

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Third Session  
March 9, 2005**

The Committee on Commerce and Labor was called to order at 2:10 p.m., on Wednesday, March 9, 2005. Chairwoman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, 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:**

Ms. Barbara Buckley, Chairwoman  
Mr. John Ocegüera, Vice Chairman  
Ms. Francis Allen  
Mr. Bernie Anderson  
Mr. Morse Arberry Jr.  
Mr. Marcus Conklin  
Mrs. Heidi S. Gansert  
Ms. Chris Giunchigliani  
Mr. Lynn Hettrick  
Ms. Kathy McClain  
Mr. David Parks  
Mr. Bob Seale  
Mr. Rod Sherer

**COMMITTEE MEMBERS ABSENT:**

Mr. Richard Perkins (excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman John Marvel, Assembly District No. 32,  
Humboldt (part), Lander (part), and Washoe (part)  
Assemblyman Bob McCleary, Assembly District No. 11, Clark County

**STAFF MEMBERS PRESENT:**

Brenda J. Erdoes, Legislative Counsel  
Diane Thornton, Committee Policy Analyst  
Russell Guindon, Deputy Fiscal Analyst  
Keith Norberg, Deputy Fiscal Analyst  
Vanessa Brown, Committee Attaché

**OTHERS PRESENT:**

Jim Nadeau, Legislative Advocate, representing Nevada Association of Realtors  
Burt Gurr, Chairman, Legislative Committee, Nevada Association of Realtors  
Paul Kyle, Real Estate Broker, Stagecoach Properties, Stagecoach, Nevada  
Renee Diamond, Administrator, Division of Manufactured Housing, Nevada Department of Business and Industry  
David Kersh, representing Carpenters/ Contractors Cooperation Committee  
Michael Tanchek, State Labor Commissioner, State of Nevada  
Jim Sala, Regional Council Organizer, Carpenters Union, Las Vegas, Nevada  
Jim Wadhams, Legislative Advocate, representing Southern Nevada Homebuilders Association  
Sam McMullen, Legislative Advocate, representing Nevada Subcontractors Association  
Mike Cate, President, Silver State Masonry, Reno, Nevada  
Christina Dugan, Director, Government Affairs, Las Vegas Chamber of Commerce, Las Vegas, Nevada  
Fred Hillerby, Legislative Advocate, representing Regional Transportation Commission, Washoe County, Nevada  
Bob Ostrovsky, Legislative Advocate, representing Nevada Resort Association  
Jack Jeffrey, Legislative Advocate, representing Southern Nevada Building and Construction Trades Council  
Paul McKenzie, Business Representative, Operating Engineers Local Union No. 3, Northern Nevada  
Tom Morley, Political Action Director, Laborers Local No. 872, Las Vegas, Nevada

**Vice Chairman Ocegüera:**

[Meeting called to order. Roll called. Opened hearing on Assembly Bill 114.]

**Assembly Bill 114:** Revises provisions governing sale of mobile and manufactured homes and commercial coaches. (BDR 43-1162)

**Assemblyman Marvel:**

I had a bill draft request from several of the realtor associations in the state of Nevada. I do have several witnesses I'd like to bring up. We have Burt Gurr, Jim Nadeau and Paul Kyle. I would turn the testimony over to these gentlemen.

**Jim Nadeau, Legislative Advocate, representing Nevada Association of Realtors:**

I have two very capable people here who will address the issue, but we have proposed an amendment to the bill ([Exhibit B](#)). That amendment removes the real estate agents, brokers, et cetera, from the requirements of NRS [*Nevada Revised Statutes*] 489, which deals with manufactured housing. The intent of this bill is to remove licensed real estate agents from the provisions of Chapter 489, and have them solely responsible to Chapter 645, which deals with real estate transactions.

Mr. Marvel was nice enough to have the bill drafted for us. The drafters did exactly what we asked, so it was not their fault, but there was a removal in one portion of the contract provision and we're asking that it be put back in with the amended language, additionally that real estate licensees would be removed from that. It would only apply to dealers of manufactured housing.

**Burt Gurr, Chairman, Legislative Committee, Nevada Association of Realtors:**

I have been licensed in the real estate business for 32 years. I've been a broker since 1979. We're asking that the real estate licensees be removed from the jurisdiction of NRS Chapter 489. We want to stay in Chapter 645. Chapter 489 deals with a transaction involving a used, manufactured or mobile home, in connection with the sale of fee simple real estate. Let me reassure you that with this legislation we are not asking to be a manufactured home, mobile home, or commercial dealer. We are asking for the ability to sell a manufactured mobile home that is sitting on dirt when it is included in the sale of that dirt.

The legislative change does not impact or affect mobile homes in mobile home parks or in mobile home communities. In many areas of our great state, manufactured, or mobile, homes have come to fill a void in affordable housing. Today, if the manufactured mobile home has gone through a somewhat complicated process of conversion, we as real estate licensees can sell a mobile home, without having the initial license. Conversion, or "permanentization" as

we call it in Elko, is a process by which the owner of the piece of dirt converts or attaches through the county assessor and the Manufactured Housing Division to real property the home itself. This process varies from county to county and varies in length of time to get done and convert it. When it is converted it does not change the character or the condition in the manufacturer to mobile home.

[Burt Gurr, continued.] The primary effect is in how it's taxed. If the legislation we're requesting is passed, real estate agents and the sellers are still required to make all the necessary disclosures. That does not go away. We still, under NRS 645, have serious disclosure issues that we take care of. The buyers at that point are able to request and encouraged by most of us to have an inspection of the home and the property. The real estate agent still has the liability associated with the transaction. The real estate agent is still regulated by the Real Estate Division, which statutes and regulations are the same or similar in most respects to what the Manufactured Housing Division's are.

Consider the process of obtaining a limited dealers license does not require additional continuing education classes. It is simply a process of submitting an application, coupled with the application fees and to maintain that license the broker only need to pay the renewal fees. Again, continuing education is not required.

We understand that the Manufactured Housing Division budget will be impacted by this legislation but believe that this legislation has a much broader consideration. Though we do believe that the fees charged for these limited dealers licenses are unreasonably high, let me make it clear this is not just about the money. A new statutory language more adequately addresses the reality of the transaction.

NRS Chapter 489 is more akin to the sale of vehicles when the dealer has actual possession and control of the personal property. The sale of a used, manufactured, or mobile home in connection with real property is more like a true real property sale. Protections for consumers are adequately addressed in Chapter 645. I thank you for allowing me to testify in favor A.B. 114.

**Assemblyman Hettrick:**

You mentioned disclosure in the Real Estate Disclosure Law. If you're going to sell used mobile on a piece of land, are you going to be subject to the same disclosure laws that you have now for selling a regular stick-built home on land? [Mr. Gurr answered in the affirmative]. So you'd have all the same requirements to disclose anything you knew about the property, the mobile, anything?

**Burt Gurr:**

Yes, we're currently under that law and nothing changes.

**Paul Kyle, Real Estate Broker, Stagecoach Properties, Stagecoach, Nevada:**

I have been a licensed real estate agent and broker for the last eight years. I too support this legislation change. The community in which I do business is made up mostly of manufactured homes, or mobile homes, resting on large parcels of land and in many cases on multiple acres of land. We know your concern as is ours is the protection of the consumer. We believe that these consumer protections will remain in place.

As licensed real estate agents, we are subject to the same or substantially similar licensing, education, and continuing education requirements as dealers of manufacturing of mobile homes. Real estate licenses are regulated as the provisions that must be included in exclusive broker agreements, which we use. Real estate licenses are subject to the discipline of the Real Estate Commission.

As mentioned by Burt, as in any other real estate transaction, the real estate licensee must and is obligated to disclose any defects that we are aware of and so is the seller. They must do the same. When my limited dealers license came due, I seriously gave consideration not to renew the license with the Manufactured Housing Division. This was in part how many transactions were transacted a year under this license and if it was actually valuable to us.

Additionally, the process of selling a used manufactured home, or mobile home combined with real estate has become confusing for both the consumer and the real estate agent with the requirements of the inclusion of Manufactured Housing Division contract. This contract appears to be primarily directed toward the purchase of new manufactured or mobile homes and has limited application to the type of transactions we engage in.

The contract treats the dealer as having possession or control of the property and only makes brief reference to the seller being involved in the transaction at all. The addition to this contract to normal real estate transaction adds to the already confusing number of forms required. If you own real estate, I ask you to think back to the amount of paperwork involved. Certainly, it is our obligation to be as clear as to the various elements associated with the purchase of property. The inclusion of additional forms and signature lines, which many are noted as not applicable, does not assist making things clear for the purchasing consumer. Also, forms we currently use, we have the Manufactured Homes Forms, do not allow the seller or buyer to have a due diligence period to conduct independent inspections, such as pest inspections, structural inspections, and other

inspections that are valuable to the buyer on that. Thank you for allowing me to speak in favor of A.B. 114.

**Vice Chairman Ocegüera:**

Mr. Kyle, what was that last part you just said?

**Paul Kyle:**

The Manufactured Housing Form, that they currently require us to use, does not clearly indicate a due diligence period for the buyer, which usually in a normal real estate transaction we have certain requirements that we have such as pest inspection, termite inspection, structural inspections, wood stove inspections, surveys and septic inspections that we have built into our forms to allow the buyer protection to go in and have an independent third-party conduct inspections on the property and premises to verify that it is what it is. That it's structurally sound, that there are no termites, that the septic tank has been pumped or inspected. With the current forms, the way they are being separated, Manufactured Housing Form doesn't give that protection to the consumer. If we add the Land Purchase Agreement to it, those two forms combined still do not protect the consumer as far as what their due diligence is and given them ample time to do inspections.

**Assemblyman Seale:**

You mentioned in your testimony that there was a fiscal impact on the Manufactured Housing Division. How big is that fiscal impact?

**Jim Nadeau:**

I'm sure Administrator Renee Diamond, of the Manufactured Housing Division will go ahead and address this more specifically. It's my understanding that there's approximately a \$28,000 impact to the budget of the Manufactured Housing Division. Now, separate that from an area called a recovery fee, there's a more significant impact to the recovery fee, but along the same lines we're taking all of those transactions out of the impact on that recovery fee and that's, as I understand, they're revolving the account within the Division. If I might address one issue regarding the recovery fee. Maybe Ms. Diamond will address this also. There's a question whether or not a mobile home that is classified as personal property and sold under this bill by a real estate agent would qualify for the Real Estate Division recovery fee. We've had our legal experts look at that and it is our belief that it would be the case. That a personal property mobile home, one that has not been converted as we use the term would follow under that Real Estate recovery fee, so it would not impact the Manufactured Housing recovery fee. I think I have that right, but Ms. Diamond may qualify that.

**Renee Diamond, Administrator, Division of Manufactured Housing, Nevada  
Department of Business and Industry:**

I served with Mr. Marvel in 1989 at the Nevada Legislature and have nothing but respect for him. Although I'm opposing this bill with his name on it, I do it because of the qualities of the bill, not the maker of the bill.

I did provide testimony that was handed out to you ([Exhibit C](#)). Mr. Nadeau has forwarded to me his amendment, and I have serious problems with the implications of this. Contrary to what you've heard this morning, by our Attorney General and previously within the Division of Real Estate, we have been told that their Recovery Fund will not cover a personal property home sold in conjunction with land. The Real Estate Recovery Fund is only for real property.

The selling of a home in conjunction with land that's been converted to real property is not a problem to the Division. It is only a problem for the consumer who is purchasing an unconverted home on a real piece of property. A non-converted home has special qualities, with regard to titling. Once a home is converted, the county assessor bills that as real property. So there are unique features having to do with the sale of this piece of personal property even though it's sitting on land.

Some of those disclosures are in our contract, which we worked very hard on, and we appreciate the fact that the maker of the bill has now said they don't want to repeal our whole contract. Some of the elements that are unique to a piece of personal property would be the disclosure of the estimated personal property taxes, the vital disclosure to the consumer that the home is personal property and taxed as such. Many people are surprised when at the end of the tax year they get both an assessment from the assessor for the real property and also for the personal property.

Included in our contract are disclosures on essential system warranty and walkthrough, and unique identification factors such as years, size, manufacturers, serial number, and the requirement that the personal property portion of the sale must be titled with the Division, not the county clerk. The documents relating to such titling must be forwarded to the Division. The Division every year has people who walk in who bought manufactured homes and only figured out years later when they went to sell it to another party that the home was never converted to real property and the title was never transferred. We get these every day. We think that the information that was made about the recovery fund is a critical part of this. Our attorneys, and the practices of the Real Estate Division have told us that the Real Estate Recovery Fund is never available to people who are purchasing personal property. That

the Real Estate Recovery Fund concerns only real property, a converted manufactured home.

[Renee Diamond, continued.] We think that there is a difference of opinion about this and that that's a critical issue for the consumer purchasing the home. We think this would create a separate class of persons capable of selling manufactured or mobile homes without regulation or administrative process, meaning the realtors would be the only people to do that. Let's say the person selling the house, there was a problem and somebody went to recover for that. The Division has no authority to fine someone or regulate persons selling homes unless they're licensed with that.

Also, we think that eliminating the home portion, which is personal property, must be a serious complication to this. Fiscal impact to the Division: Although it says in the title of the bill that there is no fiscal impact on state or local government, the reality is, that the 140 persons licensed in the state, limited dealers, pay to the Manufactured Housing Budget Account 3814, \$200 every two years to renew their licenses. That amount comes to \$28,000 every two years. Also, our Budget Account 3847, which is our Recovery Fund, where the fees are set in statute the dealers must pay, including limited dealers would reduce Budget Account 3847, the Recovery Fund, by \$84,000 biennially. That's 140 licensees at their \$600 contribution.

I understand that they aren't attempting to remove our right to adopt a contract for the sale of used homes. I also want to comment on the fact that we have told counsel for the realtors associations, in fact their former counsel and the current counsel that we have no problem with them using their contracts for the land portion and then us for the personal property portion, using our small little contract. And, in the sections where our contract doesn't pertain to them, delivery and things like that, all they have to do is mark "not applicable." Our problem is that if we were to say that the consumer who buys that home is totally covered by the many disclosures that a realtor has, that would be untrue. Additionally, let's say I remember signing a disclosure notice about lead paint, about somebody dying in the house under unusual circumstances on real property. What about the disclosure this is a manufactured home, and therefore different. It's taxed differently; there may be formaldehyde issues in the older homes that don't occur in a real property. Who's going to protect the consumer into that disclosure?

With due respect to Mr. Marvel and to the associations who are proposing this, I need to say that I don't think our little contract and our association with our licensing is a huge problem for you all, but I think it could present a huge problem for the purchasing consumer.



**Assemblyman Anderson:**

What was the percentage of increase, or the actual dollar amount of increase, in the licensing for realtors who fall into this, as compared to in the past?

**Renee Diamond:**

I don't think there was any testimony about an increase in licensing. My only testimony was that currently the Budget Account 3814, the people who are licensed with this limited dealership, 140 people at \$200 pay \$28,000 a year, and therefore if they were eliminated from this licensing, our Budget Account 3814 would be reduced by that amount.

**Assemblyman Anderson:**

How much do they pay in the past, when we first put this legislation in place to carry on business to carry out this activity?

**Renee Diamond:**

I think that they've always paid that as the licensing fee. I think it increased maybe \$25 or \$50. I don't have that with me, but I'd be happy to reply. But they've always paid a fee somewhere like this. It might have been \$125 and it went up two years ago when we raised our fees maybe to \$200. They also pay \$600 every two years into the Recovery Fund, which is a separate account, but that amount is used for recovery of individuals who have claims against licensees.

**Assemblywoman Buckley:**

I have a question for Mr. Nadeau or one of your witnesses and for Ms. Diamond. I'm concerned about the affect on the Recovery Fund, but I can't see if we can make it easier to have more realtors sell mobile homes on fee simple property, I would certainly like to see that too. I'm just wondering if there was kind of a licensure by endorsement process, within the realtors license. For example, if someone gets a realtors license and used the Mobile Home Contract and pays into the Recovery Fund, could you meld the two approaches?

**Jim Nadeau:**

There is an NRS 645.842 which deals with the Recovery Fund on the real estate side. I think I'll have to defer to counsel for this, but on that side it does under the statute, it does state in statute that it addresses both private property outbuildings and a whole variety of things and that's statutory, so I guess I'm confused about the issue on the Recovery Fee. If I could clarify just one thing on the fees. It's my understanding, particularly after talking to Ms. Diamond, that the \$200 licensing fee has always been there or at least been there for a number of years. What has changed is up until about 2, 3, 4, years ago, the

limited licenses, or dealer license, those persons were not charged the \$600 recovery fee. About two years ago, they started being charged the \$600 recovery fee, which then made the cost of that license from \$200 biennially to \$800 biennially, which was a significant increase, given the amount of transactions that are conducted. I'll go ahead and refer to our attorney for the other information.

**Renee Diamond:**

Mr. Nadeau is correct. This Division after an audit did discover that we had failed to collect what turns out to be \$84,000 every two years for the Recovery Fund, which meant that the limited dealers, being realtors, were only being licensed. We have provided a special context for them in that they aren't required to take our test. Their real estate license brings with it a certain caché for education, continuing education, and for licensure, and we recognize that by giving them a \$200 fee, whereas every other dealer or used dealer pays a \$600 fee every two years because we do recognize the realtors license.

As far as the Recovery Fund, it is set in statute, it's quite clear, and we do have to charge for that because under NRS 489.4971, it says that the claims against the Recovery Fund would be against persons license pursuant to the provisions of the chapter. Then, in subsection 2(b), it says, "for a renewal of a limited dealers license the contribution to the recovery fund is \$600," and that's in statute. That could, of course, if necessary be reduced, but the problem is, my feeling is that the people would not have a degree of accountability on the sale of this property in conjunction with personal property without the licensing of these limited dealers.

**Assemblywoman Buckley:**

If the statute was amended to make it clear that anyone who purchased a mobile home with a fee-simple-estate would be eligible for the Real Estate Recovery Fund, and they were still required to use your contract, pay the \$200 fee, but not pay the additional recovery fee because they're under the real estate recovery fee. Would that meet your concerns?

**Renee Diamond:**

It would. I don't know what the implications for the Real Estate Division would be, but for the Division, our primary responsibility is the consumer and accountability for the consumer. If we knew that the Recovery Fund issue was being covered and they still had to use our contract, we would have no problem with that. I don't agree that it's good public policy to exclude anybody other than a person who's selling their own property from the licensing regarding sale because we would have no accountability over them.

**Assemblywoman Buckley:**

Maybe this is something we can give you time to talk to your clients. I'd like to try to see if we can't blend these and make something work, if we can. Thank you for answering those questions.

**Assemblyman Parks:**

I need to disclose that I'm a real estate licensee and, further, that this bill will not affect me any differently than anybody else.

**Vice Chairman Ocegüera:**

I'll close the hearing on A.B. 114 and turn it back over to Ms. Buckley.

**Chairwoman Buckley:**

I'll open the hearing on Assembly Bill 44. Assemblyman McCleary, welcome to your Committee on Commerce and Labor.

**Assembly Bill 44: Revises provisions governing payment of overtime to certain employees. (BDR 53-761)**

**Assemblyman Bob McCleary, Assembly District No. 11, Clark County:**

District 11 encompasses a small portion of North Las Vegas, and a large portion of East Las Vegas. A.B. 44 is a Government Affairs bill draft that I requested on behalf of working people in my district, and I just want to let the Committee understand my perspective on this as somebody who's been a working man all my life. I've bused tables, cashiered, drove buses, washed cars, I was counter man, and worked in warehouses.

It's with that perspective that I bring this bill to you and also representing working-class people in my district. This bill addresses two issues and the first one and most important to my heart is it enables the Labor Commissioner to enforce overtime laws for all Nevada workers. I believe you have a chart in your packet on this; it looks something similar to this ([Exhibit D](#)). I just want to let you know the issue with the Labor Commissioner.

If you make \$7.73 an hour or less or you make prevailing wage or more, the Labor Commissioner has jurisdiction. He can come in and enforce the overtime laws, but if you are in an area between those two, he doesn't have jurisdiction. If you had a complaint, or if you were not making the proper overtime that you're entitled to under the law, you would actually have to appeal your decision to the U.S. Department of Labor (DOL). The problem with that is, they're very slow to act. For working people who need their money now, they just can't do this. That's why I'm bringing this issue to you, because I'm asking this Committee to allow the Labor Commissioner to enforce all labor laws.

[Assemblyman McCleary, continued.] The second issue that will be addressed is going to try to create some uniformity in overtime laws for public works projects and for private construction projects. I have two gentlemen with me that are going to assist me on this. I have David Kersh with the Carpenters/Contractors Cooperation Committee and I have James Sala with the Southwest Regional Council of Carpenters. I'd like to turn the time over to David Kersh.

**David Kersh, Legislative Advocate, representing Carpenters/Contractors Cooperation Committee:**

First of all, I would like to thank Assemblyman McCleary for sponsoring the bill, for his sense of humor, and for his dedication to working people. It's a matter that's very close to his heart and it's been great working with him on this.

I'm here to urge you to vote in favor of A. B. 44, along with the proposed amendment that we are introducing ([Exhibit D](#)).

Let me state from the outset that the matters addressed in this bill really get to the heart of how we measure our progress as a society. The payment of overtime is part of a great tradition of workforce reform that has served to improve the lives of the working men and women of this nation. Thanks to overtime compensation, workers are able to pay for their homes or the schooling for their children. It is a vehicle to sustain a vibrant middle class and fulfill the dreams and aspirations of thousands of workers. Over the years, studies have come out that show how working longer hours leads to increase rates of accidents and injuries. Family life suffers when either or both parents are kept away from home for an extended period of time.

Therefore, overtime compensation is a fair and honorable way to compensate for the sacrifice a worker makes to his or her family or health by working longer hours or additional days.

In order to understand the context for A.B. 44 and our proposed amendment, I would like to refer you to the chart ([Exhibit D](#)), that Assemblyman McCleary referred to before that lays out the current situation regarding overtime laws in Nevada.

The current situation is the following. You have an employee who is earning minimum wage up to \$7.73. Overtime occurs after more than 8 hours a day or 40 hours a week, and that is State law and the Nevada Labor Commissioner enforces the law.

[David Kersh, continued.] You have an employee earning \$7.74 an hour up to the prevailing wage. Overtime occurs after more than 40 hours, and this is federal law. The U.S. Department of Labor, Wage and Hour Division, enforces the law. The Nevada Labor Commissioner is unable to take care of complaints from Nevada workers because he has no jurisdiction.

The third column on the bottom ([Exhibit D](#)): An employee earning prevailing wage on a public works project, overtime occurs after more than 8 hours a day or 40 hours a week, and that is State law and the Nevada Labor Commissioner enforces the law.

I would like to refer to our proposed amendment, which is also in your package. I'm just going to quickly go over it before I go into great detail. Section 608.018: "Except as otherwise provided in subsection 2, an employer shall pay one and one-half times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate less than one and one-half times the minimum rate prescribed pursuant to NRS 608.250 works, 1) More than 40 hours in any scheduled week of work or 2) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work."

B: "Except as otherwise provided in paragraph (c), an employer shall pay one and one-half times and employee's regular wage rate whenever an employee who receives compensation for employment at a rate of one and one-half times or more of the minimum rate prescribed pursuant to NRS 608.250 works more than 40 hours in any scheduled week of work."

C: "A contractor or subcontractor licensed pursuant to Chapter 624 of NRS shall pay to an employee who receives compensation for employment at a rate of one and one half times or more of the minimum rate prescribed pursuant to NRS 608.250 not less than one and one-half times the regular wage of the employee for each hour the employee works for the contractor or subcontractor on work other than a public work in excess of 40 hours in any schedule week of work, or 8 hours in any workday, unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work. The 40 hours in a scheduled week of work and 8 hours in a workday set forth in subparagraphs one and two of this paragraph may include hours worked on a public work or hours worked on work other than a public work, or any combination thereof."

In a nutshell, the aim behind the bill and our proposed amendment is to enable the Labor Commissioner to enforce overtime laws after 40 hours for all those workers not currently under his jurisdiction, which is that middle section, and to

create uniformity in overtime laws for public works construction projects and private construction projects. That's for workers in the middle section and the bottom section of the chart. Let me back up to provide historical context. The chart reflects changes that took place at the 72nd Legislative Session, through the passage of A.B. 458. That bill clarified the circumstances under which the Labor Commissioner would assert jurisdiction over prevailing wages and overtime payments to workers on prevailing wage projects. It made it a requirement that employers on public works projects pay their employees overtime compensation when they worked more than 40 hours in one week, or more than 8 hours in one day. It transferred enforcement of overtime complaints on public works projects from the U.S. Department of Labor Wage and Hour Division, to the Nevada Labor Commissioner's office, hence the creation of the bottom section of the chart.

[David Kersh, continued.] At Committee hearings for A.B. 458 of the 72nd Legislative Session, it was stated that the goal behind the bill was to address the issue of helping people who were cheated or bullied out of their overtime pay. Although the Labor Commissioner had been able to try and assist in overtime investigations, and had sent findings to the U.S. Department of Labor Offices in Phoenix, the responses were not speedy. From the point of view of the workers, it did not make much sense having to go to two different agencies to deal with a complaint on the same project.

Through A.B. 458 of the 72nd Legislative Session, it became possible to speed up enforcement of our labor laws, and it also started the process of implementing a vision, which was shared by the Labor Commissioner, of providing Nevada residents with a one-stop enforcement option. It would serve to fill the needs of residents, who could clearly benefit by being served through the State Labor Commissioner's Office in Carson City and Las Vegas. That was a positive step forward. And now we're back, ready to take the next step to implement that vision.

There are two areas that make sense to continue to the process. Those are the places we are addressing in A.B. 44 and our proposed amendment.

Again, to enable the Labor Commissioner to enforce overtime law for workers earning \$7.73 up to the prevailing wage and to create uniformity in the overtime laws between public works and private construction projects.

The first component of our proposed amendment seeks to address the large middle section, where the Labor Commissioner currently has no jurisdiction. The proposed changes would not expand federal law. Overtime would go into effect

after working more than 40 hours. Basically, the main change would be the agency that a worker would be able to go to if he or she had a complaint.

[David Kersh, continued.] It would make it possible for the Labor Commissioner to not have to turn away hard-working individuals who are cheated or bullied out of their overtime. This makes sense when you are dealing with an individual complainant who has a minor or simple overtime complaint. The Labor Commissioner is better equipped than the U.S. Department of Labor to deal with these issues. Ordinarily, the U.S. Department of Labor employs its resources to deal with major complaints, since it looks at the practices and records of the entire company. Moreover, the Labor Commissioner is more in tune with the plight of Nevadans and can take care of issues quicker, and that way help workers who are in need.

I would just like to mention that the way A.B. 44 currently reads without the proposed amendment, there's probably some confusion. The transfer of overtime enforcement from the federal to state agency would be accomplished. However, at the same time, it goes further and requires all employers in that middle section to pay their employees overtime compensation, not just after 40 hours, but also after 8 hours.

In the last couple of weeks, I have spoken to representatives from organizations and industries that have shown concern about this provision and the impact it would have on employers and employees. These concerns range from the issue of industries with regular work schedules that exceed 8 hours a day, such as mining or nursing, to employers who are able to keep their entry-level wages above the current \$7.73 threshold and pay a higher wage, to the issue of employees who require or request unusual schedules for personal reasons and who would no longer be able to do so.

Upon reflecting on these discussions, it is evident that at this point, requiring these employers to pay overtime after 8 hours is impractical and cumbersome. The proposed amendment should calm those concerns. The second component of our proposed amendment has to do specifically with the construction industry. While requiring many of these employers referred to above to abide by an 8 hour day in terms of overtime compensation might seem impractical and complicated, the opposite is actually the case for the construction industry, where it makes a lot of sense.

Currently, you have two sets of rules, one for private projects and another for public works projects, which creates confusion for all the parties involved. On public works projects, overtime goes into effect after 40 hours per week or after 8 hours per day and is enforced by the Labor Commissioner. On private

projects overtime goes into effect only after 40 hours a week and is enforced by the U.S. Department of Labor Wage and Hour Division.

[David Kersh, continued.] It is quite common that workers work on a private and public works project in the course of the same day, or the same week, or a worker performs work on a public works project this week, and next week on a private project. It seems reasonable that there be uniformity in the process.

Every day, our organization comes across construction workers who build our public facilities or the structures that enable us to go about our business, who are taken advantage of by contractors who disregard our labor laws and are looking for ways to profit at the expense of a worker and his family. Whether it is the sophisticated schemes of some contractors who misclassify workers on a Clark County School District project, or the prevailing wage violations that have taken place right behind us over at the State Public Works building, or the recent case of 18 workers who had performed work on the University of Nevada, Reno, project and who had not been paid for six weeks, those workers who are victims of the unlawful practices of unscrupulous contractors need to have a process in place that works for them, and not against them.

These hard-working members of our community are demoralized and in need of assistance. They are out in the cold, and their families suffer because of the actions of these contractors. We ought to make the process more user-friendly and not have a system in place that requires driving from one governmental agency to another or answering the same questions twice and having to fill out the same paperwork twice. It is easy to see that somewhere along the way that the one who loses out is the worker.

Not only would the changes in A.B. 44 and our proposed amendment clear up the confusion for construction workers, it would streamline the process for all parties involved, whether they are contractors, agency compliance officers, owners of projects, or staff at the Labor Commissioner's Office.

**Assemblyman Arberry:**

Is the Labor Commissioner in support of this piece of legislation?

**Michael Tanchek, State Labor Commissioner:**

My position on this particular bill is neutral.

**Assemblyman Conklin:**

Mr. Tanchek, I don't know if you've had a chance to see the proposed amendment, but I'm speaking to Section 1 of the proposed amendments. In subsection 1 paragraph (c), and maybe I'm reading it wrong, that might be the



case. It would appear that there would then be two levels for enforcement purposes. I want to know if this creates some problems for you. One level is if you're working on a private contract, not for public works, you're at 40 hours a week or more, if you're working on a public work project, you're 8 hours a day or more over that for over time. Does that create some enforcement confusion in the State Labor Commissioner's Department?

**Michael Tanchek:**

I had some testimony I wanted to bring to that issue. Paragraph (c) is a little bit different because it sets up a separate structure from the other provisions, but from an enforcement standpoint, I believe that we could handle it. It's one of those deals where it would have to wait and see how many complaints actually come through the door.

**Assemblyman Conklin:**

Let me throw out a scenario here. I'm not condoning this activity, but I would understand that this is probably something that does take place. Let's suppose you go to work on a construction site at 6:00 am in the morning, we can start it early, and you work for 8 hours or even 6 hours, it doesn't matter on this construction site building a home. Then you leave that site and you go to where they're building a school, which is a public works project, and you work another 4 hours. Under this bill, it seems to me there is some confusion. Do you have to work all day on a public works project, or do you have to work—do you see where I'm going with this?

**Michael Tanchek:**

Yes, under the current statute, we look at the wage rate for that employee that is in effect at the time the hours are worked. So when a situation like that under the existing law, if you work 6 hours on a private project then you go to a public works project and you work 4 hours there, that's 10 hours total. If that time period on the public works project where you go over the 8 hours in the day, then those additional two hours would be subject to the time-and-a-half provisions at the time that those hours are worked.

**Assemblyman Conklin:**

Okay, so let's suppose I'm making \$9 an hour. Actually, since minimum wage is going to go up, let's assume I'm making \$9.50; that way I'm clear for the time and a half. I work 4 hours in the public work project early in the morning and then in the afternoon, I'm working on private project. Would I still be subject?

**Michael Tanchek:**

That's one I wouldn't want to do off the top of my head. I want to pencil that one out.

**Jim Sala, Regional Council Organizer, Carpenters Union, Las Vegas, Nevada:**

That was going to be part of my testimony. In the amendment on the provision for this bill, yes, they would be subject, but they would be subject as the Labor Commissioner said, for the hours that went over for that day would have been on that private project, and if it was at \$9.50, then they would be subject to the time and a half over eight at the rate of \$9.50.

I don't want to be in violation of NRS 218.5345, so the only factual number I'll give you is, I will be shorter in my testimony. We're in full support of A.B. 44 and its amendment, which I think clarifies where we wanted to be at on the two positions. We're very supportive of this issue, on the issue of the Labor Commissioner being able to support and enforce all the labor laws. This issue that Assemblyman Conklin just brought up was, we have that going on right now where a contractor will work for 6 hours or even for 24 hours on public works project for that week and 24 hours on a private works project and while most fair contractors don't do this, the place on enforcement, they're cutting two separate checks. One for the public works project, the straight time for 24 hours, and one on the private project for 24 hours of straight time, where there was 48 hours worked in the week and right now the Labor Commissioner is unable to enforce that on the private side. That has to get thrown up to the DOL, and if it's one or two people will probably never see any adjudication on that unless it was a very large number of people. That issue is a very important issue for us, whether it's overtime after 8, because that is on the public works process.

I'll throw out some general numbers; I wouldn't hold me to these facts. The collective bargaining agreements for most of the building trades, if not all, have overtime after eight provisions. The public works sector of projects, which most numbers and dollar volume project that to be about 30 percent of the work in the state, are covered by overtime after 8 hours provisions. What's left is probably 20 to 30 percent of private construction that's not covered under collective bargaining and that's really where the imbalance in the construction industry comes. Part of it is the Labor Commissioner can't enforce it, and the other part is that you do have the mix in construction where you're working overtime after 8 sometimes on public works or under collective bargaining agreements and then sometimes on the private side, you're not. We're hoping that in the construction industry at least we would create some uniformity for enforcement and for workers and contractors, so that they're all basically working off of the premise of overtime after 8 or after 40. So, that issue of enforcement is something that's important to us.

In the second area, which overlaps with the enforcement on this bill as well as A.B. 83, the other issue that comes up is overtime after 8 on the private sector,

which is the piece that we're trying to cover in the amendment. I think it's in subsection (c). What really happens in that part of the industry for uniformity's sake is it's a sense of fairness. I won't rehash what was in Mr. Kersh's testimony about the benefits of overtime and the standards and area standards in the construction industry. What I would point out to you is that the main arguments I've heard here in the hallways have been issue of cost and what would that cost do to an owner or a contractor and it may be a burdensome cost. Obviously, there's always exceptions to certain rules. I would give you what the general rule is. If the worker's working five days a week, 8 hours a day, which is a 40 hour week, if he's asked to work five 10-hour days, he's going to receive 10 hours of overtime. Whether it's after 8, or whether it's after 40, it's going to be the same 10 hours of overtime. Generally, when people are on a schedule, that's how it is. It's the uniformity issue versus the cost issue.

[Jim Sala, continued.] The second area that comes up, and we actually got this as an example, it's not in the carpentry field. Say somebody's going to pave a parking lot on a private construction project, and it's a \$200,000 job and you have a crew of 10, which is the average crew size in construction for about 90 percent of contractors. If they had to work two hours of overtime on a project on the day, and they were making about \$15 an hour, we'll up the number from \$9.50 to about \$15 an hour on private construction. The total cost of that overtime for that day would probably be about \$150. In regard to that \$200,000 dollar project, which is going to take longer than a day, obviously. Profit being about 15 percent maybe on a project like about \$30,000, you know it's going to be insignificant in regards to some of the areas in construction.

Most people are familiar with construction. Whether equipment, delivery of materials, cost of materials that have gone up, whether it be concrete, drywall, paving, or slurry, is those issues are going to have much more of an impact on owners and other people. I think that issue about the cost is probably not a very significant one, but I think it is a significant issue to workers, as Mr. Kersh brought up, in regard to being uniform and fair about if you're going to extend people's day to 10 to 12 hours and they have to take care of issues of child care or rearrange their family in order to accommodate the worker, the contractor, and the owner who's purchasing the construction, but also accommodate their families.

[Jim Sala, continued.] I'm sure that there will be a lot of people who will raise those exceptions, but we would be in support of this bill. I think it's very fair and I think it brings into line some uniformity on overtime, especially in the construction industry and the enforcement from the Labor Commissioner. We would urge support of that bill.

**Assemblywoman Giunchigliani:**

If I look at your amendment, but go back to the scenario that you prefaced, current law as well as in your amendment uses the term, "40 hours in a scheduled week of work." How do you fix the issue of them working on both a private sector job as well as public works job within in the same week? It doesn't address that and I don't think you captured in the 48 hours that you were talking. Somebody worked 24 and 24; you'd never get to that with this language.

**Jim Sala:**

You may have to defer to the Labor Commissioner, but the way we understand his enforcement is currently, he would do that investigation, but if those hours were in the private sector, he would either have to drop it or send it to the Department of Labor, and hope that they do something about it—

**Assemblywoman Giunchigliani:**

Current, correct?

**Jim Sala:**

Yes, that's the current law, but the current amendment, because of the capture of that overtime provision on the private side, would allow him after the investigation to then turn around and do the enforcement if that was on the private side.

**Assemblywoman Giunchigliani:**

Maybe I'm not noticing which statute captures the private side. Is it the reference to Chapter 624 that captures private?

**David Kersh:**

In section (c), where it says, after (c)2 we have, "the 40 hours in a scheduled week of work and eight hours in a work day set forth in subparagraphs 1 and 2 of this paragraph may include hours worked on public work or hours worked on work other than a public work, or any combination thereof."

**Assemblyman Seale:**

In your bill, as I read it from line 11 or so down through 30, there are all these exclusions. One after another, except for legislators; I don't see us in here. Who's included if you've got all these exceptions?

**Chairwoman Buckley:**

Let's ask the Labor Commissioner, because this is existing law on existing exceptions.

**Michael Tanchek:**

The exclusions that are listed in Section 2 are currently the existing exclusions that are in Statute. The minimum wage law was redrafted several years ago and the history escapes me at the moment. Sorry about that. One of the issues was exceptions to overtime. These exceptions generally track the exceptions that are in the Fair Labor Standards Act and they were added to State law, so that it would reasonably compare to the Federal Fair Labor Standards Act, so this is not new language. This is simply what's there now. To take these exclusions out in terms of who would be included, it would essentially be every employee in the state.

**Chairwoman Buckley:**

Is it a fair summary to say that on page 2, the existing exclusion with regard to one and a half times the minimum wage, that most carpenters or other skilled workers are earning more than that? Yet, collective bargaining has overtime rules. Prevailing wage has the overtime rules and there's one segment that is outside, and that's what you're trying to address in your amendment along with ensuring that the Nevada Labor Commissioner will investigate when workers aren't paid. Is that an accurate summary?

**Jim Sala:**

It's very accurate.

**Assemblyman Hettrick:**

I think that the biggest single complaint I've gotten in regard to the bill, and of course they didn't see the amendments—a whole lot of employers and employees like the flexibility of being able to adjust hours. If somebody has to go to the doctor or whatever and you can say, "Okay, you have two hours off today and work it tomorrow, and it's fine with me and it works okay." A whole lot of employers and, I think, employees would like to retain that flexibility and this doesn't give that. I don't think they're trying to not pay overtime, but because it says 8 hours in a day, you can't work that extra hour the following day, if you work 6 today, you can't work more than 8 tomorrow without having to pay overtime. I think that's an issue that I would like to see addressed here.

[Assemblyman Hettrick, continued.] You've got a deal here that says "except by agreement," so why can't we agree to let them do that without mandating the 8 and 40. I think that would make a whole lot of the employers happy and make some employees happy as well.

The second thing is, if we're worried about having the Labor Commissioner deal with these issues, why don't we just duplicate federal law on the in between and let him deal with the issues. It would be a Nevada State law and he could

deal with the issue. If that's all we want is him to be able to deal with these labor complaints, let's codify the federal laws that exist for the in betweens and he can deal with them without having to send it off.

**David Kersh:**

That's precisely what's going to happen.

**Assemblyman Hettrick:**

But, you're adding the other part. You're adding the 40 and 8, instead of leaving it at over 40 in a week.

**Chairwoman Buckley:**

I think they're asking for two separate things and mean we can judge those two separate things on their merits.

**David Kersh:**

Yes, precisely, since A.B. 44 came out and now, I've had a lot of conversations and discussions about the 8-hour issue and our amendment goes precisely there. We want basically, to have the middle section, just mirror federal law, so nothing changes in regards to the 40-hour provision that the federal law has, so it's consistent. The 8-hour day overtime is only applicable to construction workers so that it's consistent with the public works sector. In regards to everybody else, it's just the same as federal law.

**Chairwoman Buckley:**

I think Assemblyman Hettrick's question is on the proposed amendment, which portion of it specifically states that the Labor Commissioner would now have jurisdiction?

**David Kersh:**

Yes, that would be Section 1 (b), "except as otherwise provided in paragraph (c), an employer shall pay one and one-half times and employee's regular wage rate whenever an employee who receives compensation for employment at a rate of one and one-half times or more of the minimum rate prescribed pursuant to NRS 608.250 works more than 40 hours in any scheduled week of work."

**Chairwoman Buckley:**

Our resident Assemblyperson who works in employment for a living is nodding his head, so that must mean we're in good shape here.

**Assemblyman Conklin:**

You're absolutely correct, there are two issues here. Subsection 1, (a) and (b), address Labor Commissioner with the ability to enforce all areas of employment

including the area that it currently cannot. Paragraph (c), which is separate, deals exclusively with the construction industry. Mr. Hettrick may still have an issue with it, but that is the language and you can't confuse the two because they're separate.

**Jim Wadhams, Legislative Advocate, representing Southern Nevada Homebuilders Association:**

We're opposed to the bill, and we're opposed to the amendment. I was interested to listen to the testimony because the amendment I was handed didn't have any names or dates, so I wasn't quite sure where it came from. Some of the questions the Committee has asked, if it's any comfort to you, I have the same questions. I'm still not sure that this is not a great billable-hour opportunity for lawyers who practice in this area. Having said that, I'm not entirely sure why this structure is set up so that it identifies exempt employees, yet then it particularly identifies an employer group; that is, the construction industry, contractors, and subcontractors who must pay in a certain manner. It doesn't deal with the wide range of employees it might be engaged in that activity under the license of a contractor.

We have secretarial and professional help. We have people with hammers and nails in their hands. We have customer service people. We presume we have sales people as well, and it creates contradictions with the exemption list of those employee categories. Depending on your point of view, it's either going to be difficult to sort out who's in and who's out or it's going to be an opportunity for mischief that I think is not intended here at all. I listened to the testimony and I commend the proponents for trying to achieve what I understand to be a conformity with the federal law. If that's the case, then that's what this bill ought to clearly state and we can eliminate the issues of the ambiguity as to which kinds of employees now are in or out depending on which employer they happen to work for.

We would suggest that this bill not be processed and the bill be held until some sense can be made of the internal contradictions that are now within the amendment and the bill.

**Chairwoman Buckley:**

Jim, do you oppose the Labor Commissioner having jurisdiction so that there are no holes? Do the Home Builders oppose that?

**Jim Wadhams:**

No.

**Chairwoman Buckley:**

If the amendment is twofold and that's the first, and the second is that private-sector construction jobs would now be subject to the overtime provisions, do the Home Builders oppose that?

**Jim Wadhams:**

I'm not sure. No, I don't believe so, if we do it on the 40-hour federal standard.

**Chairwoman Buckley:**

So it's more concern about the ambiguity, how it's written, as to whether it achieves those two goals as opposed to the substance of those two goals.

**Jim Wadhams:**

As far as your questions have gone so far, Madam Chair, that is correct. We do simply also object to any configuration of the hours. This state and various employers have gone well past 8 hour days for the convenience not owed just to the employer, but also of the employees. As was mentioned in reference, several industries have offered three 12-hour days, which is met with tremendous dissatisfaction—

**Chairwoman Buckley:**

Which is why I think the proponents worked. I had received a number of emails and concerns I gave those to the proponents, and I think they went out and worked with some of those folks to try to clarify that.

**Sam McMullen, Legislative Advocate, representing Nevada Subcontractors Association:**

I have additional concerns on the original bill from the Las Vegas Chamber and the Retail Association as well. I would just say to the extent that if they are trying to limit it to the construction industry that I think our concerns were exactly as Mr. Wadhams stated them. I don't think there is an objection to the Labor Commissioner or the standard 40-hour rule that clearly is an objection to the 8 hours or that type of thing. Maybe what I would just suggest is we just go to a classic 40-hour federal standard. Frankly, we could probably clean this section up both as to all employees. I guess if it's going to be in work session or it's going to be in some sort of working group with the proponents, we'd be happy to work with them to try and make sure that something like that was acceptable.

**Mike Cate, President, Silver State Masonry, Reno, Nevada:**

I'm a native Nevadan, and have been contracting in northern Nevada for over 20 years. I have come today to oppose A.B. 44, but not for reason most people would assume.



[Mike Cate, continued.] Masonry is one of the oldest trades in the world and has two factors that have never changed. It is physically demanding on those who install it and it is at the mercy of the weather. Temperature, rain, snow, and high winds can prevent work from being done. It is for these reasons that I oppose this bill.

I currently have 28 employees, and as the building season picks up I'll be up to 50 to 60 employees. My employees were extremely affected by this past winter. There were several weeks that they were only able to work two or three days in a week, so I would allow them to work extra hours on those days to help pick up hours for the week, which is something that is not normal policy for my company. My journeyman masons make on the average about \$28 an hour, so if they can pick up an extra four to six hours it helped them out over the winter.

Because of the physically demanding nature of the trade, the best production is accomplished in the first three or four hours of the day. After that, production drops off, which is why a normal eight hours is all we work. If this bill was passed, I would not be able to allow overtime on a daily basis to make up for weather days. The natural slowdown and production, along with the time and a half increase in pay, would make it cost-prohibitive. It is my feeling that the employees would be the ones to lose out in this case.

**Christina Dugan, Director of Government Affairs, Las Vegas Chamber of Commerce, Las Vegas Nevada:**

I would also echo Sam McMullen's comments and like to add to the record that in its current form we are opposed to A.B. 44. We have been working with the members of the Carpenter's Union to try to come to a reasonable agreement on some of the language moving forward and we'll continue to do so. I would also respectfully ask that you allow some letters from our members to be placed onto the record, explaining how this would affect their individual businesses ([Exhibit E](#)).

**Fred Hillerby, Legislative Advocate, representing Regional Transportation Commission, Washoe County, Nevada:**

We were opposed to the original bill and now that I read the amendment, I think I still have concerns. Although the amendment basically reinstates the way the exception that's been in our law for so many years that if you make more than one and a half times the minimum wage, you're not subject to it. That exemption is what took it away from the Labor Commissioner because now those people aren't subject to this law at all, so I see how that folds it back in.

[Fred Hillerby, continued.] Let me give you the example that was given to me by my client and I think it makes sense. This is a working person who asked their employer, our Commission, "My kid's got a field trip next Friday and I'd like to take the afternoon off to be a chaperone of the field trip, but I need my 40 hours. I'm willing to work 9 hours for four days and half a day on Friday." Now if they make less than one and a half times the minimum wage, you're required to pay them overtime for 1 hour of those four days. You've taken away the flexibility of them to get their 40 hours of pay that week and still have a half a day off.

The one and half times, it was \$7.72. The bill this Body just passed in the ballot initiative in less than two years, that number will rise to \$10 and something an hour as I do my math of one and a half times \$7.50 an hour. It's going to change and some people who were exempted under the old law and perhaps exempted today under this would then fall out of the exemption and that flexibility of being able to work something other—and I would have to agree with Mr. McMullen. It just seems to me from my perspective as I read this, if we got rid of the 8 hours, and said it's 40 hours just like the federal law, put it in our law, so that our Commissioner can have jurisdiction, then you can do what that employee asks to have done and do it easily and the other regular and flexible schedules that people have talked about, the three twelve's and all of that would also be fine under that provision.

**Bob Ostrovsky, Legislative Advocate, representing Nevada Resort Association:**

We objected to the bill in its original form. We don't have some of those same objections to the amended bill. I have one request. If we're going to give our Labor Commissioner the authority to enforce what was enforced by the federal wage and hour folks which is the Labor Department, then I think, and don't know if it's even possible under the law. We should ask to become a deferral agency. We don't want to fight these in two forms. We don't want to have a complaint filed in Nevada and one filed at that federal level on the same issues.

We're a deferral agency for equal rights. Up until today I didn't think, until I had heard some of the testimony about some of these matters deferral, what they were trying to get at. If there's a way to become a deferral agency, we should. It makes life a lot easier for employers. There's only one place to go. So, I suggest that because the definition of a work week, we've heard here to get very much more complex when the facts change. If I go to work 9:00 am on Monday morning and my employer says, "Oh, I need you tomorrow morning at 8:00 am," and you work 8 hours, guess what, you just got an hour overtime. Your first hour of the second day was the twenty-fourth hour of the previous day. Those kinds of issues, and I'm not suggesting you need to address those here,

but those are the kinds of issues the Labor Commissioner faces in determining whether or not the law was violated.

[Bob Ostrovsky, continued.] Quite frankly, I'd rather deal with the Nevada Labor Commissioner, than the U.S. Department of Labor. My experience there has never been very good. They're difficult folks and so if there's a way to make it work—I don't like this language because I think if an employer reads this, he doesn't understand it. If an employee doesn't understand it, then an employer won't understand it. There has to be a better way to achieve the goal, if that's where we want to be.

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

I didn't sign in favor or opposed to this bill. I wanted to make myself clear. We're certainly in favor of the Labor Commissioner being able to administer the law. I think it was somewhere in the 70s when the minimum wage was raised, this exemption was put in. I don't think anybody paid a lot of attention to it. It didn't affect anybody under collective bargaining. Those of us who were around should have objected to it, but didn't think about it. We didn't realize at the time that it would take the ability away from the Labor Commissioner to enforce the law across the board. The reason I didn't sign in in favor of the bill was because I have been in this battle before and I assume that we would get into the question of whether or not to go with the federal law. There isn't a consensus among the southern Nevada group. This amendment came out late and I'd like to get with those guys at their meeting Monday on other business to get an answer from them of where they stand on whether to go with the 40-hour week or the 8-hour day.

Personally, I think that it would make sense to go to the 40-hour week because in effect we have no eight hour day anyway. If the Labor Commissioner can't enforce an 8-hour overtime rule, then we don't have one. I would like to ask for you to hold it until we get a consensus among the trades in southern Nevada. I'm going to make the argument about maybe it'll work, maybe it won't, but I have got to try.

**Michael Tanchek:**

We'll go to the amendment. I said earlier that I was neutral on the bill and that's basically my policy; as an enforcement agency, I don't think it's right to be an advocate as well. It kind of imparts a sense of bias in some cases where you're pleading for one side. You ought to maintain that neutrality. When I look at these bills I have to ask myself three questions. The first one is, can I enforce it? Is this language enforceable, the way that it's written? The language in the

amendment would be enforceable from the viewpoint of The Labor Commissioner.

[Commissioner Tanchek, continued.] The second question is, can I enforce it with the resources that I have available? In the existing bill I did put in a fiscal note, because I felt that removing the language completely more than likely required at least one more investigator from my office. I've looked at this bill and I don't think that the expansion in the Labor Commissioner's authority under the amendment would be as significant in terms of workload. I believe that with the existing resources that I have, we would be able to enforce the provisions in the amendment.

The third one is, are there any unanticipated consequences? After looking at the amendment, I haven't spotted any yet, although I'm notorious for picking up a little bit late in the game. My analysis of the proposed amendment, Section 1 (a), that would maintain the 40 and 8 requirement for employees that make one and a half times the minimum wage. That's the current law. My estimate, looking at some dealer figures from 2003, I believe that affects about 157,000 workers statewide currently under that rule.

Section 1 (b) would expand the Labor Commissioner's overtime jurisdiction to cover all workers in the state. That's the over 40 requirements. Since most employers are already familiar with those requirements under the Fair Labor and Standards Act, I don't think that there's a big learning curve that would be involved there and I don't see a really major problem with that.

That third part, 1 (c), that's the overtime requirement, or the daily overtime requirement in the construction industry. One thing that was stated earlier may have left the impression that we're looking at kind of a range, something between one and a half times the minimum wage and the prevailing wage rates. That's not quite correct. The prevailing wage is sort of an exception. In other words, the current 40-hour and 8 provisions apply to workers on prevailing wage projects only. In other words, you could be working in another industry making what would be a prevailing wage or higher, but since it's not a public works project, it doesn't count. This would expand it to all those folks.

**Assemblyman McCleary:**

It's a complicated bill. I'm not going to argue that and it's not perfect. It could use some work. We've already changed it once because we found some problems with it. I want to state here, I'm not trying to punish good employers. Most employers are law-abiding people and they're doing all right for their workers, but there are abuses out there and I know from being in the workforce there are people who will take advantage of their employees.

It's those employees I'm trying to protect, so I hope you understand the spirit of this bill, if it's imperfect.

[Assemblyman McCleary, continued.] One of the reasons we made this amendment was because of the flexibility issue we saw. I'd love to work four tens, that would be great, and then three days off. I understand there are nurses who work three twelves and all the other combinations. I want you to understand the abuses that I'm looking at. I'm looking at when it comes to public works projects, anything over 8 hours you have to pay them overtime. But it's not true in the private sector, so I was trying to unify—here's what can happen. You can have somebody who spends the first part of the day working on a private project and then later get shifted over to a public works project and works another 8 hours for the same company. They could work 12 hours a day, which in construction is hard work. A 12-hour day, and you'll have some abusive employers that might have two employees work both of them three days a week, 12 hour days, so they don't have to give them benefits, and they can cut a lot of loopholes that way.

The work of these people who work three days a week, but they don't have to pay them overtime. That's what I'm trying to address. I trust your judgment if this Committee can find a happy medium to protect those workers, that's all I want to do. I appreciate your indulgence and I certainly don't want to go to war with anybody. I'm willing to work with anybody to make good public policy here.

**Chairwoman Buckley:**

We'll close the hearing on Assembly Bill 44 and we'll open the hearing on Assembly Bill 83.

**Assembly Bill 83:** Revises provisions governing compensation of workmen on public works. (BDR 28-759)

**Assemblyman Bob McCleary, Assembly District No. 11, Clark County:**

This is very similar. You're going to hear some very similar concepts and it's complicated also, but please listen. I've got the same two gentlemen who are going to help present this.

**David Kersh representing, Carpenters/Contractors Cooperation Committee:**

I'm going to summarize the letter ([Exhibit F](#)). We've heard all this other testimony about overtime. Basically, we have a situation as we have heard before about public works, where you have the 8 or 40-hour overtime.

Nevertheless, you have the following scenario: A worker might be working in the morning on a private project and then goes and works on a public works project, or he works on a private project one day a week and the other days he works on the public works projects and it ends up that he works 48 hours. He could be working 48 hours and the hour overtime would kick in on the public works project. Or he could be working 12 hours and the public works and the overtime kicks in on the public works. We want to make sure that it's clear that when the overtime is calculated on the public works, that the hours that have been worked on the private project are taken into consideration.

[David Kersh, continued.] The workers working the 12 hours or the 48 hours. Unlike A.B. 44, where the overtime had to do with the private project, this is specifically the overtime on the public works project. It will enable the Labor Commissioner to make sure when he's looking at the public works overtime that he can take into consideration the private overtime. That's in a nutshell what we're trying to do.

I would like to state that there's a second part to this bill and that's on page 4, and we do have an amendment in regards to NRS 338.035. In regards to discharge of obligation of contractor or subcontractor engaged on public work to pay wages. The obligation of a contractor engaged on a public work or subcontractor engaged on a public work to pay wages in accordance with the determination of the Labor Commissioner may be discharged by making contributions to a third person pursuant to a fund, plan, or program in the name of the workman.

We looked at the language that's currently in A.B. 83 and it seems that there are words there that are excessive. Our main concern was just to deal with the issue of cash and to just keep in place the ability of a contractor or subcontractor to pay into a fund as opposed to paying the entire amount to the worker on the check. That's the section that gives the contractor the ability to pay into a third-person fund. Those are the two sections of the bill and again, we urge your support for this bill.

**Jim Sala, Regional Council Organizer, Carpenters Union, Las Vegas, Nevada:**

We are in support of A.B. 83 as Mr. Kersh illustrated in his written and verbal testimony, this is about the public works in Section 338 and the overtime provisions to make sure the scenario we discussed, where we have public and private hours, whether they are a daily or weekly, can be taken into consideration by the Labor Commissioner. It codifies what he's been doing and goes hand in hand with A.B. 44 for the enforcement. As you can see by the other language, the second issue here to summarize is we wanted to get rid of the language that said they could "pay in cash on a public works project." We

wanted to keep payment by wages, and payment in third-party trust funds or fringe benefits. But the words, "to pay in cash," to get rid of their obligations seemed—we don't know where it came from, but it seemed like it needed to be cleaned up. We're in support of this bill and we urge its adoption.

**Paul McKenzie, Business Representative, Operating Engineers Local Union No. 3, Northern Nevada:**

The concept of this bill we're very much in favor. The idea of assuring that an employee working on both a private job and a public job has his hours computed together. An instance I ran into just last year was, we had an employee who worked a private job for 4 hours in the morning. He went to a public job and worked an 8-hour day and he went back to his private job and worked another 4 hours that afternoon. He did that for three days and he was not paid overtime on any of the days.

The 40-hour work week has got to be turned into the federal level. His complaint still hasn't been heard at the federal level. The law says 8 hours on a public works project; he has to be paid overtime, so the public entity that he was doing the work for couldn't enforce the overtime rules because he didn't work over 8 hours on the public job. There's a loophole there that I think we need to do something about whether this bill addresses that problem in its entirety, especially closing the loophole because somewhere you've got to report that private work, or non-public entity work. It has to be reported together. Somehow, somebody has to track that.

This isn't just a private/public problem, either. We've got several contractors that may be working on three or four public works jobs at one time. An employee bounces between the different jobs. Each public entity only gets the hours that are reported for that job, so there's no way they can enforce the overtime regulations for that employer because those hours are spread between several jobs, several different public entities, they may never see the violation of the overtime regulations. Unless the employee is willing to take a chance of losing his job by going to the Labor Commissioner or the Federal Department of Labor, he is just going to sit back and take what he gets. Most of them are making so much more on public works jobs, than they make on the private jobs they don't complain.

There are two punishment methods. They either terminate them, or they just leave them on private work all the time if they complain about not getting overtime on the public works. I think that the loophole needs to be closed, but I think that somehow in this bill there needs to be a method to report all the hours the employee works to the public entities so that the public entities can track it, so it doesn't all have to go to the Labor Commissioner to enforce,

because the employees aren't going to complain when the threat of their job is in front of them.

**Assemblyman Conklin:**

Just so that I understand your problem, I'm not going to ask you a question regarding the bill. The employees that are working all the hours and not being paid overtime, are their paychecks coming from the company for whom they work?

**Paul McKenzie:**

Yes, they'd be getting their paychecks from the company that they work.

**Assemblyman Conklin:**

And, it's an hourly payroll that includes deductions for Social Security, worker's compensation, et cetera, correct?

**Paul McKenzie:**

Yes, it is.

**Assemblyman Conklin:**

It would be my understanding that's illegal. I understand your problem. We want to avoid unintended consequences, and yet we want to solve your problem, so that helps.

**Paul McKenzie:**

That's one of my largest concerns with the bill the way it currently is. Are we creating a quagmire that there's no way to enforce what we're asking for and cause it to get worse? The problem with the employee that worked all the hours and then got paid overtime is we turned in a wage complaint to Wages and Hours and it still hasn't been heard, and that was last year that we did the wage complaint. Again, I agree with A.B. 44 and getting it to the Labor Commissioner, so we've got local control over it, but there has to be a way to enforce what they're asking for in this bill, so you can track it, because if you don't have it tracked you can't enforce it.

**Assemblyman Conklin:**

Just anecdotally, I've worked in the temporary staffing business for 12-plus years and every company that I've ever worked for—we come across this problem periodically because we'll have somebody who will work 4 hours on a temporary assignment at one place, then go to another job. At the end of the day, I have to pay my employees overtime. They're working for me, regardless of where they work. I would imagine that would be the same for you. I'm just going to have to do some research and kind of find out where the read is from



the company standpoint that they think they can get away with not doing it the way everyone else has to.

**Paul McKenzie:**

I don't think it's that they don't know that it's illegal. I think it's that the enforcement mechanism is so cumbersome, that if the employee does report it, they may have to pay him, but by the time they do, it's down the road and an honorable businessman isn't doing this stuff, it's the dishonorable one. Anytime we make regulation, it's not to regulate the honest businessman to keep his standard up, it's to bring the standard of the person that's not honorable up to the level of an honorable businessman.

**Assemblyman Hettrick:**

Your comment and Mr. Conklin hit on my thought, but I'm in a little different direction. You can have an employee who works for one employer in the morning for four hours, then goes to work for a totally different employer that only he knows of. Neither employer knows he has the other job. You would have the same problem. You would be in the exact same thing, so I'm wondering now if staff is probably going to have to help us.

I wonder if it has to say in A.B. 44 and A.B. 83 for one employer because I think the problem we have is where the one employer has them work the non-public works job in the morning and the public-works job in the afternoon. It's the one employer because if you have two separate employers, they may not even know the guy's working two jobs. They work a Saturday, and then you're over your 40 hours a week and the other employer doesn't even know he works a Saturday. So, I think we have to be very careful here. This is a lot more complex than it looks.

**Paul McKenzie:**

Currently, under federal law and under State law, if I worked for McDonald's in the morning and I go to work for Burger King in the afternoon and I work 16 total hours, between the two employers, neither one of them is obligated to pay me overtime, and that's the same way if I work for XYZ Construction in the morning on a public works project and I go to work for his competitor PQN Construction in the afternoon and my hours combined to be over 9 hours, neither one of them is obligated to pay me overtime either because if I work for an employer for a period over that, and that's under the federal statute, and I'm not sure if it's that clear under the State statute, but I know it is under the federal statute.

**Assemblyman Hettrick:**

I don't disagree with that. Again, I haven't had a chance to go back and look at this, but the way I remember the wording was if you work on a public works job one part of the day and a private at the later, then you're subject to overtime. That doesn't say for one employer specifically, it says if you work a public works in one part and the private later or vice versa, you're subject to overtime. All I'm saying is we just need to clarify and make sure it's clear.

**Tom Morley, Political Action Director, Laborers Local 872, Las Vegas, Nevada:**  
We are in favor of this language as written.

**Michael Tanchek:**

Initially, with the bill, we had a concern about Section 2. Mr. Kersh provided some amendatory language that dealt with our issue, although, he did leave a pair of words out. We had looked at the language before and there was, "in part," and there was, "the obligation of the contractor engaged in a public work or a subcontractor engaged in a public work to pay wages in accordance with the determination of the Labor Commissioner may be discharged in part by making contributions to a third person, pursuant to a fund planned or program in the name of the work." We think that clarifies and that's what that language was intended to do. The, "in part," is important because you don't want to find yourself in the situation where somebody's entire paycheck goes into a benefit and they never see any spendable money as part of that. I think Mr. Kersh can confirm that was the original language that had been discussed there.

As to the first part of the provision, essentially, the testimony that was provided earlier was correct. That is the practice that we are following anyway. We'll have the authority to look at all of the employers' records over the course of the week, not merely those that are tied to a particular public works project. If it becomes an issue, then we have the ability to go back, look at all the records for the week, see what hours were worked when and where and see where the amount lies to be applied.

**Chairwoman Buckley:**

To address the question that was asked in the Committee, if an employee is working for two separate companies, but there's no links and they are in fact two separate companies under federal law, under your interpretation you would not require the second employer to pay overtime? Is that correct?

**Michael Tanchek:**

I hate to be the skunk at the garden party. Generally speaking, if it's two separate employers, that is correct that those are two separate jobs and the two employers aren't implicated. We have had situations, however, where

ostensibly, you have two separate employers. A case in point was a gentleman that worked for a restaurant. The first 8-hour shift he worked for ABC Incorporated and then the second 8 hours he worked for XYZ Incorporated, both companies completely owned by the same person. The guy never changed position; he stayed in the same spot for both 8-hour shifts. What we've done in reviewing federal law, they have a business realities test, and we use that as well. It's not a one size fits all. Every once and a while you've got to look at the situation and ask, "What's really going on here?" We do take that into consideration.

**Chairwoman Buckley:**

Unless there's a situation where it's a sham or subterfuge, the two employers are treated differently?

**Michael Tanchek:**

That's correct.

**David Kersh:**

Commissioner Tanchek is correct. The way he read it is the way that we intended it to be with the words, "in part."

**Chairwoman Buckley:**

We'll close the public hearing on Assembly Bill 83 and we'll ask the proponents to work with some of the testimony and give us your final recommendations on Assembly Bill 44. Then we'll address them both at the same time on a work session document. Anything else to come before the Committee? We're adjourned [at 3:57 pm].

RESPECTFULLY SUBMITTED:

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Vanessa Brown  
Committee Attaché

APPROVED BY:

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Assemblywoman Barbara Buckley, Chairwoman

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Commerce and Labor

**Date:** April 11, 2005

**Time of Meeting:** 12:00 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
114	B	Jim Nadeau, Legislative Advocate, representing Nevada Association of Realtors	Amendment to A.B. 114
114	C	Renee Diamond, Administrator, Nevada Division of Manufactured Housing	Testimony on A.B. 114
44	D	David Kersh, representing Carpenters/ Contractors Cooperation Committee	Testimony on A.B. 44
44	E	Christina Dugan, Director, Government Affairs, Las Vegas Chamber of Commerce, Las Vegas, Nevada	Letters in opposition to A.B. 44
83	F	David Kersh, Carpenters/ Contractors Cooperation Committee	Testimony on A.B. 83