MINUTES OF THE SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Eighty-second Session March 31, 2023

The Senate Committee on Government Affairs was called to order by Chair Edgar Flores at 3:36 p.m. on Friday, March 31, 2023, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Edgar Flores, Chair Senator Skip Daly Senator Pete Goicoechea Senator Lisa Krasner

COMMITTEE MEMBERS ABSENT:

Senator James Ohrenschall, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Senator Roberta Lange, Senatorial District No. 7

STAFF MEMBERS PRESENT:

Jered McDonald, Policy Analyst Heidi Chlarson, Counsel Suzanne Efford, Committee Secretary

OTHERS PRESENT:

Thomas Memmer, Teamsters Local 631
Carlos Hernandez, Nevada State AFL-CIO
Paul Catha, Culinary Workers Union Local 226
Marc Ellis, President, Communications Workers of America Local 9413

Ross Kinson, President, Northern Nevada Central Labor Council; Teamsters Local 533

Renee Ruiz, National Nurses United; National Nurses Organizing Committee Robert Sumlin, International Association of Machinists and Aerospace Workers Local 711

Dionne Klug, United Food and Commercial Workers Union Local 711

Marissa Flores, Communications Workers of America Local 9413

Liz Sorenson, President, Nevada State AFL-CIO

Russ James

Warren Hardy, City of Reno; City of Henderson; City of Las Vegas, City of North Las Vegas; City of Sparks; Associated Builders and Contractors, Nevada Chapter

Paul Enos, Nevada Trucking Association

Peter Krueger, Nevada Petroleum Marketers Association

Aodhan Downey, Mechanical Contractors Association of Las Vegas; Sheet Metal and Air Conditioning Contractors' National Association of Southern Nevada

Alexis Motarex, Nevada Chapter Associated General Contractors

Kylie Tokunaga-Hidalgo, Ames Construction

Fred Reeder, Reno Tahoe Construction

Paul Moradkhan, Vegas Chamber

Bryan Wachter, Retail Association of Nevada

Sarah Collins, National Electrical Contractors Association of Northern Nevada

Jarrett Rosenau, President, Clark/Sullivan Construction

Teresa Herrera, H and R Trucking

Brett Harris, Labor Commissioner, Nevada Department of Business and Industry Joe Guild, Union Pacific Railroad

Peggy Ygbuhay, Union Pacific Railroad

Andy Donahue, Southern Nevada Laborers-Employers Cooperation and Education Trust

Thomas Morley, Laborers Local 872; Laborers Local 169

CHAIR FLORES:

We will open the hearing on Senate Bill (S.B.) 301.

SENATE BILL 301: Revises provisions governing public works. (BDR 28-967)

SENATOR ROBERTA LANGE (Senatorial District No. 7):

<u>Senate Bill 301</u> clarifies the definition of worker on a public works project to include truck drivers who deliver certain materials to public work construction sites.

This issue goes back to early 1990s. On March 16, 1993, the Office of the Attorney General issued Opinion No. 93-1 to address the issue of whether certain truck drivers who deliver materials to the site of a Nevada public works project should be paid prevailing wage. The opinion provided that under certain circumstances, some delivery truck drivers were entitled to receive prevailing wage. The opinion was later rescinded based on certain court decisions.

On May 30, 1995, the Office of the Attorney General issued another opinion on the subject. Opinion No. 95-07 stated that a truck driver who delivers materials to Nevada public works does not need to be paid the prevailing wage.

While this issue has been debated over the years, <u>S.B. 301</u> will provide the clarity needed in *Nevada Revised Statutes* (NRS) 338.040 to ensure these workers are paid the prevailing wage for their labor on a public works project. A truck driver delivering and removing material from a public work is just as essential to the project as other employees working continuously on the site.

The intent of prevailing wage is to protect compensation standards in our communities. Without prevailing wage applying to this aspect, the law allows trucking to be excluded which directly contradicts the purpose and intent of prevailing wage. At the heart of prevailing wage is the conviction that government should not act to drive down wages. Without this fix, this is exactly what occurs regarding trucking.

The change is also designated for a creation of a uniform and fair application of Nevada's prevailing wage law to all parties involved in the process and execution of a public works contract.

Section 1, subsection 1 of <u>S.B. 301</u> expands the definition of a worker on a public work who is necessary in the execution of a contract to include "without limitation, employed by delivering or removing construction material or structures to or from the site of a public work."

Section 1, subsection 2 requires the Labor Commissioner to include these workers in the adoption of regulations. Section 2 provides that any regulations adopted by the Labor Commissioner that conflict with section 1 are void.

Section 3 sets the effective date upon passage and approval for the purposes of adopting regulations and January 1, 2024, for all other purposes.

In the conceptual amendment (<u>Exhibit C</u>) on <u>S.B. 301</u>, section 1, subsection 1, paragraph (a), Employed in the site of the public work, the words "including, without limitation" will be deleted and retain the words "employed by delivering or removing construction materials to and from the site of the public work as defined as." In the list of four that follows, item four, "Barrier Rail," will be deleted.

In section 1, subsection 2, paragraph (a) of the conceptual amendment, Exhibit C, the same language will be used, "Employed at the site of a public work" but delete the words "including without limitation" and retain the words "employed by delivering or removing construction material to or from the site of a public work as defined as" and again delete item four "Barrier Rail."

THOMAS MEMMER (Teamsters Local 631):

I have submitted written testimony (<u>Exhibit D</u>) and backup documents (<u>Exhibit E</u> contains copyrighted material. Original is available upon request of the Research Library.) supporting <u>S.B. 301</u>.

CARLOS HERNANDEZ (Nevada State AFL-CIO):

The Nevada State AFL-CIO supports <u>S.B. 301</u> and looks forward to the passage of this bill.

PAUL CATHA (Culinary Workers Union Local 226):

Many Culinary Union members have household members who work in the building trades. The Culinary Workers Union 226 supports <u>S.B. 301</u>.

MARC ELLIS (President, Communications Workers of America Local 9413): The Communications Workers of America Local 9413 supports <u>S.B. 301</u>.

ROSS KINSON (President, Northern Nevada Central Labor Council; Teamsters Local 533):

This bill is important to all of us, and we support it.

RENEE Ruiz (National Nurses United; National Nurses Organizing Committee): National Nurses United represents the interest of more than 3,000 registered nurses throughout the State and supports S.B. 301.

ROBERT SUMLIN (International Association of Machinists and Aerospace Workers Local 711):

The International Association of Machinists and Aerospace Workers Local 711 supports this legislation because every worker who is employed at the site of public work, including those delivering or moving construction material or structures to or from the site of public work, should be paid at a minimum of prevailing wage. I urge the Committee to support <u>S.B. 301</u>.

DIONNE KLUG (United Food and Commercial Workers Union Local 711): The United Food and Commercial Union Local 711 supports <u>S.B. 301</u>.

Marissa Flores (Communications Workers of America Local 9413): The Communications Workers of America Local 9413 supports <u>S.B. 301</u>, and we urge the Committee to support it as well.

LIZ SORENSON (President, Nevada State AFL-CIO):

The Nevada State AFL-CIO supports <u>S.B. 301</u>. I urge this Committee to support the bill as well.

RUSS JAMES:

I support S.B. 301, and I urge the Committee to support it also.

WARREN HARDY (City of Reno; City of Henderson; City of Las Vegas; City of North Las Vegas; City of Sparks; Associated Builders and Contractors, Nevada Chapter):

The cities of Reno, Henderson, Las Vegas, North Las Vegas, Sparks and the Associated Builders and Contractors oppose <u>S.B. 301</u> in its original form.

This bill expands the law, but it stays within the intent with the amendment because it is involved and dedicated to the production of a building. My clients believe prevailing wage should be paid where it is supposed to be paid and we should not get around that.

The standard is does it involve the construction of the building? Does it have something to do with that building coming up out of the ground? As amended,

the bill accomplishes that. Senator Lange is narrowing it appropriately to focus on the original intent.

My clients need to review the amendment but appreciate Senator Lange's willingness to present it.

PAUL ENOS (Nevada Trucking Association):

The Nevada Trucking Association opposes <u>S.B. 301</u>, although it does agree that trucking is essential to these projects and to many different facets of our lives, whether delivering construction supplies to a public works project or medicine, tools and oxygen to a hospital.

There is a difference between improving a project and delivering freight. There is a difference between trucking and construction. That is a difference contemplated today. Trucking companies are different too. They are different in terms of what they haul, where they operate and how they pay their drivers.

Drivers can be paid by the hour, by piece rate or by the mile. This bill would complicate something already complex because each company and each driver makes decisions on what is best for the company and the driver.

The amendment does allay some concerns but not the big one. I am happy that it makes it less broad. It will not include UPS drivers who might deliver a valve or a light to a public work project.

If a project needs something, a trucking company that does not have enough trucks can find someone—an owner-operator or another trucking company. It can broker those loads. This bill would complicate an already complicated process by trying to determine who was sent to a project on a particular day. When someone checks in at a job site, once that is certified payroll, that driver is going to have to report that every time. Trucking companies have a lot of compliance especially on safety. This is an additional challenge many of the small businesses and the disadvantaged business enterprises (DBE) will have a hard time with.

Trucking companies are the most resilient link in the supply chain. They can adjust quickly. This will cost not just trucking companies but taxpayers.

PETER KRUEGER (Nevada Petroleum Marketers Association):

The Nevada Petroleum Marketers Association is opposed to <u>S.B. 301</u> as originally proposed. Nevada Petroleum Marketers deliver a lot of fuel to construction sites. The Association has not yet reviewed the amendment, but it wants to be clear that its opposition is with the words "construction materials."

Nevada Revised Statutes 338.1423, subsection 9, includes the word "supplies." The Association's concern is that a truck driver bringing fuel on site to power the equipment of a public work would be included in the prevailing wage. Then the question is for how long. Once entry is made onto a public work site, that must be reported until the project is complete.

I will be happy to talk with Senator Lange to fully understand if the amendment simplifies this for fuel drivers who must deal with hazardous materials and other complications.

AODHAN DOWNEY (Mechanical Contractors Association of Las Vegas; Sheet Metal and Air Conditioning Contractors' National Association of Southern Nevada):

My clients oppose $\underline{S.B.~301}$ as written and will continue to work with the bill's sponsor.

ALEXIS MOTAREX (Nevada Chapter Associated General Contractors):

The Associated General Contractors oppose <u>S.B. 301</u> as introduced and with the proposed amendment.

This measure has potential, significant unintended consequences. The Federal Highway Administration and the Nevada Department of Transportation require contractors to ensure a percentage of all contractors for highway construction are performed by a DBE. In northern Nevada, achieving this participation goal is accomplished by hiring DBE trucking firms to deliver goods and materials to the work site. Many DBE truckers are owner-operators and are not required to submit certified payroll reports, nor are they required to pay themselves prevailing wage. These businesses simply enter into a lump sum contract for the hauling of materials.

This proposal would change that relationship with these disadvantaged firms. Many of these owner-operators would no longer seek to perform public works construction because the cost of compliance with prevailing wage and certified

payroll would be too much, and the risk of fines and penalties would be too great. This would restrict contractors' ability to hire these Nevada-based minority- and women-owned businesses and limit the ability of those businesses to grow and thrive in the State.

KYLIE TOKUNAGA-HIDALGO (Ames Construction):

I agree with my colleagues who testified ahead of me. This bill would impose a heavy burden on companies to track and report certified payroll. The cost and risk associated with this task is significant, especially for those companies not accustomed to it.

Ames Construction just finished the Reno Spaghetti Bowl project. At the peak of construction on a job that size, there was certified payroll for more than 50 trucks per day, spread out among several businesses. That will be complicated for those companies.

FRED REEDER (Reno Tahoe Construction):

Reno Tahoe Construction is a general engineering contracting company with approximately 100 signatory employees.

I oppose <u>S.B. 301</u> because it will increase the cost of every public works project. It will create a nightmare for contractors, public works agencies and the Labor Commission in trying to track and keep people in compliance on this. It will be out of control.

I was prepared to talk more on other material suppliers, but I understand the amendment is narrowing it down to the concrete and aggregate industry. I am not sure why the truck driver bringing in materials for the job like pipe which I buy sometimes out of Birmingham, Alabama, or conduit out of Houston, Texas, is excluded. However, the logistics of that would be difficult.

Does public works prevailing wage kick in at the State line or the factory? I am not sure where that would go. An example of some of the problems we are going to have would be on large dig projects. I did the University of Nevada, Reno, parking garage that just opened. At one time, up to 60 trucks were removing material on the job. It was a big dig-out. Those trucks are in and out of the site between three and five minutes, then they go to another site. On this project, I cut a deal with Lennar Nevada, Inc., homes to place fill where it needed it.

Where is the line drawn? Is it an export job or an import job? Is it an export off the prevailing wage job or is it an import to the private job to build homes? The trucks are on each site about the same amount of time and in between they are on public roads.

It is going to become difficult to draw the line on what job we are working on because there could be 60 trucks on the road from 15 different companies, independent drivers and leased trucks. I do not have that kind of fleet. In fact, I do not want that kind of fleet. There is nothing more difficult to handle than a fleet of truck drivers.

I also work in California, which has a law like <u>S.B. 301</u>; it was Assembly Bill 219 that passed in 2016. It included ready mix drivers only and is probably the tip of the iceberg. One of the problems is ready mix companies do not want to deal with public works projects anymore. On a recent project I did in Napa, California, the cost for one cubic yard of concrete was \$50 yard. It did not matter if I bought 1 yard or 12 yards, I was charged \$50 a yard. This is what will happen to costs.

This issue was brought forth by the Teamsters in southern Nevada. It has a collective bargaining agreement with the contractors it deals with. That is probably the place to negotiate a better deal and not backdoor this through the Legislature. It is not your job to give them a better deal.

This is a bad deal for taxpayers, contractors, public works agencies and the Office of the Labor Commissioner. It is going to be difficult to track compliance on this. But it is a sweetheart deal for the Teamsters.

Paul Moradkhan (Vegas Chamber):

The Vegas Chamber has concerns with the bill especially with the broad definition. The explanation of the conceptual amendment addresses some of those concerns. The Chamber looks forward to working with the proponents of the bill to ensure there are no unintended consequences or factors that would be universally captured by the bill and to come to a resolution.

BRYAN WACHTER (Retail Association of Nevada):

The Retail Association of Nevada (RAN) opposes the original version of S.B. 301.

I have not yet sent the amendment to the members of RAN but appreciate the sponsor for looking to narrowing parameters.

While the State is looking at a healthy surplus and balance going forward, the dollars available for public works projects are limited. If this pattern is continued a time will come when there will be less building because costs are increasing.

SARAH COLLINS (National Electrical Contractors Association of Northern Nevada): The National Electrical Contractors Association is opposed to <u>S.B. 301</u> as introduced and has the same concerns as expressed by previous testifiers.

The Association looks forward to working with the sponsor and reviewing the amendment.

JARRETT ROSENAU (President, Clark/Sullivan Construction):

Clark/Sullivan Construction opposes this bill as written and amended. It expands the definition of a project on a public work site. This bill is far-reaching and will impact many companies and vendors that only provide services, materials, equipment or products and not any actual labor for installations on the project site.

I understand the bill has been restrained in the amendment, but many of these companies still will not have the resources or infrastructure to administer a certified payroll requirement. Staff and resources will have to be added to achieve the monthly reporting requirement resulting in increased costs for their services or products that will be passed on to the public owner. The lack of expertise by these companies in the certified payroll situation places them at risk for noncompliance with the Labor Commission and potentially subject to penalty. It will likely discourage companies from wanting to participate in these projects, thus limiting competition and increasing costs.

In addition, there will be more information for general contractors like me to review and certify each month, again likely requiring additional staffing and resources with costs ultimately passed onto a public owner. As an example, we have a contract to expand the Nevada Cares Campus facility in Reno. The goal of this facility is to provide more expansive services to our regional homeless population. This facility is needed to address this issue with the goal of pulling these people from homelessness and transitioning them back into the community. For this project, this legislation would burden an already challenged

budget which would only force this public owner, or any public owner tasked with a project, to reduce its building program. Simply put, it would reduce the number of services ultimately intended for the public.

Based on previous testimony, I appreciate the bill has been limited in the aggregate and cement industry. However, a massive number of materials still are not captured under this proposition, such as metal stud framing, drywall, structural steel, piping, roofing, glazing glass, etc. If the goal is to try to capture everything, this is the tip of the iceberg. It is likely a gateway bill that might be intended to be the opening of the door to bring this into play. If it is broadened, these things greatly multiply.

I urge this Committee to consider these facts and not move this bill forward.

TERESA HERRERA (H and R Trucking):

H and R Trucking has been a DBE for several years. We follow all NRS and the *Code of Federal Regulations*. We are monitored and comply with the Nevada Department of Transportation on every project. On projects that pay Davis-Bacon Act wages, we use the Labor Compliance and Certified Payroll software and the B2Gnow software. Subcontractors working with us are included in B2Gnow to make sure they are paid.

We delivered in Esmeralda County. The wages there were \$61.52 an hour, and overtime was \$92.28 an hour. We go into overtime a lot. Those wages are quite high. In Washoe County, wages are \$35 an hour. Wages paid in each county in Nevada are regulated by the union. Sometimes when I submit a bid, I make errors and add overtime. That affects me financially.

In the United States, we have free enterprise and a free market. This bill will eliminate free enterprise control. Our success and economic opportunities will be hampered by government control on wages. This is a free market. I have the ability and opportunity to negotiate wages with my people. I pay \$35 an hour. I supply housing when we are out on jobs. We do most of the roads with road and highway builders. We work on roads in Austin, Dyer and U.S. Highway 6. It is hard to find truckers to go to those places.

I am opposed to <u>S.B. 301</u> because it will hamper not only my company but will trickle down to the public on the amount of money that is going to be spent on public works jobs.

I will negotiate with my truck drivers, and if \$35 is not enough, I will raise their rate. But when it comes to paying a truck driver \$92 an hour, it hurts not only me but the public.

BRETT HARRIS (Labor Commissioner, Nevada Department of Business and Industry):

I submitted a fiscal note on this bill, so I am here to answer any questions.

SENATOR DALY:

Under the *Nevada Administrative Code* or NRS, when are truck drivers covered by prevailing wage?

Ms. Harris:

Nevada Administrative Code 338.017 is specific to truck drivers. It says they are covered when transporting materials at the site of a public work or between the sites of a public work.

SENATOR LANGE:

We have been working with people who are in opposition to the bill, and we will continue to get a positive resolution for everyone.

CHAIR FLORES:

I will close the hearing on S.B. 301.

SENATOR DALY:

I will open the hearing on S.B. 299.

SENATE BILL 299: Revises provisions related to monorails. (BDR 28-955)

SENATOR EDGAR FLORES (Senatorial District No. 2):

Nevada Revised Statutes 338 provides much of the legal framework on which public projects are subject to prevailing wages. Specifically, NRS 338.010 defines a public work as any project for new construction, repair or reconstruction of a project financed in whole or in part from public money, including projects such as public buildings, public roads, public utilities and others. Normal maintenance such as janitorial services and landscape upkeep is not considered a public work subject to prevailing wage.

Exemptions from the provisions of prevailing wage law are found in NRS 338.080 and include projects with an estimated cost of less than \$100,000, work for a railroad company and work by certain apprentices under NRS 610. Under NRS 705.690 the work of or incident to the installation and operation of a monorail is not a public work within the meaning of NRS 338. That is the genesis of this bill.

I am working off the conceptual amendment (Exhibit F). Senate Bill 299 removes a 26-year exemption that excludes monorail and light rail projects from public works standards. Specifically, as presented in this conceptual amendment, this bill removes these exemptions and as a result, any work, construction, alteration, repair or other employment performed, undertaken or carried out by or for any railroad company or any person operating the same regardless of whether a public body is a party will be subject to prevailing wages. Further, the bill also provides that a monorail is not a public utility under NRS 704.

The amendment, Exhibit F, removes language that prevents apprenticeship utilization on public works projects. I will clarify there is a question of whether, with the conceptual amendment as it is now, we are in violation of federal law. To provide guidance, we will continue to work with it, and the Legal Division is working with us to better understand it. There is a belief that the bill, as originally written, violated federal law because it required a railroad company to pay its employees Nevada's prevailing wage. However, pursuant to the Railway Labor Act, railroad companies are required to pay their employees the wages determined by their collective bargaining agreements under 45 USC section 152. The concern is, upon further research from legal staff, we may have to amend that section to make sure we are consistent with federal law.

It is not the intent of this bill to have any impact on privately funded monorail or light rail projects.

SENATOR DALY:

I am aware of the Railway Labor Act provisions that apply when railroads are reconstructing and doing their own work with their own workforce. However, there have been construction projects where railroad spurs or lines were built and contracted out. That has been done under Nevada law and prevailing wage. A rail project is coming up in southern Nevada.

The definition for horizontal work in NRS 338.010 includes railroad or railway work. Clarifying what is and is not included under the Railway Labor Act would be useful. We are not trying to compete with the federal government. Caution is warranted. There is a distinction between who is doing the work, when and whether it should be covered.

JOE GUILD (Union Pacific Railroad):

I appreciate the work done on this amendment to ensure we do not run afoul of the Railway Labor Act.

PEGGY YGBUHAY (Union Pacific Railroad):

The Union Pacific Railroad is subject to the Railway Labor Act, which is the primary governing federal law on all rail labor matters. In fact, because of the unique nature of the rail industry's national footprint, role in interstate commerce and our extensive labor workforce, the Railway Labor Act's authority over rail industry, labor wages and benefits supersede other areas of federal wage laws including the Fair Labor Standards Act.

The Union Pacific Railroad's competitive wages are directly negotiated with its various craft and transportation unions through the collective bargaining process. One result of the collective bargaining process is that it cannot adjust employees' salaries on a project-by-project basis.

The Union Pacific Railroad does not take issue with contractors hired on its behalf being paid according to the prevailing wage rates for contracts to which a political body is a party.

SENATOR DALY:

If the railroad is performing the work, it is governed under the Railway Labor Act. It may contract out the work, or an awarding body or another entity may contract out to perform the rail work which is then taken over by the railway later to its specifications that would be subject to prevailing wage. That is what we want to make sure this bill hits.

Mr. Guild:

That is exactly what we are saying.

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

The Southern Nevada Laborers-Employers Cooperation and Education Trust supports <u>S.B. 299</u>.

THOMAS MORLEY (Laborers Local 872; Laborers Local 169): The Laborers Unions support S.B. 299.

Mr. Ellis:

The Communication Workers of America Local 9413 supports this bill.

Mr. Downey:

The Mechanical Contractors Association of Las Vegas and the Sheet Metal and Air Conditioning Contractors' National Association of Southern Nevada support S.B. 299.

Mr. Moradkhan:

I thank the proponents of the bill for discussing it with the Vegas Chamber and trying to address some of its concerns. The Chamber understands that the conceptual amendment will clarify that this will not fall under regulation by the Public Utilities Commission. The Chamber appreciates the clarification on the language from the bill's sponsor that this will not impact properly funded projects.

The Chamber looks forward to the adoption of the amendment and will continue discussions with the bill's sponsor.

Ms. Harris:

The Labor Commission placed a fiscal note on this bill.

SENATOR DALY:

I will close the hearing on S.B. 299.

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CHAIR FLORES: This meeting of the Senate Co 4:40 p.m.	mmittee on Government Affairs is adjourned at
	RESPECTFULLY SUBMITTED:
	Suzanne Efford, Committee Secretary
APPROVED BY:	
Senator Edgar Flores, Chair	
DATF.	

Senate Committee on Government Affairs

March 31, 2023

EXHIBIT SUMMARY					
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description	
	Α	1		Agenda	
	В	1		Attendance Roster	
S.B. 301	С	4	Senator Roberta Lange	Conceptual Amendment	
S.B. 301	D	4	Thomas Memmer / Teamsters Local 631	Written Testimony	
S.B. 301	E	4	Thomas Memmer / Teamsters Local 631	Backup Documentation	
S.B. 299	F	13	Senator Edgar Flores	Conceptual Amendment from Andy Donahue	