then, yes, that is a public project, and they do pay prevailing wage. However, there are also many cases—and this has been going on for many, many years—where all they are doing is a paper transaction just to get access

to lower interest rates, and it is the company who is paying for the debt and building the building. Not one dollar of public monies goes into the debt or into the construction of the building. I agree with you that when public dollars go into a private project, they use prevailing wage. But we are not talking about that here. What we are talking about are those cases where it's just a pass-through.

Assemblyman Christensen:

It's sounding like the city, county, or other governing body simply has oversight.

Mary Walker:

There is no oversight. It is an economic development tool to help these companies access lower interest rates. We don't oversee it; we don't do anything. We basically are a conduit for their financing without any public dollars and without any oversight at all on the project or anything else.

Assemblyman Grady:

Ms. Walker, isn't a great deal of this money that we are talking about going to build low-income housing?

Mary Walker:

Yes, and a lot of important projects besides low-income housing. Because of being able to access lower interest rates, we are able to do such things as more cost-effective health care and more cost-effective sanitation fees. We are trying to attract good jobs within our communities with this economic development tool. The bottom line is that if you put in the requirement of using prevailing wage, the companies won't access it anymore. We won't have anybody interested, and we will lose our tool.

Assemblyman Claborn:

Is it true that, on this project, all a contractor would have to do is actually pay minimum wage?

Mary Walker:

Under federal law, they would have to pay minimum wage anyway. They would have to pay prevailing wage. In Carson City, when we were constructing our own government jobs, prevailing wage cost us about 20 to 25 percent more on the project than normal Carson City jobs that we have done before.

Bob Erickson, Legislative Advocate, representing the City of Fallon, Nevada:

I would like to say we agree with Mary Walker and her analysis of Section 1. We just completed a \$2.5 million business park in Fallon, and we intend to

attract new industry into our area by using all the economic incentives that this Legislature has passed. We feel Section 1 could be detrimental to that.

[Bob Erickson, continued.] In addition, in Section 5, we are concerned about that benefit section because we find it to be unclear, and perhaps even a couple of sections here seem to be conflicting. It could have another effect in the rural areas. We have a lot of contractors who are used for smaller jobs, just "mom-and-pop" operations. They don't provide normal benefits because they gear up their workforce for a job, and when the job is over, those workers are no longer employed with them. Being in a rural area and having a smaller job makes it sometimes very hard to attract even a single bidder. We feel this could have a detrimental effect on our even being able to perform some of the smaller jobs of \$100,000 to \$250,000.

We also concur with Mr. Goicoechea on Section 6, that the Labor Commissioner should have discretion in defining additional positions. I believe an amendment was proposed to delete line 14, page 6, "and any other classification the Labor Commissioner may deem appropriate." We believe that he should have that flexibility and discretion in making additional classifications where he finds them necessary.

Chairman Parks:

I have a question relative to a comment Ms. Walker made when she referenced a transfer station in Douglas County. I am presuming it was not built by Douglas County but, rather, was built by a contractor who has a contract with Douglas County.

**Justine Chambers, Contract Coordinator, Carson City Purchasing Department,
Carson City, Nevada, and Member, Nevada Public Purchasing Study
Commission:**

I have heard a lot of discussion about public work and the definition of it in NRS 338. I just want to point out that NRS 338.011, Section 1, subsection 15 actually says that:

A "public work" means any project for the new construction, repair, or reconstruction of a project financed in whole or in part from public money, for public buildings, jails and prisons, public roads, public highways, public streets and alleys, public utilities, publicly owned water mains and sewers, public parks and playgrounds, public convention facilities, which are financed at least in part with public money, and all other publicly owned works and property.

[Justine Chambers, continued.] There is nothing in here that discusses private work or monies passed through for private work.

Chairman Parks:

Thank you very much for that clarification. I would like to ask the Labor Commissioner to come forward.

Michael Tanchek, Labor Commissioner, Nevada Department of Business and Industry:

I am neutral on this bill. However, I do have concerns I'd like to share with the Committee. I received the copy of the amendment that was proposed by Mr. Daly. I looked at them a little bit, but I haven't had a good opportunity to look through and see the repercussions.

I would like to correct a misstatement that Mr. Daly made early on. I think, perhaps, it was just a lapse on his part. It has never been the position of the Labor Commissioner that prevailing wage does not apply on any of these projects. The position of my office is that each of the projects are decided on a case-by-case basis, depending on how they fall out in the analysis. I noticed that one of the deletions that was proposed in the amendment says, "paying the prevailing wage required pursuant to..." (several statutes). That is part of an ongoing problem because none of those statutes require the payment of prevailing wages. Those statutes refer you back to NRS 338, where the requirement for prevailing wage is found. That's an important distinction to make, because it has created a lot of confusion in a lot of people's minds.

For example, private developer in Las Vegas has a contract to build a new building for the Internal Revenue Service. It's a prevailing wage project and falls under one of these provisions. It's a redevelopment project. There are some other projects currently in place that we're reviewing to see whether they are going to fall in the analysis and whether they will require prevailing wage.

Doug Walther, Deputy Director of the Department of Business and Industry, Office of Finance and Planning, has submitted testimony [see [Exhibit G](#)]. He has some serious concerns about the impact of this proposal on industrial revenue bonds. He also has some supporting letters from Orrick, Herrington, Sutcliffe LLP, and Banc of America Securities in that regard.

There are enforcement issues involved here as well. Under the language as it is now amended, if you go into NRS 338, the enforcement provisions always tie back to a public body or a contractor with a public body being involved. When you have these private projects that folks are talking about and we have a private developer who has a contract or a contractor, those statutory provisions

don't fit. Now, the language in one amendment that was proposed, I think, says, "contractor or subcontractor complying with the provisions to the same extent as if a public body had awarded the contract." That is attempting to put that developer into the shoes of the awarding body. Now you have an enforcement mechanism. If there were problems, the complaints would be investigated by developers. The list is pretty exhaustive. I just wanted to make you aware of that. It creates stickiness in the enforcement provisions.

[Michael Tanchek, continued.] Something else that has come up is the definition of supplier. There is a possibility the language as written would expand the definition of supplier, as was pointed out by some of the other folks.

In terms of the amendment, they are looking for work that is done by suppliers after they bring material to the job site. One of the exhibits that I've given you is an advisory opinion ([Exhibit G](#)) sent out by the previous Labor Commissioner that essentially lets those folks know that, if you're doing work beyond merely dropping material off at the job site, you have to pay prevailing wage. I think that is fairly clear, and that's the way it's been approved.

The benefits issue has come up. Currently, the requirement on benefits is that it be paid. The benefit could be used to meet your prevailing wage obligations, but that benefit has to be paid to a third party in the name of that workman. What that benefit is has been left to the labor organizations and management to argue out, or the other contractors decide what benefits they want to give. From our standpoint, the key requirement is that money is paid to a third party; there is no incentive to play with that money. It's either going to go to the worker or it's going to go to somebody else, but the contractors don't get to keep it.

In terms of the classifications, in a previous hearing I gave you all a copy of prevailing wage tables for Carson City. As Mr. Daly pointed out, the classifications listed here are pretty much the ones that are in those wage tables. We have the wage tables for the last 5 years posted on our website. You go back through them, they are all the same.

Jack Jeffrey, Legislative Advocate, representing Southern Nevada Building and Construction Trades Council, Las Vegas, Nevada:

Apparently there is some misunderstanding with this bill, especially with Section 1. Section 1 clarifies existing law. All of these bonds that are referenced in Section 1 are already covered under the prevailing wage law. The law was originally passed in 1991.

In each of those bonding sections it will tell you that NRS 338.010 through 090 is included, and it's a decision the user of those bonds has to make whether it's

worth his while to take a lower interest rate and pay the prevailing wage. But the philosophy was to allow them to take advantage of government to finance these projects, and they should come under prevailing wage. I won't go into the full blown thing; you don't have time for that. I did want to make that clarification. We are not talking about new ground here.

Richard Daly:

I'll get with as many parties as I can to get as many things as possible resolved as quickly as possible. I sometimes wonder, listening to the testimony, if we are talking about the same bill when I hear some of the issues that are brought up. Section 1 is clarifying existing law, NRS 244A.763, which essentially talks about provisions for the economic bonds. They have to qualify for the bonds; they have to apply for the bonds; they have to meet the criteria; and you have to guarantee the bonds will be repaid to reduce the risk as much as possible to the body issuing them. It doesn't go against the State debt. It covers these various things.

The last thing it says is that you don't have to comply with the State public works laws. They don't have to meet the economic efficiencies, and they don't have to comply with all those other restrictions normally put in, except as NRS 338.010 through 090 apply to any project financed with these bonds. That's what the law says, so the whole argument about whether or not it has been properly applied is water under the bridge. The argument about the definition of "public work" has recently come up. Because it doesn't meet the definition, they are saying that those words were intentionally put in there by the Legislature to be meaningless. That's an absurd conclusion under the acts in the law when you look at the common man's perception. Why would you put words in if you intended it not to be covered in the first place? That's why we say just because it doesn't meet that definition doesn't exclude you or exempt you from following the provisions.

The section on the benefits is just a misunderstanding. It does not require anyone to pay benefits. When the Labor Commissioner surveys for the prevailing wage, wages are defined in the law as the actual wages plus any benefits that are paid for the benefit of the worker. When he issues that, he includes the total wage rate and any benefit package, if it's included in the total wage rates. He put out one number for the laborers—it's about \$26.00 per hour—so the contractor, by signing the collective bargaining agreement, meets the prevailing wage by paying the hourly wage at around \$20.00 and making up the difference by paying into benefits. A contractor has a program to meet the prevailing wage by paying benefits, and the benefits need to be paid on all hours that the employee works for that company. If he switches companies, it really

makes no difference. If the contractor pays no benefits, he just pays the \$26.00 on the check.

[Richard Daly, continued.] That is the clarification there. As far as the other technical things, the Labor Commissioner stated that he has a determination on what a supplier can and cannot do. These are just to clarify, codify, and put it into law so it's not subject to a Labor Commissioner's interpretation. Clearly, I think it coincides with what his current standing is.

Some of those issues can be cleared up. I am just trying to clarify that existing law should apply. I'm asking this Committee to recognize that and confirm it. If they want to have an argument on whether it applies, it should be brought up in another bill.

Chairman Parks:

I will close the hearing on A.B. 409 and open the hearing on A.B. 552.

Assembly Bill 552: Revises provisions relating to public works. (BDR 28-1059)

**Richard Daly, Business Manager, Laborers International Union of North America,
Local No. 169, Northern Nevada:**

I have amendments ([Exhibit H](#)). Although there are more moving parts in this bill, I will say that a lot of the provisions and various things concerning the survey process for prevailing wage are things that are pretty much already done. We just wanted to bring them forward, codify them, and stabilize the practice, rather than have it change as it has over the past few years by whoever is the Labor Commissioner.

In the first amendment, page 1, line 4, we want to add "any person" so that it would read "any person otherwise undertaking..." to allow for and anticipate the discussion we just had on the previous bill. Other people, besides the public body, need to find out what the prevailing wage is on their project. We want to change to "recognize in the construction industry," rather than "recognize by the Labor Commissioner." That's the intent of subsection 1.

In subsection 2, we are trying to put into the statute that we surveyed for nonresidential construction, which is currently done when they do the survey now, and for construction that is over \$100,000, which is the threshold that would have prevailing wage apply.

[Richard Daly, continued.] In paragraph (b) at the top of page 2, I would propose an amendment to add "recognize national building trades organizations." That's the section of the bill that would say that the Labor Commissioner not only surveys contractors, but can survey labor organizations that represent workers in the construction industry. That is how it was done previously, even though the law didn't exactly say that. We should be able to participate in the survey. We have a lot of information about where the jobs are, how many man-hours are needed, et cetera, and we believe we can supply accurate and adequate information for the purpose of the survey.

In the bill, subparagraph (3) says, "the number of hours each class of workman as employed by the contractor." Some of this language is directly out of the regulations; again, we want to bring those forward to get codified into law what's already being done. On the survey, we want the names and the addresses of contractors, the numbers of hours worked, and various other information, so we can see that it's in the survey period, that it's the type of construction we're supposed to survey for and it's over \$100,000. For several years, the Labor Commissioner has asked on the survey whether the work performed on the job is under a collective bargaining agreement or not. Part of the reason we have the proposed amendment is on page 2, line 19, where it says, "For the purposes of the survey, wage rates for each recognized class of workman paid under a collective bargaining agreement will be considered to be at the same rate." The law currently freezes the wage rates on ongoing jobs, so you have wage rates for each project. We want to just codify it into law so that there is less ability to change over time and over interpretation.

Subsection 4 makes a slight change in regulation, which now states that if the majority of the hours are worked at the same rate, that will determine the prevailing wage rate. Regulation now says that if you don't have a majority, then you have to have 40 percent of the hours to be determined as the prevailing rate, and then they would go to an average. This change would say that if you don't have a majority of the rate, you would use the greatest number of hours reported rather than going to an average. Averages tend to lower the rate and may not actually represent any rate that was being paid.

Paragraph (c) in subsection 4, line 36, says if a type of construction is not based in a certain county, they establish the rate based on the next-closest county. Subsection 5 clarifies that if the Labor Commissioner determines the prevailing rate of wages of a recognized class of workmen, the Labor Commissioner shall recognize the classifications, job descriptions, and economic conditions. Recognizing economic conditions is a new section.

[Richard Daly, continued.] Currently, the Labor Commissioner, under paragraph (b), line 4, page 3, does adjust the wage rate to the rate that is effective at the date of determination. The prevailing wage determination goes into effect October 1. Many of the unions have set the increases in their agreements to coincide with October 1 so the contractors are not at a disadvantage for a period of time or having to pay more or less. The Labor Commissioner will recognize, if the collective bargaining rate prevails, the increases that go into effect as of October 1.

The new section in the economic conditions means premium pay for subsistence travel other than honorary pay. Currently, the Labor Commissioner will recognize the zone rates in area pay. It's called different things under different agreements. For some of the classifications, he recognizes the shift work. I believe shift work, if the union rate prevails, should be recognized under the agreement. Then the overtime for weekends, holidays, and others, we believe should also be recognized. The overtime over 8 hours was put into statute last session. We do have to pay overtime after 8 hours, but there are overtime provisions in the agreements on the weekends and holidays. My belief is that if we are going to have people working there on a substantial number of public works projects, going to union contractors won't increase the cost because it's already been paid under those collective bargaining agreements. We want people to have a 40-hour week with Saturdays and Sundays off so they can stay home with their families. We want them to be paid a decent wage rate with benefits so that they don't have to work overtime. We believe that this will coincide with those beliefs. But if someone is working a holiday, or Sunday, or Saturday, they should be properly compensated. If the prevailing wage rate is based off a bargaining agreement, we should at least follow those.

Paragraph (b), subsection 6, defines non-residential instruction. I do have an amendment for that. Non-residential construction means any type of construction, except for the structures that include landscaping and fences for multi-family residences that are less than four stories high and single-family residences. That coincides with federal definitions of "residential."

The part I wanted to clarify is infrastructure work, grading, pipe, sidewalks, curb and gutter, streets, and various components of a residential development that are not really residential construction. That's why I put in the word "structures."

Under Section 2, subsection 6, page 4, there is a current provision in the *Nevada Administrative Code* (NAC) that says the rates of wages which include the benefits at this point are frozen for the duration of the project. Any of the collective bargaining agreements recognize that, we suggest that the wage rate

remain frozen for the duration of the job. That is how it has been. The situation that has come up recently with the cost of health care and some issues with the pension programs and various things is that when the fringe benefits stay frozen for a three-year project, it puts some of those plans in jeopardy, so we propose in this section that if the wage rate is collectively bargained, and a portion of the increases go to health and welfare or pension only, we can increase it up to 50 cents per year to help maintain the benefits. That's the portion of paragraph (b) that would allow that 50-cent increase. We would have to notify the Labor Commissioner, and contractors can anticipate that the 50-cent maximum would not make it that much more difficult or increase the cost substantially.

[Richard Daly, continued.] In subsection 8, line 36 of the proposed amendment, I propose adding the words "area practice" to coincide with what we have been talking about: that you need to follow up and perform the work in accordance with the practice in the area, based on what the survey says.

Section 3, subsection 7, line 35, defines what a representative means, as an agent of the office or the employer contractor or a recognized national labor organization. The part including the nationalized recognized labor organization is new so that we can survey labor organizations. That also would include putting in the building trade organizations as proposed in the first amendment.

In the last section of NRS 338.070, we want to have the address included on the prevailing wage survey reports that are turned in to help everybody, us included, determine if NRS 338.130 is being complied with. What 130 says is that we are supposed to give first preference to honorably discharged veterans and second preference to citizens of the State of Nevada. We are not trying to invade privacy, but we do need to have that information to determine if that section of the law is being applied.

Chairman Parks:

Since most of this is currently in the NAC, what is broken and needs to be fixed?

Richard Daly:

Not all of it is in the NAC, in my opinion and in the opinions of the people who support the bill. What's broken and needs to be fixed is we had a prevailing wage survey process in existence for 25 years prior to the previous Labor Commissioner taking office. What both management and labor had come to accept as the process was changed. We went from a majority and 30 percent of the hours in order to be determined to be prevailing wage to 40 percent. We went from the labor unions being able to participate in the

survey to not being able to participate, and we went forward with the representatives. We had to argue over whether the Labor Commissioner would continue to recognize the hours under collective bargaining agreements at the same rate. We had to argue over whether or not he would recognize the increases in the agreement if the union rate prevailed. Those uncertainties on our side of it, both for labor and management, are why we need to take them out of regulation, out of the purview of the Labor Commissioner. We need to stabilize how the process has gone so everyone will know what to expect and how to act. That's what is broken. There is uncertainty in how it's going to be interpreted and administered by regulation.

Michael Kinney, Member, Laborers International Union of North America, Local No. 169, Northern Nevada:

As a laborer we would like to see some form of consistency in the laws on this rating, because, if there is a different Labor Commissioner, he might interpret the laws as being different than what is actually written. We'd like some type of consistency over the years.

John Russell, Laborer and Private Citizen, Reno, Nevada:

I would just like to say "me, too" with Mike Kinney again.

John Seymour, Legislative Advocate, representing International Brotherhood of Electrical Workers, Local No. 401; and Nevada State Electrical Workers Association, Reno, Nevada:

I, too, would like to give my support for getting some consistency in the procedures here.

Pat Sanderson, Legislative Advocate, representing Laborers Union Local No. 872, Carson City, Nevada:

Me, too.

Justine Chambers, Contract Coordinator, Carson City Purchasing Department, Carson City, Nevada, and Member, Nevada Public Purchasing Study Commission:

We have several points of opposition to this bill ([Exhibit I](#)). On page 2, the proponents talk about the recognized national buildings and trades organizations as changed by the amendment. I would like to have something added to that section that says "in the county that represent the workmen in the construction industries" so it's not an organization that represents the whole state. Wages might be a little comparable to what is expected for the smaller rural areas.

[Justine Chambers, continued.] On page 2, line 28, it talks about the wage rates being the same for the majority. I'd like some clarification on what that is. What is the majority? Is that 50 percent, 60 percent, or 75 percent, or more?

Paragraph (c), line 36, talks about non-residential construction that has not been performed within a county. During the period of the survey, the wages for such a county must be the prevailing wages for the county as determined by the Labor Commissioner. At that point, we should be able to say that it should be at a similar population, because, sometimes, you could be comparing Clark County to a small one like Churchill County. They should be compatible.

On page 4, Section 7, starting on line 23, the unions could negotiate a new contract and the wages could be changed after the prevailing wage for the project has been set. I could see this being difficult to monitor for both the public agency and for the contractor. There could be a 20-cent change on one contract, a 15-cent change on another two months later, and another 5 cents after that. Currently, it is working very well that the wages are set for the project. We request that remain the same.

I'm also concerned, on page 6, line 23, about the prevailing wage reports indicating the name and the mailing address of the workmen employed. Currently, we block out the addresses, the Social Security numbers, and the mailing addresses of the employees on the wage reports before they are released for public view. That is to protect the privacy of the worker. In past instances, we know that this information was used to solicit workers on jobs and to encourage them to join unions. That is not the function of the wage report. It's to ensure that the employee gets paid the wages, so we would like that to revert back to the way it was originally set. Another issue was in NRS 338.070, where concern was if a worker who was a veteran would receive preference and maybe that could be added to the wage report. Also, they could check on whether they are a veteran so that those requirements could be verified in that manner.

Assemblyman McCleary:

If there was a box they could check, they could say they are a veteran. Correct?

Justine Chambers:

Right.

Assemblyman McCleary:

And veterans are going to get preferential treatment, correct?

Justine Chambers:

It's not the local government body that gives preference on that. The only time we would give preference is if two bidders submitted exactly the same bid, which very rarely happens, and one is a veteran and one is not. Then we would award to the veteran.

Assemblyman McCleary:

How do you substantiate that a person is a veteran? What would stop someone from just checking the box?

Justine Chambers:

It's not something that the local government is required to check or verify. That would be a question that would have to be asked of the contractor or, maybe, the unions. They're just looking for a mechanism to verify. There are prevailing wage reports we check, and the purposes of the wage reports is different from what they are asking for. But we are trying to accommodate their need.

Assemblyman McCleary:

I would just feel more comfortable, if we are going to give preferential treatment to those that hire veterans, if we could verify who is actually a veteran.

Rose McKinney-James, Legislative Advocate, representing Clark County School District, Clark County, Nevada:

With respect to this measure, I am here for the limited purpose of drawing your attention to Section 2, paragraph 7, of the bill.

The District is concerned about the fiscal implications here, because we believe this may create a problem for us that is inconsistent with the prevailing wage formula. This provision would increase by 50 cents per hour if any contribution has been made to the health benefits under a collective bargaining agreement. I had a brief conversation with the Labor Commissioner this morning, who indicated to me that this is a unique provision of the law. We don't know exactly where it came from. I've not had the opportunity to discuss this with the proponents of the bill, but we question it, have concerns about the fiscal implications, and would prefer that language be removed.

Derek Morse, Member, Regional Transportation Commission, Washoe County, Nevada:

Our primary objection to this bill also lies in Section 2, subsection 7. We believe this will create uncertainty and risk for potential bidders that must be passed on to the public. We also believe that despite the statements made earlier that the intent of the bill was to eliminate confusion, this actually adds to the confusion. It seems to imply, when you take the language in subsection 6 and subsection 7

together, that the wage rates will be changed and that somehow they will be passed on to the contracting party. We believe if subsection 7 remains in the bill, there should be an additional section added to state that nothing in that section requires a public body to make a change order to accommodate these higher wage rates. If that is not done, we believe these provisions will conflict with federal acquisition regulations in terms of the firm-fixed-price contract and the ability to make changes in that regard. If we do make them, they will fall exclusively on the local governments. The federal government will not participate in those increased costs.

Michael Tanchek, Labor Commissioner, Nevada Department of Business and Industry:

I signed in as neutral on this, but I do have some items I would like to bring to your attention.

In Section 1, subsection 1, page 1, lines 3 through 8, the class of workmen recognized in the construction industry: I just want to point out that "construction industry" is a pretty broad term that can include not only labor organizations and contractors, but architects, engineers, surveyors, temporary employment agencies, insurance carriers, particularly those that provide workers' compensation coverage, suppliers, equipment dealers, and so forth.

It would be pretty tough to get a consensus on what those classifications are given the broad spectrum of that group, but that would be an approach. A large section of Section 1, starting on page 1, line 9 and going through page 3, line 17, essentially rewrites NRS 238.030, the process by which the prevailing wages are determined. I am going to give you a handout ([Exhibit H](#)) with the existing statutes, as well as the regulations to refer to. I think we have a pretty good system in place. It works, it's been here for a while, and, if it isn't broken, don't fix it. Personally, I don't think that the system is broken; however, abandoning that process would also require us to write off the significant investments that this state has made in the current program that is used to calculate prevailing wages.

On page 3, line 19 and 20, there is some language changes, the language about where prevailing wage rate tables have to be submitted. Currently, if a public body enters into a construction contract, they have to put a copy of the wage rates that apply to that project in the contract, so that they are there and everybody is on notice. I'm not sure what the effect of the language would be.

On page 4, lines 18 through 33, those are some provisions that have to do with changing the rates. The premium wages are kind of a moving target. What happens is that you are going to have the rates change after the contract is

awarded. It will be a little harder to keep track of those. We also share the privacy concerns about publishing the address.

Assemblyman Grady:

On page 3, line 4, sometimes the prevailing rate that the union has could be less than the bargaining rate. Would you then be mandating a different rate?

Michael Tanchek:

It has to do with the way that wage rates are calculated. If a collectively bargained rate is determined to be the rate that prevails in that jurisdiction, the rate that is going to be in effect when the new rates kick in on October 1 is the rate that you want to use. We cut off the survey process on July 15, because it takes about two months to work through all this data and develop 2,500 rates.

During that gap in the process between the time that it closes out and the time that the rates are published, these collectively bargained rates are getting established during that period, and those are the ones that get used.

Randy Robison, Legislative Advocate, representing Associated Builders and Contractors of Southern Nevada:

We would echo the concerns that have been raised previously by the Labor Commissioner and by Public Purchasing. On this bill, I think we simply have a difference of opinion. We will register some opposition primarily relating to the survey to determine the wage rates. The current process now is a survey of contractors. This would change that to survey labor organizations as well, which we feel could tip the balance unacceptably

John Martin, Legislative Advocate, representing Associated Builders and Contractors, Sierra Nevada Chapter:

On excluding projects under \$100,000 for some small municipalities such as Eureka or those that might be a little economically depressed, to exclude projects under \$100,000 helps set the prevailing wage rate. Those small municipalities may not have had a project over the last year or two that exceeded that \$100,000 threshold, so consequently, they would have no voice in what the wage rates for their area would be.

Mr. Robison brought up the issue of surveying organized labor for wage rates. They currently represent less than 15 percent of the workforce, according to the Federal Bureau of Labor Statistics. Yet they want to set the de facto wage rate determiner for the entire industry. That seems an ambitious endeavor to want to set the wage rates for the other 85 percent of the employees in the construction industry.

[John Martin, continued.] There was discussion about preference to veterans—I myself am a veteran—that I think largely lies with the employer when he is hiring and are several people there available to go to work on a prevailing wage job. I certainly support that 100 percent, and that's to give veterans the benefit and the opportunity first to see if they can perform.

I think the way the system is working right now by allowing the contractors or the employers to fill out the wage rate is good, because they are the persons who actually pay the wages. The unions determine the wages for their employees, and that certainly is their right, but they don't pay the wage. Why would they be included in determining what that wage is, because they are not the ones writing out the checks? The employer is the one who sends out that check and has to generate the monies for the payroll at the end of each week. In that respect, I think that to use labor organizations as the determining body as to what those wage rates should be would not be appropriate for or fair to the employers who are not signatory with them.

Roc A. Stacey, Manager, Contract Compliance Division, Nevada Department of Transportation:

I would support most of the comments the Labor Commissioner made and some from the industry. There are two things that I would like to bring up. The first is the 50-cent raise per year on individual projects. As it reads, this is not a raise to the prevailing wage rate, this is project-specific. Therefore, we are going to be changing our wages on a fairly constant basis, depending on the start and stop times of whatever contract is out there plus winter holdovers and other delays. That is going to be administratively difficult, and it's probably going to have a financial impact. Then we will be required to add staff and that sort of thing.

Secondly, Mr. Daly stated that he wants to see a wage that mirrors the collective bargaining agreements in the ways such as time and a half, double time, and other pay incentives for employees if they work weekends, overtime, and meet other requirements. During the 72nd Legislative Session, they enacted a requirement that, not only are employers required to pay over 40 hours a week at time and a half, they now are required to pay, after 8 hours in a day, time and a half. In the construction industry, Nevada has no option other than to work overtime, weekends, and other odd shifts, because of the fact that we have such a short construction season in many areas of the state. Even Las Vegas shuts down due to the lack of appropriate paving temperatures in highway construction. I believe that, if this were enacted, we would have to look at each and every bargaining agreement, we would have incorporated all of those into the prevailing wage, and it could have a huge financial impact for any

state, county government, or whoever is going to put out a public works contract.

Richard Daly:

I will again be getting with all the parties so that we have a chance to get this thing through.

Chairman Parks:

With that, we are going to close the hearing for A.B. 552. If anyone has any further comments on this bill, please submit them in writing. We are going to cover one more bill today, A.B. 483. Unfortunately, we will not be able to do A.B. 275 today.

Assembly Bill 275: Prohibits involvement of State Public Works Board in certain activities of local governments. (BDR 28-614)

Assembly Bill 483: Revises provisions governing collective bargaining between local governmental employers and employee organizations. (BDR 23-1337)

Assemblywoman Debbie Smith, Assembly District No. 30, Washoe County:

[Submitted written testimony, Exhibit J.] Assembly Bill 483 addresses some timeline issues related to collective bargaining and includes fact-finding for public employees who are not teachers, police, or firefighters. The way the current statute is written, the timeline for fact-finding does not make sense and, in fact, the dates are truly not attainable. If you were to look at the dates for submission of names and dates in NRS 288.200 and NRS 288.201, you would see the confusion.

You have been offered a small amendment (Exhibit K) to the bill that deletes some language and clarifies some language, and there is a color-coded timeline that will help as Mr. Langton goes through the bill. It really is a simple revision of the dates, and I think we have some very broad base support for the bill.

Michael Langton, Attorney, representing Washoe County Employees Association and the Carson City Employees Association, Reno, Nevada:

On the color-coded document (Exhibit J) that you have in front of you, the green indicates mediation; the yellow, fact finding; and the brown, final and binding fact finding. The objective in this law is to give all parties, employers and associations alike, an opportunity to maximize the time utilized in

negotiations. Sometimes a deadline passes during that negotiation. The objective here is to allow the parties to participate in mediation. If they want to before a particular date, and then mandatory afterwards at anytime, it eliminates the ability of either side to say, "You missed that deadline." It will also, we believe, lessen the EMRB [Employee-Management Relations Board] load for prohibited practice complaints in the event that one party, in good faith, is negotiating and then says, "Let's mediate this." Then we can get to that portion, as opposed to filing a ULP [unfair labor practice] or a prohibited practice complaint, which would require litigation as to whether both sides had agreed to waive it.

[Michael Langton, continued.] In mediation, the mediator has absolutely no authority—they sit, they listen to each side, and they make suggestions. Quite often mediators come from federal people at no cost to either of the parties. The EMBR does have a process whereby they provide mediators, too, and I believe there is a minimal expense. None of the processes, per se, has changed. All we have here is an attempt to get deadlines away from being prohibitory to negotiations. As you know, negotiations are a dynamic process, and I think the parties should be allowed to participate. This bill will release impediments.

Assemblyman Claborn:

We're not talking about deletion of an expired contract with the state union and the contractor, are we? What we have in our contract is that you have to delete prior to 30 to 60 days before the contract becomes null and void. We are not talking about this, are we?

Michael Langton:

No, and none of the contracts for public employee unions that I represent have those kind of provisions. Every single one of them has a rollover provision so that negotiations go on. One of the problems is that, quite often, you don't even start negotiations until after some of these deadlines have passed, because budgets are being formulated even while the parties are negotiating. I've negotiated many contracts that go until almost February 1 of the very next year when that contract is retroactive to July 1 of the previous year. We believe this will help eliminate some of those concerns. That process probably will never go away, but this will help expedite the process, and I think that's what we all want. We want the employer to be able to budget if there are economic issues. We want to have a fair opportunity as an employee organization to argue for raises before the budgeting process is set.

Assemblyman Claborn:

This is when you are already in negotiations, is that correct?

Michael Langton:

Correct.

Chairman Parks:

Mr. Langton, I believe this amendment ([Exhibit K](#)) was yours.

Michael Langton:

Yes, the amendment was my recommendation, and Assemblywoman Smith agreed to it, as did all the other people. On Section 3, page 4, line 28, delete the "within 15 days after the impartial fact finder has reported his findings and recommendations," because you should know, going into fact finding, whether it's going to be final and binding or not. It often will affect your presentation. Obviously, the winner would want to have this process, so we recommend that deletion so that Section 3 would read, "Any request for the formation of the panel to determine whether the findings and recommendations of a fact finder must be final and binding must be submitted to or with the commissioner, and the request must include," and then there is that specific criteria.

Chairman Parks:

You had struck the "not later than October 1." Should there be a date in there for that?

Michael Langton:

No, we didn't believe there should be. Leaving out the date was intentional where it states "must be filed with the Labor Commissioner." That was one of the artificial dates, "no later than October 1." When you are in negotiations in January and February, and then you say, "Let's see if we can have final binding," one of the parties could say that you missed that date, when in fact they fully participated in this. In negotiations, I think it should be a level playing field, and I don't think either side should have an advantage.

Assemblywoman Smith:

When this was brought to my attention prior to this session, I actually did talk to the Legislative Counsel Bureau staff about whether my perception of the dates was a bit convoluted or was correct. I did have the opinion that they were not attainable.

Paul McKenzie, Legislative Advocate, representing Operating Engineers Local Union No. 3, AFL-CIO, Reno, Nevada:

I think the openendedness of this proposed bill makes it so that you are not rushed to get to a settlement by some deadline. It gives parties the power to bring the other side to the table if they are trying to stretch negotiations out and abuse the system.

Liz Sorenson, Legislative Advocate, representing Communication Workers of America Local No. 9413, Reno, Nevada:

We would like to go on the record as supporting A.B. 483.

Gary Wolff, Business Agent, International Brotherhood of Teamsters Local No. 14, Reno, Nevada:

We also want to go on record in strong support of A.B. 483.

Ron Dreher, Government Affairs Director, Peace Officers Research Association of Nevada:

We would like to go on record supporting A.B. 483 with the amendment.

Tommy Ricketts, President, Las Vegas City Employees' Association, Las Vegas, Nevada:

With our recent negotiations, I wish this had been in place last year, not only for our organization but for the firefighters and the police in their negotiations. It seemed that there was the willingness of the employee organizations to sit and bargain fairly and come up to a mutually acceptable agreement. We were often put under the pressure of deadlines that currently exist in NRS 288. Neither party could agree to or meet without looking unwilling to mutually come to an agreement. With this, I strongly encourage the support of this bill and would greatly appreciate it.

Assemblyman Claborn:

If you run into an impasse in negotiations, this in no way impedes you from striking, is that correct?

Tommy Ricketts:

Correct. What this does, in my opinion, is two things. It would probably save each party \$40,000 to \$50,000 in negotiations. In our last negotiation, our portion was \$118,000, and I'm sure the city paid \$150,000 or so. This just allows a larger window without trying to meet a deadline, which is impossible, and hopefully, without going 18 months without a settlement. We could probably sit at the table and come to agreement without having to meet that deadline.

Chairman Parks:

With that, we are going to close the hearing on A.B. 483.

We are going to hear A.B. 275 first thing tomorrow morning, so we will start that at 7:30 a.m.

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The other thing is that you were handed, among all the papers this morning, a mockup of A.B. 376 ([Exhibit L](#)). It should be in your possession for when we're ready to go to work session.

With that, we are adjourned [at 11:03 a.m.].

RESPECTFULLY SUBMITTED:

Nancy Haywood
Committee Attaché

APPROVED BY:

Assemblyman David Parks, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 12, 2005

Time of Meeting: 7:30 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
AB 376	B	Assemblyman Richard Perkins	Written testimony, 3 pages
AB 304	C	Scott Craigie, APS, Energy Services	Letter from Richard Burdette, 1 page
AB 304	D	Jay Johnson, APS, Energy Services	Information in support of A.B. 304, 8 pages
AB 409	E	Richard Daly, Laborers International Union of North America Local No. 169	Proposed amendments to A.B. 409, 2 pages
AB 409	F	Richard Daly, Laborers International Union of North America Local No. 169	Copies of NRS 338.030 through NRS 338.090. 4 pages
AB 409	G	J. David Fraser, Nevada League of Cities and Municipalities	Testimonial letters of concern regarding A.B. 409. 8 pages
AB 552	H	Richard Daly, Laborers International Union of North America Local No.169	Proposed amendments. 1 page
A.B. 552	I	Justine Chambers, Nevada Public Purchasing Study Commission	Concerns relating to A.B. 552. 2 pages
AB 483	J	Assemblywoman Debbie Smith, Washoe County	Written testimony. 4 pages
AB 483	K	Assemblywoman Debbie Smith, Washoe County	Amendments for A.B. 483. 1 page
AB 376	L	Chairman David Parks, Assembly Committee on Government Affairs	Mockup for work session of a proposed amendments to A.B. 376. 8 pages