

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

**Seventy-Fifth Session
April 1, 2009**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 8:02 a.m. on Wednesday, April 1, 2009, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, 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/75th2009/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; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn K. Kirkpatrick, Chair
Assemblyman David P. Bobzien, Vice Chair
Assemblyman Paul Aizley
Assemblyman Kelvin Atkinson
Assemblyman Chad Christensen
Assemblyman Jerry D. Claborn
Assemblyman Ed A. Goedhart
Assemblywoman April Mastroluca
Assemblyman Harvey J. Munford
Assemblywoman Peggy Pierce
Assemblyman James A. Settelmeyer
Assemblywoman Ellen B. Spiegel
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblyman Lynn D. Stewart (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Ellen Koivisto, Clark County Assembly
District No. 14

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Cyndie Carter, Committee Manager
Cheryl Williams, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

James Sala, Senior Representative and Nevada Political Director,
Southwest Regional Council of Carpenters, Las Vegas, Nevada
David Kersh, Government Affairs Representative, Carpenters/Contractors
Cooperation Committee, Los Angeles, California
Jack Mallory, Director, Government Affairs, International Union of
Painters and Allied Trades, District Council 15, Las Vegas, Nevada
Steve Redlinger, representing Southern Nevada Building and Construction
Trades Council, Las Vegas, Nevada
Gail Tuzzolo, representing the Nevada State AFL-CIO, Las Vegas, Nevada
Pat Sanderson, representing Laborers' International Union Local 872,
Carson City, Nevada
Richard "Skip" Daly, Business Manager, Laborers Union Local 169,
Reno, Nevada
Paul McKenzie, Executive Secretary-Treasurer, Building and Construction
Trades Council of Northern Nevada, AFL-CIO, Sparks, Nevada
Jeffrey Westover, representing Southern Nevada Chapter, National
Electrical Contractors Association, Las Vegas, Nevada
Lou Salazar Jr., representing Plumbers and Pipefitters Union, Local 525,
Las Vegas, Nevada
Kevin Hardison, representing International Brotherhood of Teamsters,
Local 631, Las Vegas, Nevada
James Halsey, representing International Brotherhood of Electrical
Workers, Local 357, Las Vegas, Nevada
Chris Wile, International Brotherhood of Electrical Workers, Local 357,
Las Vegas, Nevada
Richard Leigon, Southern Nevada IBEW/NECA-Labor Management
Cooperation Committee, Las Vegas, Nevada
Michael Tanchek, Labor Commissioner, Office of Labor Commissioner,
Department of Business and Industry

Madelyn Shipman, representing the Southern Nevada Homebuilders Association, Las Vegas, Nevada

Ted Olivas, representing the City of Las Vegas, Nevada

Dan Musgrove, representing Southern Nevada Chapter, National Association of Industrial and Office Properties, Las Vegas, Nevada

Javier Trujillo, representing the City of Henderson, Nevada

Mary Bottari, Director, Harmonization Project, Global Trade Watch, Public Citizen, Madison, Wisconsin

John Wagner, Vice Chairman, Independent American Party, Elko, Nevada

Lynn Chapman, State Vice President, Nevada Families, Spark, Nevada

Janine Hansen, Nevada Eagle Forum and Nevada Families, Elko, Nevada

Juanita Clark, Member, Charleston Neighborhood Preservation, Las Vegas, Nevada

Wes Henderson, representing Nevada Association of Counties, Las Vegas, Nevada

Alan Di Stefano, Director, Global Trade Investment, Nevada Commission on Economic Development

Ernest Adler, representing Nevada Rural Housing Authority, Carson City, Nevada

Lon DeWeese, Chief Financial Officer, Housing Division, Department of Business and Industry

Joshua Wilson, Assessor, Washoe County, Reno, Nevada

Judy Cox, representing American Civil Liberties Union of Nevada, Las Vegas, Nevada

William Bayne, Private Citizen, Las Vegas, Nevada

Michael J. McDonald, Private Citizen, Las Vegas, Nevada

Charles L. Horsey, III, Administrator, Housing Division, Department of Business and Industry

Hilary Lopez, Ph.D., Chief of Federal Programs, Housing Division, Department of Business and Industry

Chair Kirkpatrick:

[Roll was taken.] Let the record reflect that Assemblyman Christensen and Assemblyman Stewart are testifying in another committee, and Assemblyman Goedhart will be leaving a little early today to testify. Committee members, we have a full plate today. We had to roll Assembly Bill 467 from yesterday to today. We will open the hearing on Assembly Bill 467.

[Assembly Bill 467](#): Makes various changes relating to the prevailing wage requirements. (BDR 28-910)

Assemblywoman Peggy Pierce, Clark County Assembly District No. 3:

The aim of A.B. 467 is to deal with three issues: (1) clarify the application of the payment of prevailing wage on those statutes that currently require the payment of prevailing wage on projects where public bodies are involved; (2) ensure that enforcement of the prevailing wage law can be done by the Labor Commissioner as intended; and (3) clarify the issue of lease-purchase projects and prevailing wage and make sure that developers and contractors, including those from out of state, comply with Nevada rules and hire local workers.

I would like to emphasize the importance of prevailing wage for the health of the construction industry and the economy as a whole. There are some other remarks, but I think we aired all that yesterday, so we should just move to the bill. I have with me Jim Sala and David Kersh from the Southwest Regional Council of Carpenters.

James Sala, Senior Representative and Nevada Political Director, Southwest Regional Council of Carpenters, Las Vegas, Nevada:

I would like to thank the Committee, Madam Chair, and especially Assemblywoman Pierce for helping us bring this bill forward. We currently represent 14,000 members in the state, 2,000 of whom are apprentices, and over 500 signatory contractors that we work with. Many of these members work on private and public projects.

Assembly Bill 467 is intended to clarify and clean up some of the issues that we have dealt with on the prevailing wage process from past sessions. It looks like a big bill, but actually the wording is pretty similar. I passed out a one-page handout ([Exhibit C](#)) that lists the 28 sections in the *Nevada Revised Statutes* (NRS) where changes would be made. The changes are pretty much identical in each of the sections, but it references the type of work and the affected agency. Assembly Bill 467 is to clarify the legislative intent that public works projects, or projects funded or financed in full or in part that meet the minimum threshold established in NRS, will be covered by prevailing wages, and, secondly, will be able to be enforced by the Labor Commissioner.

[Read from prepared statement ([Exhibit D](#)).]

I would like to read the following language from the bill, that "NRS 338.013 to 338.090, inclusive, applies to the project, regardless of whether the project for financing or other purposes is publicly or privately owned, and, solely for the purposes of those provisions, the project shall be deemed to be a public work and the public body shall be deemed to be a party to the contract and to be the public body advertising for bids for the project and awarding the contract for the

project." That language is pretty consistent throughout all those sections that I have referenced in the handout.

We have had several questions, and I am sure that some will come up today in regards to what some of this language means. I will try to answer some of those questions, and we may have to answer others between the introduction of this bill and the work session. So, I will try to keep it brief. I think Mr. Kersh may have comments in regards to the enforcement side from the Labor Commissioner. I would be happy to take any questions.

Chair Kirkpatrick:

Let Mr. Kersh speak first, and then we will take questions.

David Kersh, Government Affairs Representative, Carpenters/Contractors Cooperation Committee, Los Angeles, California:

We are the labor/management organization comprised of the Southwest Regional Council of Carpenters and signatory contractors.

[Read from prepared text ([Exhibit E](#)).]

I will entertain questions along with Jim Sala.

Chair Kirkpatrick:

Does anyone have questions? [There were none.] We will move to those who are in support of A.B. 467. We will start in Carson City.

Jack Mallory, Director, Government Affairs, International Union of Painters and Allied Trades, District Council 15, Las Vegas, Nevada:

We support A.B. 467. We believe that the concept of the use of public dollars or public relationships in private ventures, or in private partnerships, should be covered by prevailing wage statutes for multiple reasons. We do not believe that private entities should take advantage of the state or local governments for their personal benefit. We also believe that taxpayer dollars are best spent in situations where there is government oversight.

Vice Chair Bobzien:

Do we have any questions? [There were none.]

Steve Redlinger, representing Southern Nevada Building and Construction Trades Council, Las Vegas, Nevada:

I am here in support of A.B. 467. I do not have much to add to what has already been said. Obviously, we believe that it is the intent of existing law that when a project is built and has a clear public purpose, prevailing wage

should be paid. We think that this bill does a lot to clean up that language. If there are any questions, I would be happy to answer them.

Vice Chair Bobzien:

Are there any questions? [There were none.]

Gail Tuzzolo, representing the Nevada State AFL-CIO, Las Vegas, Nevada:

I would like to put on the record our strong support for this legislation.

Vice Chair Bobzien:

Are there any questions? [There were none.]

Pat Sanderson, representing Laborers' International Union Local 872, Carson City, Nevada:

This bill is a very good step in the right direction. I am sure that the developers will find a way to go around it, but we are trying to fix the loopholes as they happen.

Chair Kirkpatrick:

Is there anybody else that would like to testify in support of A.B. 467?

Richard "Skip" Daly, Business Manager, Laborers Union Local 169, Reno, Nevada:

We are urging support and swift passage of this bill. We believe it accomplishes a goal that we have been working on for some time. We are in full support of the Carpenters' measure here; we have been working closely with them.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.]

Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO, Sparks, Nevada:

We too, strongly support this legislation. Several years ago I sat in front this Committee and supported a bill for sales tax revenue (STAR) bonds. In that bill for STAR bonds there was a provision that said prevailing wage would be paid on the project. It surprised us to no end when, once we started work at Cabela's, they did not pay prevailing wage on that project. We tried to get the Labor Commissioner to enforce the provisions of the STAR bonds legislation, but we were told that there was no mechanism in place to make the Labor Commissioner enforce the provisions of the law.

It is amazing to me that we come before the Legislature, the Legislature passes bills with good intent, and then a bureaucrat can take that portion of the law, interpret it, and say, no matter what your intent was, there is no need to enforce the law because the bill was written wrong. This bill is a cleanup to close the loophole that was in the STAR bonds legislation, and is in many other forms of legislation that have been passed, that prevailing wage would be paid on these projects, although that provision has not been enforced. I could give you a long list of cases, but I think Cabela's is the most obvious project that we had a problem with. I would be happy to answer any questions.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.] Just for the record, we are hearing the STAR bonds bill on Thursday, so we will get that opportunity. Is there anyone else in Carson City who would like to testify in support of A.B. 467? [There were none.] We will now go to Las Vegas for those in support of the bill.

Jeffrey Westover, representing Southern Nevada Chapter, National Electrical Contractors Association, Las Vegas, Nevada:

We employ at this time approximately 6,000 electricians, so you see how important it is to us that this bill passes. Everyone gets a fair shake in having wages, pension benefits, and health and welfare benefits paid at the rate that should be paid. There are jobs that are not being paid at the proper rates. We feel that is a travesty, so at this time I would ask that you consider passing this bill with the backing of the members of the National Electrical Contractors Association (NECA).

Chair Kirkpatrick:

Does anyone have any questions?

Lou Salazar Jr., representing Plumbers and Pipefitters Union, Local 525, Las Vegas, Nevada:

I am here to show support for A.B. 467.

Chair Kirkpatrick:

Is there anyone else in Las Vegas that would like to testify in support of A.B. 467?

Kevin Hardison, representing International Brotherhood of Teamsters, Local 631, Las Vegas, Nevada:

On behalf of the members of Local 631, and my brothers of the Southern Nevada Building Trades, we support this bill and ask that you pass it.

Chair Kirkpatrick:

Does anyone have any questions? Is there anyone else in Las Vegas that would like to testify in support of A.B. 467?

James Halsey, representing International Brotherhood of Electrical Workers, Local 357, Las Vegas, Nevada:

We represent over 4,000 members in southern Nevada, and we are in full support of A.B. 467.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.]

Chris Wile, International Brotherhood of Electrical Workers, Local 357, Las Vegas, Nevada:

I also would like to see this bill pass.

Richard Leigon, Southern Nevada IBEW/NECA-Labor Management Cooperation Committee, Las Vegas, Nevada:

We are completely in support of A.B. 467.

Chair Kirkpatrick:

Is there anyone else in Las Vegas that would like to testify in support of this bill? [There were none.] Is there anyone in Carson City who would like to testify in opposition to A.B. 467?

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

I have signed in as opposed, but merely because of that possible amendment that Mr. Sala referenced in his testimony. I have been in other committees, and it is more of a procedural thing. I do have a proposed amendment ([Exhibit F](#)) that you all received.

In terms of the bill itself, whether prevailing wage is a good or bad idea in regard to policy, that is for you to decide. I am just the mechanic that has to make it work. I have discussed this legislation with Mr. Sala. I have been working with the Chair on the STAR bonds bill that you are going to hear. I have some language I worked on that I thought would solve it. Conceptually, this should clear up a lot of the problems that we have had.

The problem goes back several sessions ago with the Carson-Tahoe Hospital project. We ended up in the Supreme Court, although the Labor Commissioner's Office was never a party to that case. What happened was, there was a disconnect in the way the statute was written. Basically, it says

you have to follow the statutes. The intent, I think, was that prevailing wage applies to these situations, and it is fairly straightforward. But in that case the Supreme Court said, look, there is no nexus between the public body and the contractor; there is really no contract with the contractor to build the project. The provisions of NRS 338.013 to 338.090 are based on that assumption, in other words, a classic prevailing wage, public-works-type of project.

Clark County is going to build a new fire station. The provisions work well in that situation. However, these public-private partnership issues can lead to many different scenarios, and the clear language of the statutes does not apply. I think that was what the Court was saying in the Carson-Tahoe Hospital case. The Court said, you cannot get from here to there, and I think that is what this bill is supposed to do.

We ran into the same problem with the Cabela's project because it had essentially the same language that was in the bond statute that dealt with the Carson-Tahoe Hospital. We held a hearing. My conclusion was that it was clearly the intent of the Legislature that prevailing wages apply to those projects, but again, because of the wording in the statutes, you could not get there from here. I also stated that you could meet the Legislature's intent by enforcing those provisions in the contract, and that is where we are now.

We also have the Legends project in Sparks, which is also controversial. We are bumping up against the same problems with that project. At the moment, the cities have to enforce those prevailing wage projects through the contractual agreement that they have with those parties. Needless to say, that is a real headache.

The ballpark was brought up, which was an interesting one because I recently issued a decision on the Reno ballpark. There was a provision that allowed the use of rental car tax proceeds for the building of the ballpark. That statute has the same language as the STAR bonds statute, so it was essentially unenforceable through that mechanism. We will say that prevailing wages have been paid on that project; however, in addition to that, the City of Reno had also contributed real estate for the project through their redevelopment agency. Under their redevelopment statutes, that action triggers the prevailing wage statutes so that language actually does work. If this new approach is the approach I took on the STAR bonds with the Chair and built on that language that is in the redevelopment statutes, then it solves the enforceability problem.

With that being said, that is where we are going, and there is competing language on this bill. I talked with Mr. Sala, and their language is obviously

different from mine. I prefer mine, because it is my baby and I think my language is more straightforward and a bit clearer.

I will tell you why I want the amendment ([Exhibit F](#)). *Nevada Revised Statutes* 338.013, subsection 1, currently reads that "a public body that advertises for bids for public work shall request from the Labor Commissioner, and include in the advertisement, an identifying number with his designation of the work. That number must be included in any bid submitted in response to the advertisement." This refers to what we call a prevailing wage project number, or a PWP number. We issue those at the front end of a public works project. The PWP number has three parts. For example, if I have one that says CL2009-1, that tells the parties that you need to use the prevailing wage rate tables for Clark County, CL, for the year 2009-2010, and the 1 signifies the first project or sequential number. If you read the statute as it exists, it says, "a public body that advertises for bids for a public works," and that is what triggers the issuance of a PWP. What do you do in a situation where it is a public works, but it is not bid? This first came up several years ago in the context of energy retrofit projects, which were public works projects, but they were not bid. They were done on a request for proposal or request for qualifications basis. We did a regulation that says you have to pay prevailing wage on these projects, "X" is the prevailing wage, and these are the numbers or tables that you will use. Essentially, this amendment says if this is going to be a public works project, whether or not it is going to be publicly bid, you have to get a number from the Labor Commissioner. That helps us keep track of these projects, because I think what happens is, without the need to go for that PWP number, the notion that a project might be subject to prevailing wage goes right past people.

As an example, the Highway Patrol a few years ago did a project down in Las Vegas. They merrily went on their way with the project, but it was subject to prevailing wage, and they did not know it, because they had never seen the phrase "prevailing wage" before. We pointed out to the Highway Patrol that it was a public works project. We redid their deal, everyone got paid, and we solved the problem. But that pointed out the need for a requirement that they come and get a number, which will go a long way towards a solution. That is the purpose of the amendment. With that being said, I am open to any questions that you might have.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.] Is there anyone in Las Vegas who wants to testify in opposition to A.B. 467?

Richard Leigon:

I was waiting for a fax ([Exhibit G](#)) that has since come in, and I would like to continue testimony in support of A.B. 467.

Chair Kirkpatrick:

We have four more bills to hear. Is it long or is it short?

Richard Leigon:

It is short.

Chair Kirkpatrick:

First, we need to go back to those in support of A.B. 467.

Richard Leigon:

Yes, I am in support. I would like to talk just for second about support of the prevailing wage and the enforcement thereof. Let me just read a short list. [Read from page 4 of ([Exhibit G](#)).]

Chair Kirkpatrick:

Mr. Leigon, could you fax us the same paper that was faxed to you? I am trying to expedite the hearing.

Richard Leigon:

I will fax it over. I strongly support the tightening of this bill, because without fines and penalties the contractors will continue to offend and consider breaking the rules. One project alone is netting almost up the \$400,000, and these are just recovered wages, so we support this bill for tightening it up.

Chair Kirkpatrick:

Is there anybody in Carson City who would like to testify in opposition to A.B. 467? [There were none.] Is there anyone in Las Vegas who would like to testify in opposition to A.B. 467? [There were none.] Is there anyone in Carson City who is neutral on A.B. 467?

Madelyn Shipman, representing Southern Nevada Homebuilders Association, Las Vegas, Nevada:

We are neutral on the bill. We would also like to put on the record as to sections 1, 15, and 16, despite the new language, there is no change in the way things would be done by a developer building sewer and water for his project, even if there is oversize agreement, as long as the developer is paying all of the costs up front.

Chair Kirkpatrick:

I think we discussed that last session as well. Correct?

Madelyn Shipman:

That is the way I read the bill. The new language does not change existing practice, and I also had that affirmed by Mr. Kersh.

Ted Olivas, representing the City of Las Vegas, Nevada:

I am testifying neutral today, but I did have a few comments. As Mr. Sala mentioned, the provisions for prevailing wage are widely referenced in the statute, and I am glad that he gave you a summary of all of those because I was trying to write them down when I was in the audience. It is complex. There are a lot of references to the prevailing wage requirements, and if a clarification is required, so be it. I know it references a case that happened here in Carson City, and that is fine. I just wanted to bring a few things to your attention.

Since this is pretty much the same throughout each of the sections in this bill, I will take section 4, which is on page 3. That section has to do with a process that we call construction manager at risk (CMR). That is one of the methods of hiring a contractor in this case, and if you look at line 17 where they have made the changes, it says for the "purposes of these provisions, the project shall not be deemed to be a public works." It goes on to say that "the public body shall be deemed to be a party to the contract." If it is CMR process, and it is a public works, then we are a party to the contract. I do not know if that is the same; I am not sure that it is necessary. It also says, "to be the public body advertising for bids . . . and awarding the contract." If it is a public works and meets those requirements, then we have to do that. I am not sure if that is redundant.

Also, this process may or may not require advertising, depending on the dollar value, so I do not know if that needs to be clarified. I just wanted to bring those questions to your attention, and I would be happy to assist in any way. I have talked to Assemblywoman Pierce and the folks involved in constructing this bill.

Chair Kirkpatrick:

Does anyone have any questions?

Dan Musgrove, representing Southern Nevada Chapter, National Association of Industrial and Office Properties, Las Vegas, Nevada:

I talked to the sponsor, Mr. Sala, before the meeting, and I am not sure that we had a chance to resolve the issue we were discussing. I want to make sure it is on the record that the only concern we have—and I do not represent Malasky or

the water authority—is related to the example in Las Vegas where a private developer builds a private building but then leases a portion of it to a public agency.

The folks testifying today talked about developers trying to work their way around the statutes. My only concern is the language that Mr. Olivas referenced throughout the bill that talks about "regardless of whether the project for financing or the other purposes is publicly or privately owned." In today's credit market, banks are pushing developers to get a building almost leased before they will loan money to build it. Developers have told me that a bank will say, "We want to see the building 50 percent leased before we will give you any money." The developers will say, "If I can get it 50 percent leased, I do not need your money." It is a scary situation. So, developers are going out and looking for tenants. As we know, a lot of local governments are starving for space, and there are good deals to be had whether a public or private agency has built that building.

I do not want this bill to have unintended consequences when a building is being built privately, private tenants occupy a portion of it, and then a public entity comes along, perhaps before the building is even built, and says, we want part of that building. No public funds have been expended, but now after the fact, this law would have an unintended consequence of saying that building has become a public building. This gives the construction trades the chance to say it should have been paid at prevailing wage. I want to make sure that you understand that the National Association of Industrial and Office Properties supports the fact that a public building should fall under prevailing wages. I want to make sure that this does not have an unintended consequence. That is the only concern that we have. If it can be resolved somehow, either on the record or in the amendment, we would be supportive.

Chair Kirkpatrick:

Last session, Senate Bill No. 509 of the 74th Session was one of the lease-purchase bills that came out of the report of the Advisory Group to Conduct Interim Study on Lease-Purchase and Installment-Purchase Agreements by Public Entities. From my understanding, it was the intent of the advisory group that if an entity buys back a building within a ten-year period, it has to be at a prevailing wage cost.

Dan Musgrove:

I appreciate that comment, but as we know, S.B. No. 509 did not get enrolled. Again, I do not know the exact circumstances of the relationship with the water authority and Malasky. We are just looking at the big picture. Say it remains a lease, and the public entity never has intent to buy that portion, but because it

occupies space, is there an unintended consequence that it now becomes a public building? That is the concern I have. In this tough construction market, we want to build things and get people to work. I think there are good wages to be paid, but we want to make sure that this somehow does not hamper that process.

Chair Kirkpatrick:

We can clarify it. If I remember last session's testimony correctly, we wanted to know what the local government's intent was up front. We will look into your concern.

Dan Musgrove:

Thank you.

Javier Trujillo, representing the City of Henderson, Nevada:

The City of Henderson is neutral on A.B. 467. We had the opportunity to speak with Mr. Sala, and he allayed several of our concerns, which were in line with those of the City of Las Vegas and the Southern Nevada Homebuilders Association—specifically, the section concerning whether prevailing wage would apply to all contracts or just those at \$100,000 or above. We just needed to clarify that. We are neutral, and we look forward to working with Mr. Sala on this bill.

Chair Kirkpatrick:

Is there anyone who would like to testify neutral on A.B. 467? Is there anyone in Las Vegas? [There were none.] Ms. Pierce, do you have any final words? [Assemblywoman Pierce indicated she did not.] With that, we are going to close the hearing on A.B. 467.

Ms. Pierce, today is your day in Government Affairs, so we will now open the hearing on Assembly Bill 159.

Assembly Bill 159: Prohibits the Governor or any other state officer or employee from binding the State to the requirements of an international trade agreement without authorization by the Legislature. (BDR 19-386)

Assemblywoman Peggy Pierce, Clark County Assembly District No. 3:

Assembly Bill 159 has to do with the impact on our state of international trade agreements entered into by the federal government. It is a subject I introduced last session, and it is a subject that had not been introduced before in this house. There was a lot to educate people about trade agreements and the impact they have on what we do in this Legislature. I am here again, but this time I brought an expert. I will introduce Ms. Bottari in just a moment.

There is an amendment ([Exhibit H](#)) to this bill. The language is exactly the same, but we have put it in a different chapter where it would fit better.

In 1993, the North American Free Trade Agreement (NAFTA) was passed by Congress. Shortly after that, the legislation joining us to the World Trade Organization Agreement (WTO) was approved. This started an era of trade agreements that reached far beyond any such agreements in our nation's past. They had provisions that affect what we do in this statehouse and even what county commissioners do.

The following story illustrates the complexity of what we are dealing with. In the weeks before the vote on the legislation that created the World Trade Organization, Ralph Nader challenged any member of Congress to read the agreement and said he would give \$10,000 to the member's favorite charity if the member could answer a number of questions correctly. That was how they would prove they read the bill, which was about 1,000 pages long.

Senator Hank Brown, a Republican from Colorado who was prepared to vote for the World Trade Organization, took up Nader's challenge. He scored 100 on the test after reading the agreement and then voted against it, saying, "Anyone who thinks this agreement expands free trade has not read it."

I would like to introduce Mary Bottari. Ms. Bottari is the Director of the Harmonization Project of the Global Trade Watch, which is part of Public Citizen. She has written or coauthored many of the books and articles that I have read on world trade policy, so she knows this subject inside and out. I wanted you to have the opportunity to get your questions answered by an expert.

Chair Kirkpatrick:

Thank you for spending some time with us. We do appreciate it.

Mary Bottari, Director, Harmonization Project, Global Trade Watch, Public Citizen, Madison, Wisconsin:

I worked for Public Citizen in Washington, D.C., and before that I worked for the Wisconsin Legislature and for the United States Congress. I have been following these issues for almost 20 years. In the last ten years I have written a lot about states rights and international trade, and I have coauthored a book, *Federalism and Global Governance*.

When the WTO and NAFTA were created they dealt with the WTO agreements, which included 17 major agreements dealing with issues that had never before been thought of as trade issues. Most people think of trade as trading goods.

We send microchips there, and they send kiwis here, but the WTO's General Agreement on Trade in Services (GATS) covered a whole range of service sectors. One hundred service sectors in the United States signed up for the agreement, including telecommunications, communications, construction, banking, insurance, and a whole range of services that are regulated by states. The states were not consulted before these agreements went into effect.

The WTO houses an agreement on government procurement, including state government procurement. The WTO houses an agreement on intellectual property rights, an agreement on investment, and other things that were never previously considered trade policy. The WTO is having impacts on states that were not seriously considered before the agreements were signed, and now we are starting to see trade challenges against state laws and regulations. If a state law or regulation is challenged as a trade barrier in the WTO Agreement, the state has no standing before a WTO panel. This is a tribunal of three trade lawyers who are brought together to look at the law or regulation, whether it be federal or state, and to weigh it against the trade rules.

Each one of these agreements has a different set of trade rules. When the WTO panel makes a decision, it is executed by a binding dispute resolution system that can apply punitive sanctions against the government. The United States has lost about 90 percent of the cases brought against it, and the United States usually chooses to change its laws rather than suffer the punitive trade sanctions.

We will look at two cases affecting states. One is the WTO Internet gambling suit. The little nation of Antigua had a booming Internet gambling business in the early 2000s. They were serving about 30 sites and attracting a lot of United States customers. The Bush Administration decided to interpret our federal anti-gambling statutes, or anti-organized crime statutes I should say, as prohibiting Internet gambling. The Administration started to crack down on Internet gambling service providers. This had a huge impact on this tiny island, which employed at least 5,000 or 6,000 people in this industry. So Antigua sued us and the WTO. It was a huge wake-up call for state attorney's general, who said Antigua is suing over these criminal statutes, which were not created to be protection or barriers to trade, and most of which were created by U.S. Attorney General Robert Kennedy back in the 1960s. Meanwhile, a whole bunch of state laws banning Internet gambling were challenged, including the laws of Utah.

So at that time, the Attorneys General of Nevada and Utah and the 28 other attorneys general wrote to the Bush Administration and said, what is going on here? Why is gambling covered under the WTO Agreement? Why were we not

consulted? Why are we not being thoroughly consulted about this case? How did this all happen?

At first, the United States argued that gambling services were not covered under the WTO. The WTO ruled against them, saying they had signed up in the category of recreation services, which included gambling services. I know this sounds very strange. We lost that case; \$21 million in punitive sanctions were authorized by Antigua, but Antigua is a small island, and they wanted more. So they have been negotiating with the federal government on the amount.

In the meantime, attorneys general were very successful in pushing the United States government to do something that has never been done before, and that is to withdraw the gambling sector from the WTO jurisdiction. They were afraid that the appellate body decision and the WTO would still threaten all sorts of state gambling policies. States regulate gambling in a million different ways, as you know. Each state has a different opinion about Internet gambling, tribal gambling, and other matters, so the attorneys general were worried that their diverse gambling policies could be challenged.

However, in order to withdraw the gambling sector, the United States has to compensate 153 trading partners for their loss of business opportunities. It is not an easy thing to do. Fortunately, not all 153 trading partners asked for compensation—only about 6 or 7 did—and they have been involved in negotiations.

This issue has been a huge educational experience for state governments, for attorneys general, and for other affected people, because attorneys general have no standing in these tribunals. They cannot go unless the federal government says they can. They have to rely on the federal government to defend policies, but at least in this instance it was a "government to government" trade suit with government suing a government, so you can work things out.

Under NAFTA there is a different type of trade suit that is allowed, by which a corporation can sue a government. A corporation can sue a state, and instead of suing in state court, on the grounds that the United States businesses are allowed to sue, they sue a state in an international arbitration tribunal that has no binding ties to the United States court system. State laws have also been challenged. Canadian investors have challenged California's ban on methyl tert-butyl ether (MTBE).

Also, a Canadian mining company, Glamis, challenged a California regulation restricting open-pit mining that the company said would impact a prospective

gold mine—a mine that had not even been created yet. Glamis declared that the regulatory action by the state was a takings, a seizure of their property, but their property was not a big building or a giant mine. Their property was mining rights to U.S. public lands, which would not generate a takings case in U.S. law, but it is generating a takings case in this arbitration tribunal. In NAFTA tribunals, companies can sue for cash damages. So, Glamis cleverly looked at the landscape and said, we are going to lose this case if we take it into the U.S. court, so we will take it to a NAFTA tribunal. The case has been under litigation for years. There is an attorney general in the State of California who tracks every move of this case, but she is doing this at the tolerance of the federal officials, and the state is not going to be compensated for the money she has put into helping to defend this case.

All sorts of state policies and regulatory policies of the three NAFTA governments have ended up at these tribunals. Nontoxic policies have been challenged, public health policies have been challenged, and aspects of the 1998 State Tobacco Settlements are still being challenged by a Canadian tobacco exporter. At least two decisions that were denied cert by the U.S. Supreme Court have ended up in NAFTA tribunals for a rehearing of the issues. This causes a lot of concern at the U.S. Supreme Court and in the judicial system. There are concerns that future trade agreements should not grant foreign investors greater rights than U.S. businesses have under U.S. law. They are very worried about these type of takings cases, which would not amount to takings cases under U.S. law.

The last type of trade agreement I would like to mention are trade agreements covering governing procurement. Your state has been very smart and has stayed away from those trade agreements covering government procurement, but there could be a problem in future administrations if someone decided to sign the state to these trade agreements. As the process works now, the Governor could sign the state up without even consulting the Legislature.

This is not a process created in federal law; it is not a process that you can point to anywhere. It was an idea that U.S. Trade Representative Mickey Kantor had back during the Clinton Administration. He realized that signing up state procurement policies to global trade rules might be a little sensitive, because under many state constitutions it is really not the governor's job to do procurement; it is the legislature's job. So, he created this policy of asking governors if they would like to sign their states up to the global trade agreements. Many governors did. In 1995 they signed 37 states up to the WTO Agreement. Nevada was not one of them. So much sturm und drang has been raised about these issues that today, only eight states are actively participating in the procurement agreements that are being negotiated. So we

have a Panama agreement pending, we have a Columbia Free Trade Agreement pending, and very, very few states have signed on. I congratulate your state for having the foresight to not sign the agreement.

There is no real process at the federal level. They sometimes consult a group called the Intergovernmental Policy Advisory Committee on Trade (IGPAC). This advisory committee is made up of state and local government representatives and works with the U.S. Trade Representative's Office, but it is one committee among 26 industry groups with 700 representatives. They are sometimes consulted, they sometimes are not, and they have no real role in making demands or detailing proposals. This is why every state association that has looked at this issue, from the attorneys general to the National Conference of State Legislatures (NCSL), have been pushing for a better process and a better policy. Four states have led the way by passing bills very much like A.B. 159. Six other states are doing the same thing. I just came from Sacramento, where a very similar bill is going to be heard in a month.

The point is that there needs to be a little democracy, more of a formal process, and an opportunity for states to have an informed sense of what they are doing before they are signed on to global trade agreements. The good news is that many federal representatives are starting to listen and are thinking about working with states to create a similar, formal process at the federal level.

Chair Kirkpatrick:

Does any one have any questions?

Assemblyman Settelmeyer:

It is interesting that Ms. Pierce and I are somewhat heading toward the same objective here, and that is federalism and state rights. We were having a little disagreement last session. Maybe you could help to clear it up. I myself hate NAFTA; I think it was a lopsided deal, especially for agriculturists. It really put us behind the eight ball. For ten years we could not ship a pound of beef to Canada or to Mexico, but they could ship meat to us. So, I agree 100 percent that the state should have the right to say no to federal trade deals or get a vote ahead of time to refuse it.

I am a strict constructionist constitutionalist and I am having problems with Article 1, Section 8, Clause 3, the Commerce Clause, which states that Congress is the only body that can enter into a trade deal. Within this bill it says that the Governor and the State Legislature can get together and enter into a trade deal.

Mary Bottari:

That is not actually what the bill says. You are absolutely right; Article 1, section 8, says the federal government does trade. So, if your state decided to do a new trade agreement with Canada or Mexico, you could not do that. This bill is about process, about whether you are going to consult with states before they are bound to certain sectors of the trade agreements. It is not an international agreement; it is an agreement between the federal and state governments about how they are going to do it.

A few years ago, all the states signed up to a trade agreement, and then a bunch of governors started screaming about it. The U.S. Trade Representative backed down and said, okay, the next time I will ask you, and he did. But asking the governors is not a process written into federal law. If it was, you might be preempted, but you are not preempted here. You can create a little bit of a process here, internally, about how you are going to handle it if the Governor is asked again. Can the State Legislature look at it? Can legislators hold a public hearing? Is the Panama Free Trade Agreement a good one for this state? Are we going to have export and import opportunities? The whole nine yards. We are talking only about domestic process, not about an international issue.

Assemblyman Settelmeyer:

I agree with what you are saying. The bill says the Governor may bind the state to the requirements of an international trade agreement if the Legislature enacts legislation that especially authorizes the Governor to do so. That is a problem. You are stating that the Governor and the State Legislature have the right to make us enter into an international trade agreement. I feel adamant that that violates the Commerce Clause. Congress is the one that does it, not us.

Chair Kirkpatrick:

Mr. Settelmeyer, the bill says "except as otherwise provided in subsection 2, an officer or employee, including the Governor, may not bind the state to the requirements of an international trade agreement." Maybe Mr. McKenna can get you an answer.

Assemblywoman Pierce:

I think the key is the word "requirements." This is not about an entire agreement but about certain requirements of an international trade agreement. That to me is what your question is. Last session I asked Brenda Erdoes, the Legislative Counsel, for an opinion on this, and I have a letter in which she says that, yes, this is constitutional.

Chair Kirkpatrick:

So how do we address Assemblyman Settlemeyer's concern? Does that not help you, Mr. Settlemeyer?

Assemblyman Settlemeyer:

If you could put something in that the legislators have the absolute right to have input, and not let the Governor have any power without our input as well, I am all for that. The concept of saying that the State of Nevada has a right to enter into an international trade agreement without Congress first saying "yes" is a problem, because I believe in the constitutional concept and in the Commerce Clause. It was decided by the framers that we as a nation need to promote the United States of America and not have one state prey upon another. That is the concept put forward in the *Constitution*, and I feel they were correct in that assumption.

Assemblywoman Pierce:

And I am pretty sure that the framers never envisioned NAFTA. I would be willing to work with Mr. Settlemeyer to see if there is some language that would work.

Chair Kirkpatrick:

We can do that. That would be more appropriate.

Assemblyman Bobzien:

I think a lot of us are more in agreement with Mr. Settlemeyer than what is coming out here. We are not saying that the State of Nevada can fly down to Chile and enter into our own trade agreement. There is a difference between entering into an agreement and binding ourselves to the requirements of an already-negotiated agreement. We are just saying that we are not going to consent to being bound by the provisions of a trade agreement that has otherwise been negotiated. It is that more or less your understanding, Ms. Pierce?

Assemblywoman Pierce:

Yes, thank you.

Assemblyman Goedhart:

Two years ago during my first session, I was dead set against this idea, but we have seen the federal government getting into all sorts of areas where it does not belong. In fact, this session we have Assembly Joint Resolution 15, in which we are reaffirming our state sovereignty based on the Tenth Amendment.

One question is, have we already, in effect, bound ourselves to those current NAFTA provisions?

Mary Bottari:

There are three sets of provisions which involve service sectors, investment, and procurement. The procurement negotiations were so controversial that the states were not bound. The states were not asked about the service sector and investment provisions. Yes, you are bound. So, there can be NAFTA corporate suits against the State of Nevada.

Assemblyman Goedhart:

Could something in this bill state that unless it is signed off by both the Legislature and the Governor, we will not bind ourselves to any future provisions of any international trade agreements?

Assemblywoman Pierce:

Yes, subsection 2 of section 1 says "the Governor may bind the state...only if the Legislature has enacted legislation that explicitly authorizes the Governor to do so.

Assemblyman Goedhart:

I see where it says that, but could we make it a little stronger, to say that we as a State of Nevada will not consider ourselves to be bound to any future trade agreement in the absence of a specific approval through the state legislative process?

Assemblywoman Pierce:

That is what this bill says.

Chair Kirkpatrick:

We have to be very careful how we write it, because of constitutional questions.

Assemblyman Goedhart:

The way I read the bill, even if we put this law on the books, it does not prevent the federal government from binding Nevada to a trade agreement that they entered into.

Chair Kirkpatrick:

Mr. Goedhart, I do not want to kill the bill, because I like the bill myself, but if we get too far out there, we are going to run into some constitutional problems.

Assemblyman Goedhart:

I am afraid that if we give the Governor approval, there may be a situation where the federal government does not ask the Governor to enter into the binding agreements.

Assemblywoman Pierce:

I think the language in this bill covers that. I also think this covers what we are saying now—that we are not bound when we were not asked.

Assemblyman Goedhart:

I do not see that in the language. Please do not get me wrong; I am not trying to kill the bill. I am trying to add some input into the bill creation. Do we have any other states that have signed or passed this type of bill already?

Mary Bottari:

Four states have passed a version of this bill, and I am trying to think of their exact wording. They might have slightly different wording that is a little dressier.

Assemblyman Goedhart:

In that case, we could see if they ever met and passed a constitutionality test.

Mary Bottari:

Regarding Mr. Settelmeyer's question, the U.S. Trade Representative is respecting these state laws right now. They have not signed the states that have passed these laws and those states have not been signed on to any trade agreements.

Assemblyman Goedhart:

I did not want to attack the bill. I am just trying to create the process where we can come up with a bill that actually does what we intend it to do. Thank you.

Assemblywoman Spiegel:

Regarding Mr. Goedhart's question on the language, instead of saying that the Governor "may bind," what if it said that the Governor "shall not bind" and then "unless"? Would that do it and still be constitutional?

Chair Kirkpatrick:

Because none of us are lawyers here, we are going to get an opinion.

Assemblywoman Spiegel:

From a layperson's perspective, would it alleviate your concern if Legal said it was okay?

Assemblyman Goedhart:

I am not sure. I have to defer to Legal on that.

Chair Kirkpatrick:

I want to stick to the intent of the bill, because Legal knows best what we can do constitutionally. I think, Ms. Pierce, that you can agree we are all on the same page; it is just a matter of what few words can or cannot be changed.

Assemblywoman Pierce:

I have one more comment. On this chart you can see that states have lost their enthusiasm for signing themselves on to trade agreements.

One of those states that has never signed on is Nevada. The reason is that when the federal trade representative sent out letters asking if we wanted to be bound by the procurement requirements of a trade agreement, the letters found their way to Mr. Greg Smith, who, as Administrator of the State Purchasing Division, is our procurement officer. He is an officer in the National Association of State Procurement Officials, and he called colleagues and asked them what they thought of this. They said this is bad stuff. Over the years, he has, in my opinion, protected Nevada and done a tremendous job for the state.

However, my bill says that he is not an elected official and should not be making these decisions. These trade agreements have serious implications for our state, and it is our responsibility as legislators to make these decisions. That is really what this bill is about. This Legislature needs to study this subject and step up and make these decisions for the state.

Assemblyman Goedhart:

Looking at this chart, does this cover only the procurement portion of the NAFTA provisions? Has Nevada ever signed on to any of the other sets of trade agreements?

Mary Bottari:

One problem is that they have created an ad hoc procedure for procurement, but they have not created any kind of procedure for investment services. By passing these kinds of laws, states are demanding more formal procedures, because now they realize these investment services cases are a problem as well. These are what we call the nontariff, or regulatory, terms of trade agreements.

Assemblyman Goedhart:

So we have not signed on to any parts of the nontariff portion of the trade agreements?

Mary Bottari:

You are not asked, so therefore you are bound.

Assemblyman Goedhart:

Wow. So it sounds as if there has been a change from the federal level too. Now they are asking the states to be bound, whereas before it was a presumption?

Mary Bottari:

It is complicated. You are definitely subject to the WTO and NAFTA investment services agreements. I would have to check about the other smaller trade agreements that were passed.

Assemblyman Goedhart:

There was not a provision to allow the state to be bound or not?

Mary Bottari:

Right, there was no consultation with the states in advance, and this is why the National Conference of State Legislatures and other groups are advocating a formal consultation with states in advance. Other countries manage to do this. Canada formally consults its provinces, and they are literally signed on or off.

Assemblyman Goedhart:

I like the idea. I just had a few questions because I wanted to get up to speed on this issue.

Chair Kirkpatrick:

I think Ms. Bottari is going to be here all day, Mr. Goedhart, so you can ask her a lot of questions.

Assemblyman Settlemeyer:

I have two questions. How many trade agreements have been entered into in the last two years, and would that necessitate us having to come back in a special session to approve these agreements? Do they have to be done in 30 days, so all of a sudden we have to call a special session?

Assemblywoman Pierce:

I do not believe so. I think these trade agreements take a pretty long time to negotiate, and I do not think that there would be a time limit. But that is

something to look at during the interim, because these agreements are so complicated. My vision is that when a committee comes back either with legislation binding us or saying, no, do not do this, we should not need a special session.

Assemblyman Settlemeyer:

If we are dealing only with situations where Congress has already approved a trade agreement, and they are asking our opinion, then I agree 100 percent with you. So you insert that language, and I could go with it, but otherwise I still have a major concern that it violates the *Constitution*. I am not a lawyer, but I went to law school and I have strong feelings about constitutional law.

Mary Bottari:

It would be difficult because when Congress approves a trade agreement, you either need to be on or off it at that point, because you cannot go back and amend it once it is approved. They are asking states, now, so there is a process. This bill deals only with who they are asking. Are we going to ask governors whether they should sign on or off, or are we going to ask the state legislatures? Many states have done a constitutional analysis about who should be asked.

The state of Minnesota decided that, in the absence of a law, the governor had no authority to sign the state on and that it was clearly the legislature's prerogative. We did not have that constitutional analysis here, but it could be done.

Assemblyman Settlemeyer:

I agree 100 percent. If Congress asked us, I think the Legislature should be involved.

Assemblywoman Pierce:

May I make one more point? More and more people in the country, on both sides of the aisle, are getting nervous about our trade agreements. There are 70 Congress members who have been elected recently and who ran on fair trade versus free trade.

There is a bill before Congress called the Trade Act, which would really reset our trade policy. It would look back through our trade policies and decide whether what we are doing is a good idea, and to see if we need to revisit NAFTA, the Central America Free Trade Agreement (CAFTA), and other trade agreements. Part of that bill is to set up a mechanism to ask, and consult with, the states. If passed, this bill would dovetail nicely with the Trade Act, which I think will be passed.

Chair Kirkpatrick:

Ms. Pierce, your guest is here most of the day, correct? So, those of you that have any further questions may contact Ms. Bottari in Ms. Pierce's office. Ms. Mastroluca, you have the final question, and then we are going to move to the testimony in support.

Assemblywoman Mastroluca:

Could I get a copy of that chart in a smaller size?

Assemblywoman Pierce:

Yes.

Chair Kirkpatrick:

Thank you very much for coming today.

John Wagner, Vice Chairman, Independent American Party, Elko, Nevada:

We support the concept of this bill. My one point is, I would not expect you to give permission unless the Governor asks for it in the first place. I see checks and balances in the bill. I think that the Legislature should have oversight agreements that are signed by any officer in this state. It binds the whole state to it. Thank you.

Lynn Chapman, State Vice President, Nevada Families, Sparks, Nevada:

We support this bill. Phyllis Schlafly is the National President of Eagle Forum. She has noted that Alan Blinder, who is a professor at Princeton University and a former Federal Reserve Vice Chairman, was in favor of free trade but now says that free trade can put 30 million to 40 million Americans' jobs at risk, mostly from outsourcing. I am concerned that we the people in Nevada need to have some protections, and I feel that a body of people would make better decisions than one person in charge.

Janine Hansen, Nevada Eagle Forum and Nevada Families, Elko, Nevada:

I am happy to support Assemblywoman Pierce's bill. We supported it two years ago. On the national level, Eagle Forum has been very active in opposing NAFTA, WTO, and CAFTA on a consistent basis. We have lobbied nationally against these issues, and why? Because they destroy national sovereignty and, as a result, they have destroyed state sovereignty. The states came together and gave their power to the federal government. This is a violation of that union—of that trust—when these trade agreements are imposed without asking the states if they will be bound.

I appreciate Mr. Settelmeyer's concerns. I think they are real. I would address them by looking at section 1, subsection 3 of the bill, where it says. "As used

in this section, 'international trade agreement' means a trade agreement between the federal government and a foreign country to which the state, at the request of the federal government, is a party." It does not say that the state is the party; it says it is as a part of the federal government. The subsection does not include "a trade agreement between the state and a foreign country," which would violate the *Constitution*, to which the federal government is not a party. That might help answer Mr. Settelmeyer's concerns.

These trade agreements are leading to the destruction of American industry and jobs. Since 2000, we have seen a loss of 3.2 million jobs in manufacturing and a trade deficit increase to \$763 billion. So, we encourage you to protect the people in the State of Nevada, to reassert your position on state sovereignty, to protect American jobs, and to encourage the federal government to discontinue these trade agreements. We fully support this bill.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.] Ms. Clark in Las Vegas, did you want to testify in support?

**Juanita Clark, Member, Charleston Neighborhood Preservation,
Las Vegas, Nevada:**

Yes. I faxed over my testimony earlier this morning ([Exhibit I](#)).

Chair Kirkpatrick:

Ms. Clark, if you faxed your testimony, would you please summarize and address some of the questions?

Juanita Clark:

It is very short. I have a comment about the questions that have been raised today. They are certainly very valid.

In subsection 1 of section 2 of the bill I noticed the phrase "is hereby declared to be invalid." I just wanted to bring that forward. Surely we do not want the states going out on their own beyond the *United States Constitution*.

Ms. Pierce is our Assemblywoman, and so we are very pleased to have you introduce such a solemn, vital, and global concern for our state.

[Read from prepared text ([Exhibit I](#)).]

Vice Chair Bobzien:

Do we have anyone else in Las Vegas who wishes to speak on A.B. 159?

Juanita Clark:

My grandsons concur with me.

Vice Chair Bobzien:

Do we have anyone in Carson City who wishes to speak on A.B. 159?

Gail Tuzzolo, representing the Nevada State AFL-CIO, Las Vegas, Nevada:

I am in favor of this legislation. I think it will protect and represent Nevada citizens much better than the current situation.

Chair Kirkpatrick:

Thank you, Ms. Tuzzolo. Good morning, Mr. Henderson.

Wes Henderson, representing Nevada Association of Counties, Las Vegas, Nevada:

The Nevada Association of Counties supports this legislation. We recognize the fact that there can be unintended or undesirable consequences when one level of government takes an action that affects another level of government without the concurrence of the affected level of government.

James Sala, Senior Representative and Nevada Political Director, Southwest Regional Council of Carpenters, Las Vegas, Nevada:

You may wonder why the carpenters union is worried about trade, but our organization is very concerned about this issue, and we are here in support of the bill.

I want to give you two quick examples of how this issue affects workers in the State of Nevada. We have about 13 mill cabinet shops that do a lot of work in the gaming industry, banks, and many other places. In the last few years we have lost probably 300 of those workers' jobs to a country that does not have terrible human- and worker-rights issues—Canada—primarily because of its timber supply, ability to produce, and government subsidies; although we have gotten no help from WTO in regards to that. There is a starker example that deals with the issue of human and worker rights. To build a building, a group made 1,100 truckloads full of precast concrete in Mexico, trucked the concrete through Nevada and into Utah, and then set up this 160,000 square foot, five-story building. Instead of the worker jobs being done in Utah or Nevada, they were done in Mexico. This is one of the reasons that we are very concerned. That is real work and real jobs for workers in this state and other states. We are in support of this bill.

David Kersh, Government Affairs Representative, Carpenters/Contractors Cooperation Committee, Los Angeles, California:

We are here to show our support. I thank Assemblywoman Pierce for bringing forth this issue. This is a very important issue that impacts workers, as Jim Sala has said. The construction industry does not exist in a vacuum; we are affected by these trade agreements. In regards to our laws, we spend a lot of time and energy discussing prevailing wage, and we already have enough problems dealing with loopholes between sessions. We do not want to have a secret tribunal or some corporation challenging our prevailing wage and other laws.

Chair Kirkpatrick:

Does anyone have any questions? Would anyone else like to testify in support A.B. 159? [There were none.] Is there anyone in opposition who would like to testify? [There were none.] I do have someone signed in to testify in opposition. They must have changed their mind. Is there anyone in Las Vegas who would like to testify in opposition to A.B. 159? [There were none.] Is there anyone in Carson City who would like to testify as neutral?

Alan Di Stefano, Director, Global Trade Investment, Nevada Commission on Economic Development:

I am Director of Global Trade Investment for the Nevada Commission on Economic Development (NCED). We are in support of this bill. We are in support of the wording. However, we do not believe this bill goes far enough. I am glad that Assemblywoman Pierce brought in Ms. Bottari for expert testimony so you can see the complications with these issues. Only one state has a fulltime director of trade policy, Washington. No other state has an expert on trade policy either at the governor's office or the legislature.

As you can see, there are very, very complicated issues. Ms. Bottari said that she would ask for a better process and better policy. We are asking for state oversight of this process, but there is no mechanism currently available. There are two documents in front of you. One is called the "NCED Proposal for Modification of A.B. 159" ([Exhibit J](#)). We can skip the first page because Ms. Bottari covered that background—the process with free trade agreements (FTAs), the role of the U.S. Trade Representative (USTR), and the states that have or have not signed on.

On page 2, our proposal of modification to A.B. 159 would add that a Trade Policy Working Group be established and that all proposed trade policy legislation go through the group for review before any bills are proposed.

The other document is titled "State of Minnesota, Trade Policy Working Group" ([Exhibit K](#)). This became law in the state of Minnesota last year. Minnesota is now one of seven states that have instituted a Trade Policy Working Group. We are moving beyond the current legislation and saying Nevada needs a process to look at trade policy since we do not have an expert on staff. What we are asking for, basically, is on page 13, where you can see Minnesota's recommendations.

The first section would be nearly identical to Assemblywoman Pierce's bill, but we would add language on the Trade Policy Working Group, or advisory committee, or whatever the Legislature would call it. The State Legislature would approve the formation of this policy committee and its members, their terms, et cetera. This policy committee would allow all the stakeholders in the state who have comments on trade policy to advise the Legislature, so that their views can be heard. Even when the Legislature is not in session, this trade advisory committee, or policy group, could be called to discuss ideas.

This mechanism has been missing in most states, but now seven states have adopted this. Our proposal is to have this Committee look at the Minnesota law and adopt something very similar to create a trade policy advisory committee.

Assemblywoman Spiegel:

Do you have any feeling about the fiscal impact of putting together this Trade Policy Working Group?

Alan Di Stefano:

I do not believe that there would be any fiscal impact. It states that the Legislature would appoint these people. There is no money spent on this. It would say that the members would serve two-year terms, following the Minnesota proposal. Again, this is a boilerplate. Our Legislature would have to cite exactly how this would work in Nevada and when the committee could be called for a discussion. Unless it was called in a special session where people would have to be paid, there should not be any fiscal impact.

Chair Kirkpatrick:

Ms. Pierce, would you like to comment on this?

Assemblywoman Pierce:

I appreciate this proposal. It is generally in the same direction if A.B. 159 gets passed. There has to be a mechanism for the Legislature to study this issue. My focus was the policy, this time, because I did not want a fiscal note with this bill. But thank you very much for your testimony and for bringing us an example of what other states are doing.

Chair Kirkpatrick:

Perhaps you could work with Ms. Pierce to see if there is way to include your proposal without a fiscal note. Perhaps there are some folks within your agency who would like to be part of a task force, because we have no money.

Alan Di Stefano:

Yes, we understand that. We would be happy to work with Assemblywoman Pierce on a task force. Again, the Legislature is the one that needs to decide who makes up this committee. The Director of our agency would be one of the people who we would recommend. We would be happy to work with Assemblywoman Pierce on such wording. Our concern is, if A.B. 159 is passed without this mechanism, it would give us two years without this oversight. So we would ask that this be added now, to not only give us the legislation, but also give us the mechanism to get input during the next two years.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.] Thank you very much, we appreciate you coming forward. Is there anyone else who would like to testify as neutral on A.B. 159? [There were none.] We will close the hearing on A.B. 159. We are going to move to Assembly Bill 506.

Assembly Bill 506: Authorizes the creation of community land trusts.
(BDR 25-227)

**Ernest Adler, representing Nevada Rural Housing Authority,
Carson City, Nevada:**

The genesis of this bill was the interim Legislative Commission's Subcommittee to Study Mortgage Lending and Housing Issues. When they looked at the *Nevada Revised Statutes*, they found a one-line statute on community land trusts, so it really is not defined as to how we are supposed to proceed with community land trusts. A community land trust, or CLT, is an equitable and sustainable model for affordable housing and community development that has spread throughout the country over the last 30 years. This is actually a fairly old concept. Today a community land trust is either a tax-exempt nonprofit corporation or a governmental entity.

Most community land trusts target their activities towards charitable activities, such as providing housing for low-income people or developing blighted neighborhoods. The land trust owns multiple parcels of land throughout a geographic area and retains ownership of the land forever. Any residence sold to an individual homeowner or a nonprofit for rental housing—essentially the trust owns the land in perpetuity, and the homeowner owns the structure. The

land is conveyed to the homeowner through a long-term lease, usually of 99 years or more for a simple maintenance fee of \$25 to \$50 per month. However, as I stated earlier, the structure is owned by the individual.

This retains perpetual affordability for the house that the homeowner purchases. The resale price of the house is set by a formula contained in the ground lease, which allows the homeowner a fair return on the structure but does not give the homeowner a return on the land which they are leasing. So, that reduces the price of the entry level of that house in perpetuity. Community land trusts are not focused on a single project located in a single parcel area. The parcels are contained in land trusts that are usually scattered throughout the community. Land trust homes are meant to be indistinguishable from other owner-occupied housing in the same area, although the mortgage payments on the home are much less.

As an example, you might have a land trust in Las Vegas that takes over five blighted houses in a given geographical area, but on five different streets. In that instance, the land trust could move in, purchase those blighted houses, and place the land in the land trust. Then they could seek grants or other financing, rehab the houses, and sell them to low-income people through a mortgage system. The people would own these structures, but they would pay a minimal fee for the land. So, they might be able to acquire a \$150,000 house for \$90,000 and have a mortgage which was reduced by at least one-third.

The land trust works with the family before they purchase the structure. They make the prospective owners go to classes on financial literacy, home maintenance, and the like. So, even though we have seen a large number of foreclosures throughout the country, the people who occupy land trust property, even though they are low-income people, have a default rate of less than 1 percent nationwide. That is partly because the land trusts do not let people get into adjustable rate mortgages or those types of mortgages. They direct them towards safe, standard 30-year mortgages so that they can maintain their residences.

Currently, the Nevada Rural Housing Authority is working with the Washoe County School District on possibly doing a land trust in Gerlach. There is no teacher housing in Gerlach, so the school district is going to donate the land to the land trust. They have hired an architect, who is designing zero energy consumption homes with solar panels on the roofs. It is a very innovative project. The teacher will buy the structure but lease the land from the land trust at a lease-maintenance price of \$25 a month. So, the teachers will have a very low monthly mortgage payment, yet they will be able to own one of these

very technically advanced houses located near the school in Gerlach, which currently is a very difficult place to obtain housing.
Would you like me to go through the bill?

Chair Kirkpatrick:

I think we heard this bill last session, and then we heard it in the interim committee.

Ernie Adler:

People who are on the interim committee have heard it. I know that.

Chair Kirkpatrick:

Yes, I have heard it four times, but if you would like to go through the bill, go ahead.

Ernie Adler:

Sometimes you hear people grumbling about the ways that bills are drafted. Actually, this is a very well-drafted bill. I would like commend the Legislative Counsel Bureau on it. Perhaps it is because we have had so many tries at it.

Sections 5 through 8 define low-income and moderate-income households as the target groups. Section 9 states that it allows nonprofit housing authorities and local government entities to form land trusts. Section 10 specifies that each structure shall have a separate assessor's parcel number for tax purposes. We receive bad information from the assessors because of confusion as to how to assess a structure that was separate from the land. They decided it would be better to have a separate assessor's parcel number to that.

Again, the leases are defined as longer than 99 years. There is a formula for maintaining the affordability of the structures. These structures would remain affordable even if the neighborhood shows a significant positive appreciation. Some people have asked why we have that in the bill. For instance, say a casino at Lake Tahoe decided to donate land to a land trust for casino employees who are relatively low-income people, and we created a housing project with affordable monthly mortgages. But then if a major ski development next door caused the value of those structures to skyrocket, we would want to make sure that those houses remain affordable for the next group of casino employees who want to purchase them. That is why that provision is in there.

The Housing Division will promulgate regulations to govern this process. This is extremely important because there are no definitions currently in Nevada law, and it is important that somebody take charge of doing some detailed definitions of how a land trust is to work by putting together some regulations. On page 8,

in subsection 6, the affordability language is again put into the bill, so the structure remains affordable, from buyer to buyer, for low-income people. In subsection 7, the Nevada Tax Commission establishes criteria for valuation of the structure since these are unique structures.

Chair Kirkpatrick:

Let me ask you that question. Section 17, line 31 says that "real property owned by a community land trust is exempt from taxation if it is leased or is available for lease purchase pursuant to section 11." Looking back to section 11, what is the point of having the assessor requirement if they are exempt anyway and you are only taxing the structure?

Ernie Adler:

The structure is taxable.

Chair Kirkpatrick:

Right, but the land is not. The last four times that I heard the bill I did not hear the part that the owner was going to be exempt from taxes. That would be the community trust, correct?

Ernie Adler:

Yes, which is a nonprofit or a governmental entity and cannot be assessed taxes anyway in most instances.

Chair Kirkpatrick:

That is a surprise to me, because I have heard the bill many times and never heard that before. That is an abatement or an exemption, if you ask me.

Ernie Adler:

It is an abatement of sorts, but in most instances, if we are talking a blighted neighborhood with a house that is unoccupied, the county would probably be the one transferring that land trust. So they would be fully aware of the situation, and the new structure actually would bring in more taxes than what is currently paid by the abandoned structure, because it would be an occupied structure. I do not think there is an abatement there, but in most instances it results in an increase in taxes if you improve that structure and the quality of that neighborhood.

Chair Kirkpatrick:

Does anyone have any questions?

Assemblyman Settlemeyer:

Madam Chair, you just hit on a solution. Why not do this through a deed restriction rather than as a community land trust? Is it the fact that you are looking for the abatement?

Ernie Adler:

That is a very good question. Historically, entities throughout the United States have tried to do it through deed restrictions, but you cannot do it through deed restrictions because of all sorts of problems with them. You cannot continue to maintain the entry-level value of those homes to the next buyer. The community land trust has been the most effective way to do that.

Assemblyman Settlemeyer:

I have seen it done in San Francisco, where you limit the purchase price of the property to 50 percent of the assessed valuation, and that does limit the value. I have seen it done in other states.

Assemblyman Munford:

How do you identify these communities? Where are you going to build these low-income houses, and what communities become qualified? You say that it is supposed to be a blighted area, but where in the state could this happen?

Ernie Adler:

It would be available throughout the State of Nevada in two kinds of areas. One would be a very high-rent area to help workers such as firefighters and teachers afford to live there. With our foreclosure situation, another area might be where you have a number of abandoned houses. You could put those houses in a land trust to elevate the quality of the property, improve the neighborhood, and provide home ownership to low- and moderate-income persons. It works in different neighborhoods in different ways.

Assemblyman Munford:

So, you rehab those abandoned houses, or tear them down?

Ernie Adler:

Yes, you would rehab or tear them down, or do something of that nature. If you do that in certain blocks and put these new houses in, which are probably nicer than the current housing stock in that neighborhood, it actually elevates the property values for the other residents.

Chair Kirkpatrick:

Is Mr. Munford going to have a say on which houses are fixed up, or is it going to depend on what local government decides goes into this land trust fund?

Assemblyman Munford:

I was going to ask about local government; I am glad you brought that up.

Ernie Adler:

Some of these houses, I have heard, are going to be resold to local government for a small amount of money, so I think that housing stock would be some of the housing stock that would be available for a land trust.

Assemblyman Munford:

So, an interested party or someone who wanted to get involved with this would have to go through the local government; is that what you are saying?

Ernie Adler:

No, some of these lands trusts will be private 501(c)(3) nonprofits. So there will be some nongovernmental land trusts too. Actually, the 501(c)(3) nonprofits have done most of the land trusts in the United States, not the government.

Chair Kirkpatrick:

I just want to ask one more question. After the 99 years, who owns the house? Because currently the way nonprofits are set up, after the 50 years they own it. Is there a provision that they can transfer it to someone else? How does that work?

Ernie Adler:

For instance, if you have a family living in the house and they should pass away, they can will this house to their heirs. It just continues on. Usually what will happen—of course, we have not gotten there yet—is that the 99-year lease will be renewed to another 99-year lease.

Chair Kirkpatrick:

A lot of these projects based on statute set 50 years ago are now getting the deed.

Ernie Adler:

They would not be able to get the structure, because the structure is actually owned by the homeowner.

Chair Kirkpatrick:

Right. Are there any other questions?

Assemblywoman Spiegel:

What happens if a person wants to bequeath the structure to a relative, and the relative does not meet the affordability criteria? Would they still be entitled to having that subsidy on the land?

A separate question is, what happens if the head of the household named on the mortgage passes away, and the house is then passed along to the spouse, who is living on Social Security. It has been 70 years since they bought the house, and the property values have gone way up. Is the spouse not entitled to stay there?

Ernie Adler:

I will answer the last question first. If someone passes away, and the spouse can still afford to make the mortgage payment, they can stay there as long as they want. Then they could sell the house; that is always an option.

Some of this is governed by the land trust documents, of course. If both tenants pass away and the kids are millionaires, I think they would be obligated to sell it as an affordable house to somebody who meets the income guidelines. They would still be able to profit from the sale.

Assemblywoman Spiegel:

I asked because I saw in the bill a presumptive right of repurchase, and I was wondering if that would interfere with the bequeathing process. We could talk about that separately.

Ernie Adler:

The presumptive right of repurchase, I think, comes in situations where the people have defaulted on the mortgage or the land trust payments. The land trust can then repurchase it and convey it to another qualified buyer. That is how it is set up.

With a land trust, they are very sensitive that people not default on their mortgages or lease payments. The mortgage company usually sends two sets of payment coupons, one to the land trust and one to the property owner, so that the land trust makes sure that the people are current on the mortgage. If they start falling behind, the land trust counsels them and tries to make sure that they do not default on the mortgage, since the trust has an interest through the lease.

Chair Kirkpatrick:

Mr. DeWeese, did you want to add anything?

Lon DeWeese, Chief Financial Officer, Housing Division, Department of Business and Industry

Yes, just three quick points. As the Chairwoman knows, having sat through the interim committees a couple of sessions ago, housing was not always in a depressed market. It was in an inflated market, and there were shortages of affordable housing. We think that this is an important tool for the local jurisdictions through the creation of land trusts, and we would endorse that concept because we do work with the local jurisdictions. This is a desirable element for them in their armamentarium. The 501(c)(3) are almost always formed under the instrument of "lessening the burdens of government" so they are created as a way of not having debt or added property and property maintenance for the local jurisdictions.

Lastly, the Housing Division has the responsibilities outlined in section 13 of this bill, and we would expect to carry those out without too many problems.

Chair Kirkpatrick:

Does anyone have any questions? Is there anyone that would like to testify in support of A.B. 506? [There were none.] Is there anyone in opposition to A.B. 506? [There were none.] Is there anybody neutral on A.B. 506?

Joshua Wilson, Assessor, Washoe County, Reno, Nevada:

I am neutral on this bill; however, I have certain clarification issues, particularly with some of the sections referenced already. My primary concern is the manner in which these improvements are going to be valued. It seems to be a distinct departure from the traditional manner in which taxable value of improvements are currently being determined.

In response to the supporter of the bill, or perhaps just for clarification, the improvements are not valued at market value. The improvements in Nevada are valued at their replacement costs new, as determined through the Marshall and Swift cost manuals, and then depreciated at 1.5 percent per year. So as the property becomes older, because the 1.5 percent depreciation is accelerated above what market depreciation is, typically it becomes further and further away from the true market value of that improvement. With that, I think the other concerns have been addressed.

Chair Kirkpatrick:

I think Mr. Adler is going to have to work with a few people. I have some of my own concerns and questions, because this is a little different from the last time I saw the bill.

Ernie Adler:

Just one other point. In talking to some of the public entities, the school district specifically, they have some restrictions about donating land to another entity. We probably will need some language allowing them to...

Chair Kirkpatrick:

I do not want to have that debate with you, because North Las Vegas has managed to donate land and Henderson has managed to donate land.

Ernie Adler:

The school district is the one that brought that subject up.

Chair Kirkpatrick:

I am telling you that the school districts, as well as the College of Southern Nevada, have already done it.

Ernie Adler:

So they have done it too. So we will forget about it.

Chair Kirkpatrick:

Yes, not today. It would not be a good idea.

Ernie Adler:

So, the bus has already left the station.

Chair Kirkpatrick:

Yes, the bus is gone. Are there any other thoughts? Some work needs to be done on this; there are a lot of unanswered questions, and I do not understand how this is any different from the process we have already.

Does anyone else have any questions?

Juanita Clark, Member, Charleston Neighborhood Presentation, Las Vegas, Nevada:

I just have a clarification. It has been mentioned here today about the moderate income of firemen, teachers, and policemen. We had a situation in Clark County where firemen were making too much money to qualify and teachers were making too little.

Chair Kirkpatrick:

Thank you, Ms. Clark. You were at all those meetings with us. Is there anything else on A.B. 506? We will close the hearing on A.B. 506.

Mrs. Koivisto, we are short on time, so Assembly Bill 431 is yours for the next 15 minutes.

Assembly Bill 431: Makes various changes concerning the verification of the immigration status of certain employees. (BDR 18-133)

Assemblywoman Ellen Koivisto, Clark County Assembly District No. 14:

Assembly Bill 431 relates to verification of immigration status. Before I retired from a paying job in the university system, one of my duties was processing employment documents. An important part of processing employment documents was to verify immigration status. We had folks coming in from foreign countries, including those in the Middle East, to enroll as students and to work as postdoctoral scholars. Federal law requires that employers verify immigration status. To my knowledge, the university system has always done that. So, in a way, A.B. 431 simply clarifies that requirement and puts it in statute.

The bill requires public employers in the state to verify the immigration status of a person before allowing the person to work for the employer. It also provides that the public employer may comply with this requirement by using one of the links maintained on the Internet website of the Department of Business and Industry. That is really all the bill does.

Chair Kirkpatrick:

Last session you and I worked on this bill. The Labor Commissioner also has this on his website. He has the E-Verify as well as the Business and Industry home page.

Does anyone have any questions?

Assemblyman Munford:

So, every business and every company has to do a background check?

Assemblywoman Koivisto:

No, not a background check. All they do is verify that the person can legally work at the job, that he has a legal social security number, and can legally be hired.

Assemblyman Munford:

That is any employee they hire?

Assemblywoman Koivisto:

Yes.

Assemblyman Munford:

It is not aiming at any one group or employee?

Assemblywoman Koivisto:

Absolutely not; it is federal law now.

Chair Kirkpatrick:

The airports already do it. It is already required on the I-9 Federal Employment Verification. I know that everyone on this Committee received the email from Mr. Nelson. All we are doing is asking to do it the day before, instead of five days after they are hired. I do not think that is out of character, because quite honestly, you are supposed to fill out the W-4s and all that information before you start work. That is the way I understood it. This is just saying that they should have to verify for public work jobs, as they do for the airports, some highway projects, and the public employees.

Assemblyman Munford:

If they do not, what is the penalty?

Chair Kirkpatrick:

Quite honestly, then you cannot get hired, and that is why you do it before.

Assemblyman Munford:

But what if the employer does not do this and hires a person anyway? Do they have a penalty?

Chair Kirkpatrick:

No, but we could put one in. There is probably a federal penalty that I am not aware of.

Assemblywoman Koivisto:

Right, because it is a violation of federal law. If I might point out, after 9/11 the university started doing online checks, and we had to go through some serious training for the people doing the original paperwork before it got to me. They all had to learn how to work this website and work with the federal agencies.

Chair Kirkpatrick:

Are there any other questions?

Assemblyman Aizley:

I think I know the answer, but does every employer have to do it? And the bill is for public employers, not every private employer. Is that correct?

Assemblywoman Koivisto:

The bill deals with public employers. And actually all employers are supposed to be doing it, but this bill deals only with public employees.

Chair Kirkpatrick:

We just received an email from Mr. Kihuen, and he would like to go on record in opposition of certain sections of the bill. Are there any other questions for Mrs. Koivisto? [There were none.] Would those in support of the bill please come up.

Lynn Chapman, State Vice President, Nevada Families, Sparks, Nevada:

We are in support of this bill. It is a great bill and a good start. In the news we have heard about raids on companies where they found illegal workers holding 230 jobs when 25,000 American people are applying for these jobs. We have had this over and over.

This is a good bill. We need to do this, because public employers are getting tax money to run their divisions, and we have a lot of illegals getting paid to do jobs that Americans really need, especially now with so many people out of work and unemployed. We need to worry about Americans.

John Wagner, Vice Chairman, Independent American Party, Elko, Nevada:

We are in support of this bill. However, I think it should be for all employers in the State of Nevada, not just public works. With unemployment rates at 10 percent, it is time that Nevada takes cares of its citizens, including legal residents. My grandparents came through Ellis Island and had legal status of some kind before they became citizens. Anyone on legal status is entitled to get a job if they are qualified. Somebody who is not here legally should not take their job away from them.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.] I recently read a study that said there are 119 different immigrant groups in the State of Nevada. This bill is not directed at one group.

Janine Hansen, President, Nevada Eagle Forum, Elko, Nevada:

One of the best things about this bill is that it complies with federal law, as any legislation passed by a state on this issue needs to do. In the United States we believe in the rule of law.

One of my friends went to Europe and said they could not have any stop signs over there because no one obeyed them. They had to have those roundabouts, but in America we believe in obeying and honoring and insisting on the law.

Last year I went to a national conference of the Eagle Council, and Kris W. Kobach, Professor of Law at the University of Missouri, made a presentation on the illegal alien issue with regards to the states. He said that in 2007, all 50 states passed legislation on illegal immigration. So, this is not just an issue for Nevada; every state is now a border state. A 2007 Heritage Foundation study assessed the cost of illegal immigration at \$89.1 billion a year. This is significant in that the states bear the greatest portion of that cost.

Three states, Arizona, Oklahoma, and Missouri, have passed very effective laws, and if you are interested in more information, I can provide it to you. We support this bill, but we encourage you to do more. There is much more that you can do that is in line with federal law, as Arizona, Oklahoma, and Missouri have now done. There has been an exodus of illegal aliens from those states. They are probably coming here or going back wherever they belong. We just want everyone to obey the law. We believe that the rule of law is significant in the United States and that the cost to the taxpayers is exorbitant.

Chair Kirkpatrick:

Does anyone have any questions? Is there anyone else who would like to testify in support of A.B. 431? [There were none.] Is there anyone else who would like to testify as neutral on A.B. 431? [There were none.] Is there anyone who would like to testify that is in opposition of A.B. 431?

Judy Cox, representing American Civil Liberties Union of Nevada, Las Vegas, Nevada:

I am here to testify in opposition of A.B. 431. This bill was called to our attention only this morning, so my testimony may be a little haphazard. I am perfectly willing to provide written testimony if the Committee would like.

The first reason that we are opposed to this bill is in section 1—the database. It opens the risk for abuse of personal information about employees. The amended language says "and a link to any other source which the director determines will assist the employer." There is no guarantee on the security of this source, there is no guarantee on the source, and there is no guarantee on how the information from this source is going to be used. It creates a huge risk for abuse and invasion of privacy.

Chair Kirkpatrick:

Ms. Cox, I want to address these points as you go through them. We discussed this issue last session, and if you go through the E-Verify program, you have to register. It is very secure. I could not go in and look at anybody's information. The employee also has to sign a piece of paper to get a number. I hope that addresses some of your concerns.

Judy Cox:

I understand that this particular system is very safe; however, there is no guarantee that this or any other sources would be as safe as the E-Verify system.

Moving on to section 2 of the bill, the first sentence says, "Before a public employer allows a person to begin work for the employer, the public employer must verify the immigration status of the person." That is a very vague term, "immigration status." Verifying a person's immigration status alone is not the equivalent of verifying their authorization to work in the United States. There are a lot of legal immigrants in the United States who are not authorized to work. So, just verifying that somebody is here legally or illegally is not going to get you to the position that this bill is suppose to accomplish, which is determining whether they can work in the United States.

There are many lawful immigrants who are authorized to work in the United States who may not have a social security number. This bill apparently requires the verification of a social security number and no other type of documentation. However, a lot of immigrants who are authorized to work in the United States have what is called a "work authorization card," and they may not have a social security card. The work authorization card is issued by the U.S. Citizenship and Immigration Services (USCIS) as proof that the person is authorized to work in the United States.

Another problem with section 2 is that it appears to have a stricter standard than Form I-9. The whole purpose of the federal Form I-9 is to verify work authorization, and there are lists of documents on the I-9 that a prospective employer can check as long as the prospective employee provides those documents. That is sufficient proof of work authorization in the United States and does not put the onus on the employer of having to verify the immigration status.

Section 3, again, requires a contractor, subcontractor, or other person providing labor to verify immigration status. This puts the onus on the employer to verify immigration status as opposed to authorization to work in the United States. Again, those two are very different categories. You could verify whether somebody was here on an immigrant visa or a nonimmigrant visa, or whether they had a B1 visa, B2 visa, F1 student visa, a J1 student visa, or an H-1B work visa, but having that information may not tell you their work authorization status unless you are an expert on immigration law. And somebody with an H-1B visa can work, whereas somebody with a B1 or B2 tourist visa cannot work.

The final problem with the bill is that there is no procedure for correcting mistakes. If the social security number does not verify, that person cannot begin to work, but quite frequently there is a mismatch between what the person wrote down and what the Social Security Administration has on their records. A lot of times this is easily correctable in a few days or weeks. I do not see any procedure in the bill for correcting mistakes for somebody who may be authorized to work in the United States.

As I said earlier, this bill was brought to our attention just this morning. I would be happy to provide written testimony regarding our opposition to the bill if the Committee wishes.

Chair Kirkpatrick:

That would be most helpful because then we can try to address your concerns. I think we could agree to disagree for some time. Is there anyone else in Las Vegas who would like to testify in opposition? [There were none.] Is there anyone in Carson City who would like to testify in opposition? [There were none.] Mrs. Koivisto, do you have any final comments?

Assemblywoman Koivisto:

No, not really. Thank you for hearing the bill, and as I pointed out, much of this is already federal law.

Chair Kirkpatrick:

Does anyone have any final questions for Mrs. Koivisto? [There were none.] With that, we will close the hearing on A.B. 431 and open the hearing on Assembly Bill 508.

Assembly Bill 508: Revises provisions governing the development of low-income housing. (BDR 25-1113)

William Bayne, Private Citizen, Las Vegas, Nevada:

I am here to present Assembly Bill 508 which deals with affordable housing in Nevada. It deals more specifically with the developer fees relating to affordable housing in Nevada. Assembly Bill 508 provides two changes to the current procedures.

The first change is that for projects that have government financing, such as with the United States Department of Housing and Urban Development (HUD) or under a HUD program, and for projects secured by a performance bond, it will not be appropriate or possible to force the developer to defer the developer fee.

Currently, the developer typically is required to defer up to 80 percent of the developer fee. I found out just before this meeting that the Nevada Housing Division is opposed to this bill. I hope that this discussion can help alleviate those concerns or answer some of their questions as to why I am presenting this bill.

According to Nevada Housing Division numbers I believe 221,000 people are going to need affordable housing in the State of Nevada over the next ten years. We need affordable housing in a big way. In order to accomplish that level of affordable housing, we have to do large projects. We cannot do two homes here, three homes there. That needs to be done as well, but you need to do larger projects.

First, as a developer, I am concerned that when you limit the developer fee, or require the developer to defer the fees, it makes it so I do not want to do projects. Why would I go out, take risks, and do projects if there cannot be any fees earned? That is part of the reason this bill is being introduced. It gives us an incentive to build affordable housing, which is very difficult to build because it is very difficult to deal with the federal government, all the municipalities, and put one of these projects together—especially large-scale projects.

Second, this bill allows tax credit financing to occur. Let me explain that quickly. Say a project qualifies for tax credits. Now you take those tax credits and sell them in the market. The tax credit financier wants to participate in this project by putting up money, by buying the tax credits. If there is a problem, the tax credit goes to the developer, and the financier says to the developer, you need to defer a portion of your fee so my money is not at risk yet. If I am already required to defer 80 percent of my fee, I cannot defer a whole lot more. So the tax credit investors are saying, we are not interested in doing these deals if you have already deferred 80 percent, because there is no more margin of error or safety factor for us. So, this bill makes tax credit financing more possible.

For small affordable housing projects, the developer does not typically have a lot of skin in the game. He can wait. You can get an architect to do architectural work; you can get mechanical, plumbing, and electrical (MP&E) engineers to do some engineering work on a small scale. It is a small house. They can wait until the state induces, and then they get paid.

This bill allows for larger projects. On a large project I cannot ask an architect to do \$3 million worth of architectural work and wait until the state induces. He cannot wait a year, two years, or however long it takes. He needs to be

paid. It is a large project. So, again, deferring the developer fee makes that much more difficult.

I must say that the Nevada Housing Division has been great to work with; we appreciate the work that they have done in their goal to provide affordable housing. We are in agreement on that subject.

One of their biggest concerns has been what is to stop the developer from coming in, taking his fee, walking away, and not finishing the project? This bill provides that the developer has to put up a payment performance bond, as do most HUD deals. I cannot walk from a project without the performance bond being perfected. That way the state and the Nevada Housing Division are secure, and HUD is secured in their loan. That is why HUD guarantees these types of loans; they are secured, so there is not a lot of risk for HUD. Again, this bill applies only to HUD-insured programs. The goal of this bill was not to usurp the Nevada Housing Division's authority or purview when it comes to affordable housing in Nevada. They absolutely should have the right to make the developer defer fees when HUD or a performance bond is not in play.

Again, there are out-of-state developers who are not interested in our state, and they will take the developer fee and not finish the project. The Nevada Housing Division needs to have the authority make sure that does not happen.

Let me speak to affordable housing for one second. You do not take affordable housing and simply sprinkle it throughout the state. You do not have one house here and one house there.

I have an 82-year-old grandma. She cannot drive anymore, so she cannot live in her house and drive to get groceries. What we have to do with our affordable housing is to see more master plan developments in Nevada. My family has built master plan communities in this state since 1940, and the goal is that you have a grocery store and other services on the site. You address a lot of people at one time. They are in affordable housing for a reason. Their income level is low. They do not have the ability to drive around and try to find services. So if you can concentrate the services in one location, it necessitates larger projects, which are induced by not deferring 80 percent of your developer fee.

Michael J. McDonald, Private Citizen, Las Vegas, Nevada:

I have been involved with senior citizens for over 20 years, fighting for their rights. Today we have many veterans and seniors with no place to go. Senior citizens and our veterans are becoming the lost and forgotten breed. Seniors

have to decide whether to pay for their prescriptions, food, or rent. It is getting worse, in part because of the economy.

In my previous life as an elected official, when we went out to do a project to get senior projects built, we were turned away. Everyone laughed at us. We offered everything we could to get a developer to build a senior project and redevelop an area. Not one, not one master plan developer stepped forward. When I left office, I approached Bruce Bayne and William Bayne to put together this development. You do not have master plan developers. Think back. In Washoe and Clark Counties, many developers are building smaller scale developments because they work. But when do you ever see a true developer, who has done master plan communities, step up and build for seniors on fixed income? There are gorgeous complexes for senior citizens who have money. Try to find the same thing in an inner city.

We are here to try to build these projects and to get other developers, including master plan developers, to come in, play by the rules, and build for our senior citizens. It is a shame that we have senior citizens right now living on Main Street in tents. When you walk around, there are four men to one apartment. That is not how this country was made, and that is not how we should be treating our senior citizens. This has been a four-year commitment, and to find a developer that has been in Nevada for so long and has developed some of the most expensive properties in the state, for that developer to get on board, you have no idea what an uphill push that has been.

Chair Kirkpatrick:

Does anyone have any questions?

Assemblywoman Pierce:

I do not have a question. Mr. McDonald used to be my councilman, and I have to tell you that the seniors in my district will never love me as much as they love him. He has been at this a long time.

Chair Kirkpatrick:

Does anyone else have any questions?

Assemblyman Munford:

I am in support of this bill. Mr. Bayne was a student of mine, and I am proud of him. Mr. McDonald is one of my constituents, and he has done enormous things for senior citizens. He is looking in my district too, and we need something of this nature in my district. It is a good thing.

Chair Kirkpatrick:

Are there any other questions? Is there anyone who would like to testify in support of A.B. 508? [There were none.] Is there anyone who is neutral on A.B. 508? [There were none.] Is there anyone in opposition to A.B. 508?

Charles L. Horsey III, Administrator, Housing Division, Department of Business and Industry:

We agree with a lot of what has just been said. I want to make a couple points of clarification. Your state Housing Division has financed more rental units for senior citizens than all of the state's private sector lenders combined. In addition, this handout ([Exhibit L](#)) shows the tax credit projects that were financed in 2008. Of the ten tax credit projects financed in 2008, eight were for senior citizens.

When I become the administrator in 1986, I had several goals. First, I wanted to make sure that Nevada-based developers got preference. The reason was that we wanted to create an environment, as Mr. McDonald stated, that would encourage private sector developers to participate in affordable housing.

Second, we wanted to avoid a situation that has happened in other states, like Florida. For example, if an out-of-state developer came into Nevada, made their profit and left, there would be no one to make sure that property was maintained. We, therefore, thought that one way to ensure they would stay would be to defer a goodly portion of their developer fee. A performance bond, unfortunately, is only for the construction period in practically all instances. As a public entity, we are talking about then need to finance units that we are all proud of and are well maintained for 25 or 30 years.

In addition, we wanted to encourage an environment in Nevada where nonprofit developers and nonprofit entities could get into the affordable housing arena as part of their mission statements. We have been successful in doing that in Nevada. Community services agencies have participated in projects. The tax credit program has been a remarkably successful entity, and we still believe that it is good public policy to make sure that these projects are maintained.

Going back to 1987, the first year that the tax credits were allocated, Nevada was one of only four governmental entities in the entire country that had more demand than supply. To date, using the tax credit program and the bond programs that Mr. DeWeese supervises, we have produced approximately 20,000 rental units for Nevada families and individuals.

It has never been brought to my attention prior to this bill that the deferment of developer's fees was a major problem. We have more applicants than we have

supply of either bonding capacity or tax credits to allocate. Therefore, it does not seem to be a major problem. Again, the development of 20,000 residential units primarily for senior citizens would seem to belie the concerns that have been expressed.

Chair Kirkpatrick:

How many master planned senior complexes do you have? I know you and your staff have done a great job. I have seen the senior complexes at Bonanza and Eastern, and Ogden and Tenth Street. Those are great senior complexes. A great one was built by a private developer within my district. A lot of these projects are not master plan communities. Where is the shopping? Without the Paratransit, they cannot get to stores or go play bingo with their buddies. They cannot go to the bar to shoot pool late at night. Seniors are way more active than they were 15 years ago. So, how many master plan communities do we have for seniors that allow them to live, work, and play within their own neighborhood?

Lon DeWeese, Chief Financial Officer, Housing Division, Department of Business and Industry:

In answer to your question, almost every one of our senior projects has some form of entertainment facilities associated with the project.

Chair Kirkpatrick:

I understand what you are saying, but what I am saying is . . .

Charles Horsey:

Madam Chair, we are primarily a financial institution, and those decisions are primarily those of local governments in their planning and zoning. However, we have been asked by Clark County to get into the development business on some of their pieces of Bureau of Land Management (BLM) land, which was one of the reasons that Dr. Lopez, with her doctorate in urban planning, came on board. So historically, no we have not been actively involved in the planning community aspects, but that looks like the next step in our development.

Hilary Lopez, Ph.D., Chief of Federal Programs, Housing Division, Department of Business and Industry:

In terms of your question, as part of the qualified allocation plan for the 9 percent competitive low-income housing tax credit, developers do get preference points if they site their developments within a quarter mile of transportation services and other types of community facilities or services. They also get preference points if they incorporate some of those other aspects in terms of community rooms, where they could host bingo or other activities

for seniors, as part of their developments. Most of our developers take advantage of those points.

Charles Horsey:

As a point of clarification, the developer and the contractor are often one and the same. The contractor's fee can be obtained during the course of financing, and only the developer-fee aspect is deferred.

Chair Kirkpatrick:

I wish this would have come out during the interim study. I was the only person asking why things were going in different directions. I could never get any answers, so I am a little frustrated.

Lon DeWeese:

For the record, we at the Housing Division responded to every one of your inquiries during those interim studies, and I would like that on the record.

Chair Kirkpatrick:

Okay, that is fair game, but let me put on the record that I got them after the interim committees were over.

Lon DeWeese:

With regard to the project that Mr. Bayne and Mr. McDonald are referring to, this is the first high-rise project, and we recognize there are a lot of extra costs associated with it. They are, in fact, entitled to a 15 percent developer fee, and on this project that amounts to over \$6 million. They are also entitled to a contractor fee, which is another \$4 million based on the cost of being evaluated so far. That is a total of \$10 million, and we are only asking, as with all other developers relating to the senior housing project, that the \$6 million be deferred such that they receive that on a present-value basis over the life of the project, or sooner, depending on when cash flows would allow. That way their commitment to the project is not erased the moment they open the doors.

Charles Horsey:

We have two constituent groups that we must adhere to. First are the persons of low or moderate income who are going to reside in the home or the apartment unit, and second is the developer community. We recognize that without the developers' private sector, either for profit or nonprofit, we have no chance whatsoever in developing affordable housing. We recognize the importance of their participation in our programs.

Assemblywoman Mastroluca:

Can you please tell me how many other states have provisions which resist or require the deferral of payments and profits?

Lon DeWeese:

We would have to survey all other state credit programs to get an answer to that.

Assemblywoman Mastroluca:

I would appreciate that.

Chair Kirkpatrick:

Are there any other questions or comments?

William Bayne:

Ms. Mastroluca, my research is by no means exhaustive, but in working with HUD and in talking with our bond counsel, we are not aware of any other state that has provisions to defer the development fee. I am not saying that no state does, but we have not been able to find one.

I am thrilled to get into the numbers discussion that Mr. DeWeese referred to, but I do not think this is the appropriate forum. If you would like, I would be happy to answer his assertions as far as how much the development fees are. I will leave that up to you. If you would like to direct a question, I would be more than happy to answer it.

Chair Kirkpatrick:

We always take homework on Fridays, so if you would like to submit something to us, we will have it handed out on Friday. Mr. McDonald, do you have any other comments?

Michael McDonald:

No, but I will provide backup and homework for the comments that were stated. Mr. DeWeese and his office have been wonderful to work with. There are very few high rise projects west of the Mississippi. Mr. Bayne also owns a security company, so we can make seniors become secure. We are also putting a full battalion fire station in this building. So, if there are any paramedic needs for the senior residents, that would help.

Chair Kirkpatrick:

This is legislation for the future. It amazes me that local government goes in one direction, trying to take people out of their cars and keep them within their homes, and then we go in another direction. I am seeking long-term policies.

I think we need to have more discussion on this bill. Whatever it takes to get us all together, we need to do it.

Michael McDonald:

We appreciate the opportunity to testify. We would love to have more developers coming in, because our ultimate goal is to take care of our senior citizens. These small developments are built by wonderful developers but they are small developers. There are 50,000 seniors with no place to go, according to HUD. If you are building only 150- or 200-unit developments, who are we fooling? Are we doing this just to make ourselves feel good?

Chair Kirkpatrick:

Would you please do one thing for me? In downtown Denver they have a master plan affordable housing project that provides a lot of amenities. Can we get information on how it was financed and put together? It is great having the seniors, the kids, and all the services right downtown. I think that is a master plan direction to consider for the future.

Lon DeWeese:

Madam Chair, our development is inner city; we are trying to bring people back to downtown.

Chair Kirkpatrick:

If there is nothing else, I will close the hearing on A.B. 508. Is there any public comment? [There was none.] Is there anything from the Committee? [There was none.] If not, the meeting is adjourned [at 11:02 a.m.].

RESPECTFULLY SUBMITTED:

Cheryl Williams
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 1, 2009

Time of Meeting: 8:02 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 467	C	James Sala	Handout
A.B. 467	D	James Sala	Prepared Testimony
A.B. 467	E	David Kersh	Prepared Testimony
A.B. 467	F	Michael Tanchek	Proposed Amendment
A.B. 467	G	Richard Leigon	Prepared Testimony
A.B. 159	H	Assemblywoman Pierce	Proposed Amendment
A.B. 159	I	Juanita Clark	Prepared Testimony
A.B. 159	J	Alan Di Stefano	NCED Proposal for Modification of A.B. 159
A.B. 159	K	Alan Di Stefano	Minnesota Trade Policy Working Group
A.B. 508	L	Charles L. Horsey	Handout Concerning Housing Low-Income Tax Credit Awards