

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

**Seventy-Fourth Session  
March 7, 2007**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:02 a.m., on Wednesday, March 7, 2007, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Marilyn Kirkpatrick, Chair  
Assemblywoman Peggy Pierce, Vice Chair  
Assemblyman Kelvin Atkinson  
Assemblyman Bob Beers  
Assemblyman David Bobzien  
Assemblyman Chad Christensen  
Assemblyman Jerry D. Claborn  
Assemblyman Pete Goicoechea  
Assemblyman Ruben Kihuen  
Assemblyman Harvey J. Munford  
Assemblywoman Bonnie Parnell  
Assemblyman James Settlemeyer  
Assemblyman Lynn D. Stewart  
Assemblywoman RoseMary Womack

**GUEST LEGISLATORS PRESENT:**

Assemblyman Joseph Hogan, Assembly District No. 10:



**STAFF MEMBERS PRESENT:**

Amber Joiner, Committee Policy Analyst

Scott McKenna, Committee Counsel

Mary Kay Doherty, Committee Secretary

**OTHERS PRESENT:**

Gus Nuñez, Interim Manager, State of Nevada Public Works Board

Evan Dale, Deputy Manager, State of Nevada Public Works Board

Chris Chimits, Interim Deputy Manager, State Public Works Board

Renny Ashleman, Attorney at Law, Chairman State Public Works Board

James Sala, Representing Southwest Regional Council of Carpenters

Michael Tanchek, State Labor Commissioner

Richard L. Peel, Representing The Mechanical Contractor's Association,  
The Nevada Electrical Contractor's Association, and the Sheet  
Metal and Air Conditioning Contractors' National Association

Jack Jeffrey, Representing the Southern Nevada Building and  
Construction Trades Council, Standing in for Danny Thompson,  
State AFL/CIO

Roc Stacey, Representing the State of Nevada Department of  
Transportation

Donald Grock, MKD Construction, Operating Engineer's Union Member

Clara Andriola, Representing the Associated Builders and Contractors  
(ABC)

Sean Madole, Valley Hoe Excavators, Reno, Nevada

Justin Ivory, Owner, A-1 Steel, Sparks

[The Assembly Committee on Government Affairs was called to order.

The roll was taken.]

**Chair Kirkpatrick:**

We will start with our presentation from the State of Nevada Public Works Board (SPWB).

**Gus Nuñez, Interim Manager, State Public Works Board:**

To my right is Evan Dale, our Deputy Manager for Fiscal Services, and Chris Chimits, Interim Deputy Manager. The Public Works Board's responsibility is to develop and implement the State's Capital Improvement Program (CIP). It is also the building department for all construction on state-owned lands. We play a major role in managing the funding for the CIP by assisting the Treasurer's

office with timing, amount of investment of general obligation fund proceeds, and also with maintaining separate accounts for each project.

Evan and Chris will explain the process of using the traditional low-bid method to deliver the Capital Improvement Program (CIP) projects. While we use other methods, such as Consigned Build and Construction Management at Risk, the majority of the projects are delivered through the low-bid method, in accordance with Nevada Revised Statutes (*NRS 338*).

**Evan Dale, Deputy Manager for Fiscal Services, State Public Works Board:**

I will start with a high-level overview of the Public Works Board function for the State. The Board does not perform any of the construction work and, for the most part, does not prepare the design for the projects.

In any given year approximately 1,500 to 2,000 workers will contribute toward implementing the State's CIP. Seventy of those workers are employees at the State Public Works Board (SPWB). Therefore, most of our effort is focused on hiring the other 1,430 to 1,930 workers, according to the rules in statute and regulation and managing, directing, and approving the work of the outsourced people.

We hire architects and engineers based on a qualification process. The Public Works Board and the using state agency are able to exercise some judgment over who will perform those services. The construction workers, on the other hand, are hired based on who will work for the lowest price. The Public Works Board has little judgment in choosing those workers, and they represent about 80 to 90 percent of the people working on the CIP projects.

My presentation refers to the handout ([Exhibit C](#)), and, beginning with bullet item number 1, I will walk you through the cycle of a CIP process.

The CIP process begins during the budget cycle when the State Public Works Board invites applications from state agencies needing a building or some other CIP project. The State Public Works Board has received 173 applications for the 2007 CIP, and our first step is developing the written scopes and cost estimates for those applications.

Let us talk a little bit about the business of estimating these projects. When a professional architecture and engineering (A&E) team or a contractor prepares a cost estimate or bids on a project they work from a set of documents that resembles this [held up example]. There is, also, a set of speculation, (spec) books and a set of drawings. They define the project [held up two examples]. When we develop the CIP, the SPWB does not have such information. We

work from a 3- to 5-page application and, from that, we must develop a concept for the project so the industry can estimate the building cost. When a professional A&E team or contractor prepares a cost estimate or a bid, they spend 200 to 300 hours analyzing the documents but, in contrast, the Public Works Board spends just 5 to 20 hours analyzing the 3- to 5-page application. Estimates for the Capital Improvement Program are developed with this. The SPWB would like to have all of the documents previously shown to prepare our estimates and present them to the legislative committee.

When we have had such documents we were able to create a planning project, we were able to develop a process with a much higher level of confidence, and, in the next biennium, we were able to follow-up with a construction project. In other words, if we have the planning project we can develop a process with a much higher level of confidence.

After estimating and developing the scopes for these 173 applications, the staff reviews all the applications and prioritizes them by the needs of each applicant. The total estimated cost for all the applications received in the 2007 CIP is about \$1.4 billion. The Public Works Board recommended approximately \$900 million, but has ended with a \$1 billion recommendation.

Next, the Public Works Board will hold a series of public hearings for testimony from the requesting agencies and the need for their projects. Ultimately we will recommend any projects for funding to the Governor.

Bullet point number 4 indicates the SPWB represents the Governor's CIP recommendations to the Legislature. We attend hearings and answer questions about the costs in the CIP estimates, and we explain the scope and reasoning behind the need for the projects.

**Chris Chimits, Interim Deputy Manager, State Public Works Board:**

After the Legislature funds all the CIP projects, the SPWB has the money and the responsibility to start designing, developing, and constructing all the projects.

Hiring architects can be an emotional and subjective art and a science, so we have developed a process to create a "short list" from the applying architects. We team Public Works staff with staff from the requesting agency. There are usually a dozen or so architectural firms submitting bids for each project and this team will shorten the list by using a numerical method to choose about four firms, and will then interview them. At that time another team, with new faces from the Public Works and new faces from the agency, will come on board. These people actually conduct the oral interviews and will make a decision

based on the firm's experience, their technical expertise, and past performance. These three things are heavily weighted in the decision-making process.

When the four firms are selected all the information is forwarded to our manager. He accumulates the data from the selected first, second, and third-place firms and forwards it to our Board. At a State Public Works Board meeting this Board makes the final decision.

When an architect is selected, negotiations begin for both the scope of the project and the fee. When the scope of the project is resolved, the architect has a firm understanding of what we expect him to do. Later, the architect will return with his proposal. The proposal then is negotiated, accepted, and a contract is formed.

Now the fun part begins and it is the part I enjoy the most. It is the beginning of the Schematic Design process. At this time the requesting agency's problem or need is identified, and the SPWB articulates the agency requirement, in terms of space; how much space, what kind of space. This design process is necessary so the design team can form a "solution."

Forming the solution is one of the most enjoyable things for the Public Works Board. The solution creates the floor plan and the exterior elevations, selects the materials, sites the building appropriately, and deals with all the agency needs articulated in the program or design process. A cost estimate is also prepared at this schematic phase, but I will come back to that.

We now move on to the Design Development phase and all the contributing engineers, consultants, and architectural teams come in. The heating systems, cooling systems, electrical delivery and structural systems, and the systems to resist horizontal and vertical forces, earthquakes and winds are selected and accepted in the Design Development phase. Also, at this point, a second cost assessment is completed and it is a more refined version of the schematic cost estimate, because of the additional details.

The Construction Document phase is the third phase of the design process. At this time the technical aspects of the design are established; all the drafting, the detailing, the writing of specifications included in these big books [held up books], occurs. Every doorknob, every piece of carpet, all the lights, the clock, the speakers, everything is defined and described in these documents. A final cost estimate is also prepared by using the set of drawings in these two big books.

As Evan [Dale] mentioned, when we begin any process for the CIP development, there is only a 3- to 5-page application containing a rough description of the building. For instance, there is an application for a 62,000-square-foot building with labs in it, office space, and a couple of conference rooms. The plan also describes the type of people who will be using the building and why it is needed. The SPWB staff has additional conversations, does 5-10 hours of research and prepares the cost estimate for the Legislature. The Legislature then funds the CIP projects for both planning and construction.

Over time the cost estimates develop and become refined, and the contingencies contained in the original estimate are reduced at each level. Finally, a construction document estimate is created and it looks like this ([Exhibit C](#)). This took three weeks to complete and was for this project [referred to book]. It took 280 man-hours and cost \$30,000 for this estimate. It includes the exact number of door-knobs, the exact square feet of carpet, the linear feet of duct work, all the switches, the circuits, everything necessary for a \$75 million building is contained in this book.

With all this preparation, you may ask why contractors' bids come in higher or lower than the estimate. The answer is interesting. The Public Works Board estimate is the result of a professional's ability to do take-offs for everything in the plans, and they are accurate. However, the estimate does not include the construction firm's perceived risk element to complete the building at that given time. It does not include an estimate regarding the relationship between a chosen architect and the chosen contractor. If a good relationship already exists there could be a lower price; an arduous relationship could include a higher bid. This is difficult to estimate when preparing a construction cost estimate only from drawings.

Another major component, not included in these cost estimates, is the supply and demand picture at the time of the bid. During Hurricane Katrina, for instance, it became almost impossible to get C-900 pipe in Las Vegas. All the pipe was going to New Orleans. Additionally, contractors were even unsure if they could hire the needed sheet rockers for the job, or if they could get everything needed to construct the building. The level of risk, then, becomes higher when there are more unknowns and it is reflected in the bids.

Just recently we opened High Desert Phase Four, a prison in southern Nevada. Construction bids came in \$12 million over the estimate. A couple of weeks later, in the same town, we opened the Nevada State College and it came in several million dollars under bid. It is frustrating because we must report and do complex estimates, but we cannot really estimate the contractor's risk on the

project, or the relationship between the contractor and the design team. There are many emotionally-based variables when preparing a bid.

During the design process we establish firm construction documents, form a contract or a relationship between an owner and a contractor, and "plan check" the project. We have an exhaustive "plan check" process.

In the back of your handout there is a Project Manager General Task List. It is the foldout sheet and it is the check-off list all project managers use to ensure no step is overlooked during the project. The process is lengthy and complex. Every step involved in plan checking and the design process is addressed.

After completing the plan check and when all the peers agree, we go to the bidding phase. It is a high-stakes game, but if we are successful we do award the construction project to a contractor. We write an Owner-Contractor Agreement and it governs the relationship throughout the construction period.

When the construction process begins a SPWB staff project manager and building inspector take over. The project manager oversees the architectural team and the construction team. He may also use material testing labs to assist in determining the quality of concrete and for testing materials such as asphalt for proper compaction, that type of thing.

Our building inspectors are assigned full-time on all projects. They have two major roles. In the first role they inspect for code; they want to confirm that what we are building complies with the Nevada building code. This is of paramount importance. The second task they perform is "clerk of the works" for lack of a better term. They ensure the specifications in the plans are followed. The building code does not necessarily care how many coats of paint are required or if it is even painted well, but an owner does. The inspectors assist the project managers in this area and they inspect for quality and quantity, not just code items. They are on the site daily inspecting all of the work of the contractor.

We use a commissioning team when the construction period closes. It is comprised of two mechanical engineers and an electrical engineer. They work the mechanical systems; the controls, the parts and pieces that move and heat and cool the building. They confirm everything operates correctly and they also review everything with the agency moving into the building. The using agency will also be trained correctly and have all the operations and maintenance manuals and the code commissioning. We assure ourselves the building actually works as it was intended and that the agency understands everything so they can move in and operate the building correctly.

There are also furniture, fixtures and equipment to be purchased. Our office also does that purchasing. We make sure there are desks and chairs, that they are appropriately located and available when the agency moves in. This completes the project and we start all over again. We begin estimating the new projects for the next biennium and go on from there.

I have attached a couple of colored photographs to the handout ([Exhibit C](#)). They are pictures of two in-house projects we have completed. Our staff is comprised of professional architects and engineers who spend a majority of their time managing other professionals and construction companies. They oversee the almost \$1 billion allocated for construction. However, occasionally, we will do an in-house project. These pictures reflect just two examples of many projects we have completed over the years. These in-house projects keep our people sharp, familiar with the code, and familiar with issues other architects must deal with.

**Evan Dale:**

I will now refer you to point 11 in the handout. In addition to overseeing and managing the construction and design processes, the Public Works Board also maintains formal accounting records and enforces the required series of laws and regulations. We must make sure all the contractors have proper insurance and that their insurance company is approved by the State. We enforce the prevailing wage laws on the projects. If there is a complaint or a violation, we set up hearings and do investigations.

The SPWB also assists the Treasurer's office in financing these projects. As you know, most of the money comes from General Obligation Bonds of the State. We do not raise all that money right off the bat. We try to predict the cash flow needs of the projects. For the CIP, it is usually over a period of four years. We raise just the amount of money needed. This CIP will have approximately \$700 million of State money. One million dollars of the money raised, if not needed, could cost the State about \$40,000 in interest; or if we raise \$10 million too much in a particular bond issue, it would cost the state almost \$500,000 in interest. We want to predict, as precisely as we can, exact cash needs for one year of projects. For example, in the 2005 CIP, I asked for \$35 million. It turned out to be almost exactly what was needed for the first year. In the second year I asked for \$150 million and we are working with that money now. It is another component of the State Public Works Board.

**Gus Nuñez:**

On page 4 of the handout there is a bit of history regarding how we estimate projects and history regarding inflation. We have, as you know, been



experiencing quite a bit of construction inflation these last few years and it is predicted it will continue in Nevada.

On page 5, using a graph and within the table, there is some history and some information about the present and what is projected for the future. We used local estimating firms, the Clark County School District, hourly utilization rates, and hourly utilization rates used in the prior CIP to project the 2007 CIP. On page 6 we have a graph showing the same thing, but have compounded it. On page 7 we have included excerpts from recent articles and estimating firms to explain the risk when bidding on our projects.

As you know, when we accept a contract all risks are transferred to the contractor. The contractor provides a performance bond and guarantees contract completion. The bond insures that construction will be completed on budget and on time.

The last thing we want to mention is the school plan-check. The law requires the SPWB to plan-check all projects for all schools in the State of Nevada. The Facility Condition Analysis Program provides for this [read from point 13, [\(Exhibit C\)](#)].

I came to the Public Works Board about five and a half years ago. At that time our projects were completed at the rate of \$5 to 6 million per month, or \$60 to \$72 million a year. Presently, our projects run at the rate of \$17 million a month or \$200 million per year. We have added three project managers and four inspectors since the end of the last legislative session, but it has been a challenge to fill those positions because of today's market.

With the 2007 CIP we must double our employees and are requesting six more project managers and four additional inspectors. Doing this will not cover all the needs for the next two years, but we believe we may be able to hire this number. Some of our work will, therefore, be outsourced; specifically in the inspection area.

**Chair Kirkpatrick:**

Are there any questions?

**Assemblywoman Parnell:**

Gus, as you know, there has been concern because some of the building inspectors believe they are not allowed to do what they are charged to do; the sign-off, following through, and getting back to the project manager. Is there an update on what has transpired as a result of those concerns?

**Gus Nuñez:**

Yes, we had an open meeting with our staff and the building inspectors to discuss the issues with our Board. I provided an answer to their concerns in writing and I also gave a copy to the Legislative Counsel Bureau (LCB). I believe you should have also received a copy.

At that open meeting our Board told us to look for mediation. We did that. The Department of Personnel (DOP) referred the name of a mediator who was not accepted by the building inspectors. The inspectors then suggested another mediator, and we agreed. At this time there have been several sessions.

The main issue relates to responsibility and authority. Within our office there are two sections, project implementation and building inspection. Project implementation is under our appointed project manager and the other involves our licensed building inspectors. The project managers are expected to bring a project in on budget, on schedule, and within the legislative scope; and, as such, it is the project manager's responsibility and under his authority. The building inspectors' primary responsibility is enforcing State code and they have full authority over this. The issue arose because some building inspectors want more authority in the area of project implementation. I have explained that on any project, our office needs just one person, per section, to be responsible. With code enforcement I know where the responsibility lies and who has authority over it. With respect to project implementation, if there is a problem, I want to look to the project manager and hold him accountable.

The most economical way to perform "beyond code compliance" or "clerk of the works" compliance with plans and specs review, cost estimates progress, and addressing issues on a daily basis is by utilizing project inspectors. The project inspectors are part of project implementation and are on the project site full-time. We use them, rather than the higher-paid project manager, because it is more economical.

Additionally, our state Risk Management Agency wants to assure that code compliance is completely independent and is not compromised. Building inspectors must look after the health, safety, and welfare of the employees and the general public using our buildings. This must not be compromised. Therefore, building engineers should not be responsible for bringing in a project within budget. They assure the building is completed to code. They must act in a completely independent fashion to provide a Certificate of Occupancy for the project. Therefore, building engineers should not be responsible for bringing in a project within budget.

I think the mediation has helped considerably. Yet, I also think there is still work to be done between the two groups.

**Assemblyman Goicoechea:**

You did not say anything about change orders, the real nightmare in contracting. Would you go into that?

**Gus Nuñez:**

Because there is no such thing as a perfect set of drawings there will always be a certain amount of change orders. We do require, however, a certain level of due diligence by our designers. In terms of dollars we want to keep change orders for errors and omissions to somewhere between 2 or 3 percent. There is a current policy, but we are in the process of working with our Board to develop a more stringent policy with respect to errors and omissions. On the other hand, if there are issues about drawings and performance from the architect, it is taken into consideration during the consulting and selection process in the future.

In the last couple of months, some projects have gone awry and gone beyond the probable 2 or 3 percent. We have asked the architects to come up with some money. There has, for the most part, been no litigation getting that money.

**Chair Kirkpatrick:**

Looking through Sections 5, 6, and 7 ([Exhibit C](#)), it takes over a year to get through each process and only two years before you return to the Legislature. How can your staff project costs? A lot happens in a year. Is there any way to make the process move faster? Drawing things out, by both sides within the State, is costing the State a lot of time and a lot of money.

**Gus Nuñez:**

Our Chairman of the Board has asked the same question. We went through NRS 341 and have suggested several areas where, if laws or regulations were modified, we could reduce that time considerably.

As an example, within the last year, we basically suspended the rules to get a special project completed. The Health and Human Services was under a court order to provide additional beds for the criminally insane and, we were told, we had only four months to get a project designed and built for the remodel of a pod at Dini-Townsend Hospital. Selecting a consultant, designing the project, selecting an architect, and building it was done in the four months and with some money left over. This was an emergency but it can be done.

However, I am not advocating it. First, we do not have the staff, and, secondly, the law provides for public input and allows for transparency of the process. The public can see what we are doing and how we are doing it. With respect to public money, there must be a balance between assuring transparency and efficiency.

**Chair Kirkpatrick:**

I suggest that you sit down with us at a later date. I think it is important when the Legislature looks at the public works policy to help the process rather than make it worse.

**Renny Ashleman, Attorney at Law, Chairman of the Board, Nevada Public Works Board:**

I have been discussing with you, Madam Chair, and also with others in this building and within the industry, two or three things that could be done to speed things up. At this time everybody waits for the Board to approve the designs. It is not a bad step. We do have architects and engineers who handle pretty big projects and they may have additional ideas. However, the Board almost never turns any design down. It would cost a fortune to re-do them at that point. I have suggested that the project manager do the approvals. That could add as much as a couple of months to the project.

We have also suggested the Board could appoint an executive committee for phone meetings. We now meet 12-15 times a year and are always running out of budget money for the Board meetings. We ask the Board to waive the remaining fees and costs and have as many meetings as needed. We could have phone conferences or an executive committee to speed up the decision making. These are a couple of things we can do.

Other recommendations for speeding the process would, as Gus pointed out, remove our ability to treat competing contractors fairly. The public bid process takes most of the time but it is necessary and contractors must have an appeal process rather than dealing only with the project manager.

With some projects we may want to expand our policy and demand the planning and design stage completion before recommending capital construction. Combining these stages can sometimes be done and the Board has started using the Construction Manager at Risk (CMAR) and other allied methods. We moved to these methods because inflation is so bad, and waiting for the designs made our estimates unreliable. We do take this issue seriously, but there is a problem either way you go.

**Chair Kirkpatrick:**

For the Committee's knowledge, I have been working with Mr. Ashleman because I believe this is an issue that we must address to streamline some of the process. I wanted to get something on record to allow the Committee to start thinking outside the box.

I would now like to invite Assemblyman Joseph Hogan to present his bill, A.B. 218.

**Assembly Bill 218: Revises provisions relating to public works. (BDR 28-852)**

**Assemblyman Joseph M. Hogan, Assembly District No. 10:**

I am pleased to present A.B. 218, a bill to clarify and facilitate the effective execution of our labor laws. The first requirement of an effective law is that it should be clearly written and readily understood by those expected to observe its requirements. I believe this bill will achieve that result, with its amendments to certain provisions of *Nevada Revised Statutes* Chapter 338.

I have with me today, Mr. James Sala and Mr. David Kersh. Mr. Sala is intimately familiar with these provisions and has been working diligently to work out the best possible version of them, with many of the parties involved in the entire process. He will have a statement and then we will all address any questions that you may have.

**James Sala, Senior Representative, Southwest Regional Council of Carpenters:**

For quite some time, at least since 1998, our organization has been working on many issues regarding public works. In an effort to level the playing field we have been involved with legislation and pre-qualification of contractors, and we offered a bill to stop and reduce confidential settlements. We authored a bill, Assembly Bill No. 83 of the 73rd Session, allowing the Labor Commissioner to adjudicate overtime on private work, as well as public works, so contractors and workers did not get caught between the issues.

We believe many of the issues we have worked on, some of the regulatory processes, have helped smooth out the public works process. We have worked with the prior Labor Commissioner, the current Labor Commissioner, and many other people.

This bill, A.B. 218, is our attempt to take a commonsense approach to contractors who try to undermine that level playing field. We believe penalties should be fair and be consistent. We know the Labor Commissioner makes his best effort, but there are still some gray areas in the statutes. We have shared this bill with the Labor Commissioner, with the Association of General

Contractors (AGC), with the Associated Building and Contractors (ABC), and many other interested parties.

The specifics of this bill attempt to do four things. First, the bill clarifies what is an actual offense. The second part establishes graduated penalties. On page 6 of the old bill, if you interpret it literally, an offense or a set of offenses could result in a debarment of three years for the first offense. We do think any contractor violating these laws should be dealt with seriously, but to avoid a three-year debarment, both the past and present commissioners have tended not to impose any administrative or any other penalties, even on repeat offenders.

If you notice, one of the significant changes [section 3] says with a first offense, the Labor Commissioner "may" prohibit that person from being awarded a contract for public works by a public body for at least six months but not more than a year. It is graduated but is not as severe. We hope it will send the message, but it is also fair.

On the second offense the Labor Commissioner, according to A.B. 218 "shall" prohibit that person from being awarded a contract for a range of one to three years; still a graduated process. The third offense calls for three to five years [debarment], and the fourth offense or more would be for "at least" five years. There is a graduated scale and this progression will, we think, bring more consistency and fairness. It encourages the Labor Commissioner to invoke the provisions for contractors who deserve it.

The next area we wanted to clarify is on page 7 and says, "The Labor Commissioner shall notify the State Contractors' Board, and every public body." Initially the commissioner had some concerns about this creating an administrative burden for his department, but we have had some conversations about how it can be done.

The last area is in subsection 3, on page 7, and says that in the instances where the Labor Commissioner feels that a violation or a first violation is of a minor nature, he may impose an administrative penalty or just forfeiture of the contract award and not a debarment. If that contractor creates subsequent offenses of a similar nature, the Labor Commissioner can use that first offense and combine it with the second offense and move on to the next stage of penalties.

In this last section, and after further discussions with the Labor Commissioner and others, we now believe it may be necessary to look for some additional regulatory process to protect against unintended consequences for a minor error

or a paperwork error. I am not sure, however, if the best place for this is within the statute.

Our work with awarding agencies, contractor groups, and the Labor Commissioner, is attracting quality contractors back into the public works market. It remains tough to get contractors, however, because of the volume of work in the State, especially in southern Nevada.

Assembly Bill 218 is also intended to alert the public that contractors wanting to bid in the low-bid process will not be awarded a contract if subverting the prevailing wage process. In the past some contractors paid a worker for 30 hours but worked him for 40 hours or only paid the worker the laborer's rate when he did an iron worker's job, deliberately misclassifying the work to save \$8-10 an hour per worker. We have also run into instances when ten people are working on a project but the contractor only reported and paid for five employees. There are many different issues and we want to ensure that if any contractor is awarded a public works project, but uses that kind of "scam," he will not be allowed to continue to bid within the process and will be penalized. Hopefully, this bill will clarify and give guidelines to the process.

**Chair Kirkpatrick:**

I would like to call you up, Mr. Tanchek, before opening for questions. I think you may address many of our questions. At the end of the day, you will have to implement our decisions.

**Assemblyman Goicoechea:**

I have more of a comment. I do agree that section 3 [A.B. 218] has some real problems. It technically says that whether the Labor Commissioner takes an action or not there is a first offense on the books. I do not like that at all.

**Assemblyman Beers:**

I was speaking with some members of the carpenter's association when reading through this bill, and they raised questions regarding indemnity. If a group of subcontractors essentially sign an indemnifying contract, and one of them commits an offense, through the indemnity clause the entire group is liable. It seems to me we need to find a way to separate that out as well.

**Chair Kirkpatrick:**

Mr. Sala, let me clarify with our Legal Counsel because I think there are two separate issues, and that issue [indemnity contract] belongs in Judiciary.

**Scott McKenna:**

I am not aware of that issue being addressed in this bill. If Mr. Beers would like to further clarify the question, I would be happy to try to find an answer for him.

**Chair Kirkpatrick:**

Mr. Beers, would you like to get with Mr. McKenna, later? Or do you want to try to clarify it at this point?

**Assemblyman Beers:**

I will get with him later. I did not see it in this bill and it is a problem that has been raised.

**Chair Kirkpatrick:**

Want I am saying is, and, Scott, correct me if I am wrong, I believe you will need to get with Legal because there are two separate issues, with two separate statutes, and the one statute goes to a separate committee.

**Assemblywoman Parnell:**

In the bill, page 6, line 35, referring to the term "corporate officers," is there a definition for corporate officers? It is new language and I would like to get a sense of who they all are.

**James Sala:**

It is new language for that subsection but if you look just above it, line 27, the existing language referenced "that person, and the corporate officers," so when we drafted the bill we just replicated that language. Because I am not an attorney I would not like to give any legal definition, but many contractors hold different licenses and sometimes they have multiple companies. You may need to ask the Labor Commissioner.

**Assemblywoman Parnell:**

Thank you. I would like that definition at some point, either from legal counsel or the Labor Commissioner.

**Assemblyman Settlemeyer:**

When you are dealing with a situation that may prevent someone from bidding on a process, it could also create a situation that increases the cost for us in completing projects. Would you agree? If you prevent someone from participating, someone who could possibly be the low bidder on another project, the State may end up paying more money for the next project.



**James Sala:**

On a personal level I do not believe that to be true. Because of the bid process described here, it would be very difficult. The same four contractors may bid on three successive projects and any one of them could be the lowest bidder on any of the projects. There might be four different projects—a highway, a building, a school—but any individual contractor will not always be the lowest bidder. Regarding debarment, and if the contractor is the low bidder by violating the law, I do not think that anyone would want him to have the project.

**Assemblyman Settelmeyer:**

As a follow-up, here is a possible scenario. In the Galena Bridge project, the difference in the low bid and the next bid was something in the neighborhood of \$25 million. If someone committed a clerical error and messed up on a paycheck, and was ultimately banned from bidding on that project, the concept of increased costs for the State of Nevada could be potentially tens of millions of dollars. I am fearful of that. Perhaps, in a work session, we could make sure that clerical errors, in no shape or form, will affect the process.

**Assemblyman Stewart:**

On the first offense, according to the bill, it says "may." On the first offense the commissioner may elect not to impose a penalty, but it is still a first offense. If it was a clerical error and then, heaven forbid, a person commits a second clerical error, and with the second offense there is a "shall" penalty of one to three years, it could ruin the contractor's business. I would be concerned about that "shall" on the second offense.

**James Sala:**

Just a couple of brief comments, and I referenced this in my comments, previously. The existing language says, "If any administrative penalty is imposed against a person for the commission of an offense, that person, and the corporate officers, if any, of that person, may not be awarded a contract for a period of three years." There was no graduated process in the original language of the bill. The second thing I would offer is that I do think that the regulations, regarding what is termed a minor or unintended paperwork violation, are certainly different from someone running a process while undermining the prevailing wage and not paying people correctly or not paying overtime. Under those circumstances, certainly, you would want to take stronger measures. As I mentioned, under that last section we do need some regulatory guidelines, but not necessarily in the statutes. We took the graduated approach to allow some flexibility for the Labor Commissioner.

**Assemblyman Claborn:**

I was the Operating Engineer's Business Representative for over 24 years. Undermining the prevailing wage was running rampant even then. There are contractors out there exploiting our employees. They pay a minimum wage or even less than minimum wage. I do not know how many thousands of hours I reported in grievances. I reported with a commissioner, everywhere we could go, to get our correct pay for prevailing wage workers. Perhaps this is a vehicle to stop some of this. I appreciate your bringing this bill in here. Something must be done to stop exploiting our workers.

**Chair Kirkpatrick:**

Mr. McKenna, do you want to clarify a couple of things for the Committee?

**Scott McKenna:**

I would like to point out that in the beginning of NRS 338.017, what follows is only if an administrative penalty is imposed. If you look up to Section 2, which is NRS 338.015, the imposition of an administrative penalty is discretionary with the Labor Commissioner. It is not required. You would only get to the provisions of NRS 338.017 if, under NRS 338.015, the Labor Commissioner had imposed such a penalty. To do so, the Labor Commissioner, of course, exercises discretion as to what is serious enough to warrant the imposition of such a penalty.

**Chair Kirkpatrick:**

Thank you, Mr. McKenna. At this time I will go to the public comment on this bill. Mr. Tanchek, I am inviting you up first because you are neutral.

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

This bill lands directly in my lap. If you are totally confused by the time I am finished, I will have done my job, because you will understand prevailing wage is very confusing.

I do want to say I appreciate the work Mr. Sala has done with this. He consulted with me early on to get my take on some of the things and I appreciate the professionalism.

The Labor Commissioner is ultimately responsible for enforcing the prevailing wage laws in the State. Under the system, when claims or complaints are filed they are generally forwarded to what we call the awarding body, or the local government or state government agency that awarded the contract, to conduct an investigation and reach some conclusion, which is called a determination, and it comes back to us. We review that work and then I either set it for a

hearing, dismiss it, send it back for further information, or dismiss it outright, depending on the circumstances. It requires a lot of discretion because there are a lot of different situations. Some of them still leave me scratching my head.

The first issue I do want to address, and Mr. Sala brought this up, has to do with page 6 [of the bill], subsection 2, where the Labor Commissioner "shall" notify the State Contractor's Board and "every public body", of each contractor who is disqualified. This bill, in its present form, could require a fiscal note because of the implied notification costs. For instance, in Clark County we deal consistently with about 20 different awarding bodies. In the northern part of the State and the rural counties there are over 300 awarding bodies. I say over 300 because, to be honest, I do not know how many we have out there.

However, after talking with Mr. Sala and my staff, we will now include the disqualified contractors list with the usual public works project number and CIP form always mailed to the awarding agencies. The agencies will receive the required notification without mass mailing everybody.

Probably what is of most concern has to do with not paying workers the correct wage on public works projects. There can be a lot of different reasons for that. Some of the reasons are innocent, and some of them are not so innocent. Do not focus on it as "just for a simple paperwork mistake." There are a lot of mistakes made that are not simple paper work mistakes. At the same time, they may not be heinous errors either.

Failing to pay workers the correct prevailing wage on public works projects is a strict liability violation. If someone has not been paid correctly on a prevailing wage job, when it comes before me, they will get whacked. I do not care why he did not pay that person correctly. One contractor, for a good example, was putting information incorrectly into his computer program and his payrolls consistently underestimated a payment on the pension plan. At the end of an eight hour day the program was rounding down. So, at the end of the day everybody working for him was having their pension plan underestimated by a penny. Over time it could turn into some substantial money. We actually found it early on but that was a violation. It is an offense.

One thing people are concerned about, for example, is when we find a problem, correct that problem, and then something else happens down the road. Suddenly this employer is disqualified for three years and everyone working for him is possibly out of a job. When these cases come before me I generally issue an order on every case. Mr. Sala talked about settlement agreements earlier. We rarely do settlement agreements anymore. Just about everything is

reduced to an order. This is my practice and I think it puts contractors on much firmer notice than what you get with a settlement agreement.

I want to digress for a minute. Two years ago my office developed a new program for tracking these non-compliant contractors. The previous program we used when tracking the violations was keyed into the prime contractor. When I would try to identify a repeat offender, it would key into the prime contractor, not necessarily the contractor committing the violation. For example, every time we issued an order on a violation there were two parties named, the prime contractor and the contractor committing the violation, because all of the money flows through the prime contractor. Because the old system tracked only the prime contractors, we could not tell who the actual violators were. Under our new system, in place for two and a half years, I can actually go back and see who is doing the violating, what the nature of the violation is, and when it occurred. It is much easier to keep track of these folks now. In the past two years I have disqualified two contractors. Both of them deserved it. I am currently looking at another two. I have not reached a conclusion, but my inclination is that they probably deserve it as well.

There are two types of monetary penalties. One is called forfeitures. Forfeitures are, in a sense, the liquidated damage provisions in the contracts. In other words, if you do not pay the workers correctly, you turn your reports in late, or you deliberately misstate information on a report, forfeiture then goes to the awarding body. Basically it reduces the contract price. Money is taken from the contractor on that basis.

The next level is the administrative penalty. This penalty is imposed in addition to the forfeiture. It is an escalation of the monetary penalty against that contractor. The third level is disqualification.

It has been suggested that when an administrative penalty is issued against a contractor there is an automatic disqualification for three years. Rarely, if ever, do we issue administrative fines. The administrative fine is relatively minor compared to the result of the disqualification. If I disqualify a contractor I will be putting people out of work, so I want to make sure I have a really, really good reason to do so. Conceptually, I really like what Mr. Sala has done with this bill. It bridges that gap.

We have discussed the possibility of some language to soften the concerns that affect or disqualify somebody for a subsequent offense by dragging in a minor offense from the past. I think there are some good grounds for working out these issues.

I would now like to address the question that Assemblywoman Parnell brought up regarding corporate officers. I think Mr. Sala nailed it for you and I will give you an example of one contractor we disqualified a few years ago. He had 14 different contractor's licenses. Under those 14 different contractor's licenses there were various combinations of corporate officers but they were always the same six people. One corporation would get disqualified, but they just moved on to the next corporation. We caught up with them and disqualified that corporation. This "corporate officer's" language does allow us to catch up with those people if they play that kind of a game.

Assemblyman Beers had a question about the indemnification issue. I have not seen the language of that bill. In this particular context, the contractor we go after is the contractor who actually committed the violation. We focus on that individual. The guilty or the careless pay or, in some cases, the dumb pay, but those who are not involved or are not responsible do have protection and relief. I would like to take a look at that other bill and see how it could affect this.

**Assemblyman Bobzien:**

I am more confused now than I was before. I do appreciate your comments about being a little more analytically critical about the concept of a simple paperwork mistake. I do not have a clear sense of just where the line is and just how you negotiate it. I need a clearer picture of the criteria you use in determining whether you will go forward with an administrative penalty.

**Michael Tanchek:**

In terms of the two who were disqualified, the conduct they engaged in was so over-the-top that you did not need a weatherman to tell you "that it was raining." It can, however, get a little narrow, so I will give you an example of a common issue we deal with. Prevailing wages are basically "task-based wages." For example, there is a crew that is building a sound wall with several different crafts involved in the construction during the course of a day. There is an operating engineer who runs a crane and is moving big pieces in place. He will get paid a wage rate based on the operating engineer's classification. At the same time there is some grunt work to be done and that falls under the classification of laborer, which has a different rate of pay. Sound walls, because of their size and because they are made from concrete, requires forms to be built and the craft classification dealing with those forms is carpenter. Once the forms are put together you will pour concrete to finish the form and, at that time, you bring in cement masons. I left out iron workers. If using reinforcing (rebar) steel reinforcement in the sound wall, the iron workers will be there too. Completing this one job demands four or five different craft classifications, but the jobs are not necessarily performed by four or five different people. One employee working on the project may have his laborer hat

on for a couple of hours, and then will move over and put on his carpenter's hat, and so on. Within the course of a day, one guy's wage rate is literally changing on an hourly basis. Contractors are required to keep track of that.

Basically, many of the disputes are between workers and their employers over a particular craft classification of the worker when performing a task at a particular time. If it is determined there should have been a different classification for the time, it is a violation. That violation is not necessarily stemming from misconduct on the part of the contractor. It is a disagreement over how to characterize the work at a given time.

Welding, for example, has ten different craft classifications. When a guy is welding you cannot just say that he is a welder. You must decide which one of the ten classifications he is participating in.

There are contractors who will deliberately misclassify people. Mr. Claborn pointed out that he had been with the operating engineers and he has seen that more times than he would care to count. This is the deliberate type of misconduct we look for. It is kind of a fine art and must be looked at case by case. There is a gray area, but 90 percent of what we deal with is black and white. It is in that 10% gray area where the Labor Commissioner must have some discretion and look at it individually.

**Assemblyman Settlemeyer:**

It is not a simple issue when dealing with prevailing wages. In the situation where we try to stretch our dollars, with the matching up of some federal money and commingling of funds, it brings up the discussion of the Davis-Bacon Act wages and how they may apply and the multiple use schedules and all the different issues. Sometimes a contractor does not mean to pay incorrectly. That is why the word "shall" is problematic to me within the statute.

Also, on page 7 [A.B. 218], the concept of whether or not the Labor Commissioner finding an error still counts as a contractor's offense, I find problematic. There is a need to have ability to use discretion and to have humans involved in the process.

**Michael Tanchek:**

That is a very good point and I think it is of concern for a lot of people who are here.

**Assemblyman Kihuen:**

What is the current practice for dealing with repeat offenders who have not been assessed with the administrative penalty?

**Michael Tanchek:**

It depends on the nature of the offense. This morning I went through my database and there are very few repeat offenders. There was one contractor who appeared several times. A couple of the offenses were relatively minor but that contractor has been disqualified. Generally speaking the repeat offense can be different each time. One time a contractor may not pay someone overtime correctly, and then the next offense is for misclassifying a worker. Our practice is to put the contractor on notice and then escalate the penalties. Generally, what you are looking at is sort of a "three strike" system. If it gets to the point of, "Which part of this do you not understand, Mr. Contractor?" it is, perhaps, time to get him out of the mix.

**Assemblywoman Pierce:**

In reference to your description of employees doing different crafts during a day, it does not seem that complicated to me, and it seems it is something a contractor ought to keep straight. There should not be that many mistakes, and there should not be multiple mistakes over many, many jobs. It seems it is pretty straightforward. What is the amount of time between taking an action with a contractor and notifying the Contractor's Board?

**Mike Tanchek:**

The practice, in reference to the State Contractor's Board, is that when I take an action, I also issue an order. When the contractor is disqualified and there is an order saying this contractor is disqualified for three years or whatever, the Contractor's Board and State Public Works Board are both served with copies of that order at the time of issue. It is simultaneous.

**Assemblyman Goicoechea:**

The establishment of the prevailing wage is truly difficult, especially in rural Nevada. Counties and local contractors fail to respond so there is not a prevailing wage set for Humboldt County. What happens is, Mike [Labor Commissioner] must then go to the union hall in Reno or in southern Nevada and discuss with them the prevailing wage. Then our contractors and public bodies come roaring in and say, "What are you talking about? A truck driver gets \$45 an hour? We pay them \$20." That is where the real prevailing wage issue is.

**Chair Kirkpatrick:**

I have one question. Regarding Section 2, subsection 3, it allows you, as the Labor Commissioner, to set some type of regulation based on a sliding scale. I believe that type of language allows you to put things in place based on offenses and violation, but my concern is that anytime things are legislated it seems to take at least two years to put regulations into place. Is this something

that could be put in place within a short time, or will this take a long time to put into place? I would like the public hearing to be part of the regulation process.

**Mike Tanchek:**

I could start, realistically, after July 1, 2007, when we can adopt permanent regulations.

I am actually kind of wrestling with the sliding scale issue and exactly how to define the severity of these offenses. If it is something that is just stupid, is it \$1,000 and a "do not ever do that again," or is it \$2,500, or the full \$5,000? I have no criteria for gauging each particular instance or fitting it into the sliding scale. I must look at each charge on a case-by-case basis.

**Chair Kirkpatrick:**

I am frustrated with this lack of consistency. We do not want to punish the guy who is trying to do the right thing but might be late paying a bill because a secretary misses every Friday, yet it is necessary to catch the real problems. How can we get some consistency so people will start paying attention and get their act together?

I know if I do not turn my payroll in on time I will pay a fee. I also know a contractor must track daily that Joey worked 12 hours as an apprentice and he worked 6 hours as a helper; it is part of the time and materials ticket. I do not quite buy that it is hard to do. Any good contractor hires the right people to keep that information correct for him. However, I do not want to penalize the wrong people in the process. I would like to continue communicating because we have done a good job, so far.

**Assemblyman Stewart:**

Mr. Commissioner, would you be more comfortable, as I am, if we change the second offense word from "shall" to "may," to give you more discretion in handling penalties?

**Mike Tanchek:**

I think that could be a possible solution, and it is heading us in the right direction in crafting the language because I know the carpenters have some suggestions and that idea has some real promise. I think we will be able to get over that hurdle.

**Assemblywoman Pierce:**

I want to make sure the Committee understands the way the prevailing wage is set. A survey goes out to all the contractors, and if the contractors do not



reply, or cannot be bothered and do not like the prevailing wage, well, tough luck. Is that correct?

**Mike Tanchek:**

That is it, in a nutshell.

**Chair Kirkpatrick:**

I will now move to those who are also neutral on A.B. 218. [There were none].  
I will now move to those who would like to speak in favor of the bill.

**Richard L. Peel, Representing The Mechanical Contractor's Association, The Nevada Electrical Contractor's Association, and the Sheet Metal and Air Conditioning Contractors' National Association, (SMACNA):**

We do not oppose the concept A.B. 218 espouses, but we do have some concerns about the language, specifically as it pertains to the penalties and the fines to be imposed. We are willing to work with any subcommittee that may be created and try to work through that language. Of course the goal is to make sure we have laws that are fair and well balanced and, that too, is our intent.

**Jack Jeffrey, Representing the Southern Nevada Building and Construction Trades Council and also standing in for Danny Thompson, for the State AFL/CIO, Henderson, Nevada:**

We are certainly in favor of the concept of the bill. I think the bill requires some work and we will be happy to work with the interested parties.

Just a very short history of how this thing all came about. In 1985, there was a bill introduced to repeal prevailing wage. Through a series of public hearings it was decided that it was not the best thing to do and we worked out a compromise using surveys and trying to reach a more accurate prevailing wage. Before 1985 the prevailing wage was determined basically by Nevada State Highway 6, the "Mason/Dixon line" that runs through Tonopah. If you were in southern Nevada it was the southern Nevada/Clark County rate, and if you were north of Highway 6, it would be the Reno rate. Part of that discussion centered on this issue. The existing language was put in the bill in a bipartisan manner. I was in the Assembly at that time and did a lot of work on that bill and nobody, from either side of the aisle, wanted jobs awarded to cheaters.

If you are concerned about losing a low bidder but he is only successful because he cheats his workers, what will he do with the local government or the owner of the project? I think that the concept of the bill is very sound. We did have a problem; in fact the existing law was the provision that I championed. I

probably got a little bit too exuberant, because I can see where the three-year debarment for an administrative penalty causes a problem.

The problem the Labor Commissioners have had, generally, is they want to see the workers paid but do not want to go through the administrative process for it. We do need to put something together that makes sense, but puts the real cheaters out of the business. The existing statutes do not do that. If there have been a few debarments in the past couple of years, I applaud the Labor Commissioner for that. I think the best way to stop cheaters is to debar them. After a few have been debarred the cheaters will go away.

**Chair Kirkpatrick:**

Are there any questions? [There were none.] We will move on to those who are here to speak against the bill.

**Roc Stacey, Representing the Nevada Department of Transportation:**

I am speaking on behalf of Richard Yeoman, who had another appointment. We have several concerns with this bill and are opposed to it. The first concern is the definition of what an offense is. An offense, as stated in Section 1, is each instance of the failure to pay prevailing wage and, therefore, as it was stated earlier, it is to construe that for each individual who is underpaid it could be one offense but on the first offense you could have numerous violations or offenses. The second concern is the mandatory debarment of a contractor after the Labor Commissioner administers an administrative penalty. We believe that is a very restrictive requirement in this law. I am in charge of the contract compliance division for the Nevada Department of Transportation (DOT,) and we do all the wage investigations of our contracts through my office. I have two individuals who work full time, one in the north and one in the south, doing wage investigation. We have determinations submitted to the Labor Commissioner for hundreds of thousands of dollars worth of wages due and also penalties owed for those due wages. On each occasion, when the Labor Commissioner has agreed with us and issued an order, there were penalties; not necessarily administrative penalties but monetary penalties assessed to the contractor. The most difficult issue for us, and what Assemblyman Settlemeyer stated earlier, is it will drive up our construction costs.

This is a list of awarded projects from Fiscal Year 2003 to current ([Exhibit D](#)). As you see in Fiscal Year 2003, there were almost four bidders per contract. Currently, in the end of Fiscal Year 2006, we are down to just over two and a half [bidders] per contract. Our contract costs are going up. Part of the reason they are going up is because we do not have competition. We believe this bill will affect competition.

**Assemblyman Settlemeyer:**

What is the percent of difference between the first and second bid, on average? If you can get that information to me I would appreciate it.

**Roc Stacey:**

Yes, sir. I will do that.

**Donald Grock, MKD Construction, Operating Engineer's Union member, Carson City, Nevada:**

The problem I see with A.B. 218 lies in the penalty structure. I do not feel that there is any great problem with the administrative arrangement for monetary fines or sanctions or penalties, whatever you may call it. I do have a real problem with the Labor Commissioner being able to essentially put a contractor out of business. I believe if that sanction must be explored, it is in the field of the judiciary and not the administrative. I hope the Committee will explore that problem. We have a great system in this country. Administrative fines are nothing new, but if any sanction could put a contractor out of business, I say no.

**John Martin, Bison Construction Company, Carson City, Nevada:**

I, too, am adamantly opposed to this. I have been in business since 1978. In 1979, I made a \$19.25 error on a man's check, which we compensated him for. In 2004, I made a \$700 error on a \$4.5 million job. Twenty-five or 26 years apart would, then, bar me from doing any business for the State. At best, and as Clara Andriola will mention, the bill language should be changed to a "willful" offense rather than just an offense. There is certainly a difference. There has been some conversation about the fact that keeping track of a man's time should be relatively easy, but if you have 35 men on the job, performing numerous tasks, and you cannot afford to put somebody on a job doing nothing but watch and write down every time they change a task, it cannot be done. The money is not there.

The construction business right now, in my opinion, is the most regulated business that we have in the State. As a general contractor I am responsible for everybody's bills, everybody's wage problems, everybody's unemployment insurance, industrial insurance, liability insurance, and everything right down the pike. I have noticed that over the years, when bills like this are introduced they are always proposed by somebody who does not have to deal with the paperwork end of it or the processes that are involved in it. It is an extremely huge burden. There is no other business in this State that will risk \$9 million to make 3.5 percent profit. The casinos do not do that, grocery stores do not do it. No other business is responsible for what their subcontractors do, what their vendors do, besides the construction industry.

To make it even more prohibitive, we have 12 full-time employees and the bulk of our work is public work. With the mistake that I talked about in 1979 and again in 2004, they would be out of a job. So, what Mr. Tanchek mentioned about having a huge financial problem, and the impact for those associated with it, is an absolutely true statement.

**Chair Kirkpatrick:**

Are there any questions? [There were none.]

**Clara Andriola, Representing the Associated Builders and Contractors (ABC),  
Reno, Nevada:**

I want to formally thank Mr. Sala for the spirit of the bill and his words and testimony for creating a level playing field, because it is what ABC is committed to do; creating a level playing field for legal, licensed, reputable contractors. Having said that, a commonsense approach was also discussed and common sense dictates that those who intentionally or flagrantly disregard prevailing wage statutes should truly be punished.

I think one of the terms in this bill that we may need to clarify and truly define is "offense". Because there is not a differentiation between what is truly an egregious offense versus something that may be, based on the testimony that you have heard, just human error. I would encourage and also welcome working with all parties on this bill because the spirit and the intent is there, but there is a real danger of putting decent, licensed, reputable contractors out of work. And, I do not think anyone here wants to do that.

Having said that, I would like to refer to a letter I sent to Madam Chair and to members of the Committee for further details ([Exhibit E](#)). I would support the testimony you heard from, for instance, Mr. Martin, as a general contractor and as one who has been doing work for quite sometime and understands the concerns of not defining offense. I would also like to encourage that discretion be given to the Labor Commissioner with those clear guidelines. The spirit of the law never really has unintentional consequences, but in this case it is of grave concern.

**Sean Madole, Valley Hoe Excavators, Reno, Nevada:**

I am against this bill. I think the reporting requirements and the obligations that we already fulfill under prevailing wage are pretty strict, and I think the bad apples get caught anyway. We have problems with the definition of "offense." We deal with operating engineer pay scales, labor pay scales, and cement finisher pay scales. Many times it is not clear what a person does during various times in the day. We are also specialty contractors and we do cubicle underpinning. This does not fall into classifications at times. We have done

that kind of work on public works. I just see this as typical in a normal work week. We have had jobs where we have four different prevailing wage scales, all with different classifications. A 580 backhoe operator on one scale has a different classification on this job than he has on another job. I am just against making any more rules. I think we have plenty to follow right now.

**Justin Ivory, Owner, A-1 Steel, Sparks, Nevada:**

A lot of good points have been addressed today. I am just going to add one more. One of my concerns is if we continue to exclude honest contractors for minor mistakes the cost of the jobs will go up. Actually, what will happen is Nevada contractors will no longer be building Nevada's bridges and buildings. They will be excluded because of minor errors and out-of-state contractors, who have never done work with the State of Nevada, will be doing this work. It may be competitive but they will be doing the work, not because they are qualified, but because they are not disqualified.

**Assemblyman Claborn:**

What has been said here today is leading us to believe that these are minor infractions. In my 24 years dealing with this, the problem was not minor infractions about different classifications. What it was, and what 99 percent of this is today, is not paying the prevailing wage outright. I can understand the gentleman's concern because he could have lost a contract for a minor infraction. What I am talking about are big infractions; not paying the prevailing rate at all. What I have heard today is misleading this Committee about what this bill is about.

**Chair Kirkpatrick:**

Are there any more questions? [There were none.]

I am going to tell you where we are going with this bill. I believe some good points have been raised today. I am not going to appoint a subcommittee or a work session. However, I believe that you, gentlemen and ladies, can all get together. Mr. Tanchek also believes there are some good parts of this bill and that the intent of the bill has some good parts to it. Let me know, in about a week, if you come to some agreement or if you cannot. At that time we will take a different direction. I appreciate all of you being willing to put time into this.

I will now close the hearing on A.B. 218.

[The meeting was adjourned at 10:56 a.m.]

RESPECTFULLY SUBMITTED:

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Mary Kay Doherty  
Committee Secretary

APPROVED BY:

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Assemblywoman Marilyn K. Kirkpatrick, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** March 7, 2007

**Time of Meeting:** 9:02 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
	C	Evan Dale, Deputy Manager for Fiscal Services, State Public Works Board	Agency Overview Presentation Handout
	D	Roc Stacy, Manager, Contract Compliance Division, NDOT	Handout
A.B. 218	E	Clara Andriola, President, Associated Builders and Contractors, Inc.	Letter