MINUTES OF THE
SENATE COMMITTEE ON GOVERNMENT AFFAIRS

Seventy-fifth Session
March 18, 2009

The Senate Committee on Government Affairs was called to order by Chair John J. Lee at 1:30 p.m. on Wednesday, March 18, 2009, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator John J. Lee, Chair
Senator Terry Care, Vice Chair
Senator Steven A. Horsford
Senator William J. Raggio
Senator Randolph Townsend
Senator Mike McGinness

COMMITTEE MEMBERS ABSENT:

Senator Shirley A. Breeden (Excused)

GUEST LEGISLATORS PRESENT:

Senator Joyce Woodhouse, Clark County Senatorial District No. 5
Assemblyman Lynn Stewart, Assembly District No. 22

STAFF MEMBERS PRESENT:

Heidi Chlarson, Committee Counsel
Michael Stewart, Committee Policy Analyst
Cynthia Ross, Committee Secretary

OTHERS PRESENT:

David Slater, Teacher, John R. Beatty Elementary School, Las Vegas
Lexie Arancibia, Student, John R. Beatty Elementary School, Las Vegas

Ryan Underwood, Student, John R. Beatty Elementary School, Las Vegas
Meagan Anders, Student, John R. Beatty Elementary School, Las Vegas
Steve Ross, Secretary-Treasurer, Southern Nevada Building and Construction Trades Council
Steve Redlinger, Southern Nevada Building and Construction Trades Council
David Kersh, Carpenters/Contractors Cooperation Committee, Inc.
Michael Tanchek, Labor Commissioner, Department of Business and Industry
Robert A. Ostrovsky, Nevada Resort Association
Paul J. Enos, CEO, Nevada Motor Transport Association
Veronica Meter, Las Vegas Chamber of Commerce
Clara Andriola, President, Sierra Nevada Chapter, Associated Builders and Contractors, Inc.
Buzz Harris, Nevada Chapter, Associated General Contractors; Nevada Association of Mechanical Contractors
Lea Tauchen, Retail Association of Nevada
Renny Ashleman, State Public Works Board
Peter D. Krueger, Subcontractors Legislative Coalition
Richard Peel, Subcontractors Legislative Coalition
Richard Lisle, Mechanical Contractors Association, Inc.
Greg Esposito, Plumbers, Pipefitters and HVACR Technicians, Local 525
Sherry Vyvyan, Southern Nevada Air Conditioning Refrigeration Service Contractors Association
Jeffery L. Westover, National Electrical Contractors Association
Sherry Hernandez, Administrator, Subcontractors Legislative Coalition
Brian C. Kerzetski, Vice President, Universal Plumbing and Heating Company; Plumbing-Heating-Cooling Contractors of Nevada
Arthur White, Aqua Plumbing and Roadrunner Plumbing
Dave Bold, Done Right Plumbing
Tye Halverson, Southwest Air Conditioning; Sheet Metal and Air Conditioning Contractors National Association
Blake Ballard, Sahara Air Conditioning and Heating, Inc.; President, Southern Nevada Air Conditioning Refrigeration Service Contractors Association.
John Seymour, International Brotherhood of Electrical Workers, Local 401
Randy Canale, Plumbers and Pipefitters of Northern Nevada, Local 350
Gus Nunez, P.E., Manager, State Public Works Board
Don C. Jeppson, Director, Department of Building and Safety, Washoe County
Ronald Lynn, Nevada Organization of Building Officials
Wes Henderson, Government Affairs Coordinator, Nevada Association of Counties

Bjorn Selinder, Churchill County; Eureka County; Elko County

CHAIR LEE:
We are opening this meeting with Senate Bill (S.B.) 166. This bill comes to us by a class in southern Nevada. Senator Joyce Woodhouse and Assemblyman Lynn Stewart have been working with this class closely in the legislative process of selecting the State insect.

SENATE BILL 166: Designates the official state insect of Nevada. (BDR 19-914)

SENATOR JOYCE WOODHOUSE (Clark County Senatorial District No. 5):

> Good afternoon, Chairman Lee, and members of the Senate Government Affairs Committee. I am Joyce Woodhouse, State Senator for Clark District 5. With me today is Assemblyman Lynn Stewart, representing Assembly District 22. We are both here this afternoon to introduce to you a very special teacher, Mr. David Slater, and three of his outstanding fourth graders from John R. Beatty Elementary School in Las Vegas and also to urge your support for the Vivid Dancer Damselfly as our state insect, as identified in Senate Bill 166. At the Grant Sawyer Building in southern Nevada is the rest of Mr. Slater's class, and we invite them to wave to you one more time. Thank you! Before we turn the time over to Mr. Slater and his students, we would like to share with you the procedures by which Senate Bill 166 came before you.
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> At the end of a Kids Voting Board of Directors meeting in mid-December, one of our colleagues asked, "Did you know that Nevada does not have a state insect designated, and we do have a state flower, a state bird, a state rock and others? How would one go about naming a state insect?" So Mr. Stewart and I in unison said, "That would take legislation!" And we volunteered to process the bill, as long as students statewide were involved (Exhibit C, page 1).
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> Thus the planning began. Attached to the packet that you have you will find the flyer announcing the program, the curriculum standards for the fourth grade that are aligned to this project and the rubric (Exhibit D, page 3) by which the judges would score the

essays that were produced by the students. This information was disseminated throughout the State with the help of the Nevada State Department of Education and the Clark County School District. The purpose of the program was fivefold: one, to encourage scientific research; to develop teamwork; to foster critical thinking; to utilize literacy and writing skills in preparation of the essay; and five, to study Nevada State history and experience the legislative process, Exhibit C, page 1.

ASSEMBLYMAN LYNN STEWART (Assembly District No. 22):
I will add a sixth reason for becoming involved with this process. We became involved so kids can know they can make a difference and that their voices can be heard.

This contest concluded on February of this year; and the judging occurred on February 26. We had seven judges from communities throughout our State. We had 74 classrooms that participated from 57 schools and 7 counties, including Clark, Carson, Washoe, Nye, Douglas, Lyon and Churchill. We were so pleased with the results of this competition. The winner of the competition to nominate and process through legislation is, of course, John R. Beatty Elementary School with their essay nominating the Vivid Dancer Damselfly. Not only is that a beautiful name, but it's a beautiful insect. We have with us today young people who are going to testify in favor of the bill. And this was brought about a great amount by the generosity of the Truly Nolen Company, and we have here with us today Mr. Barry Murray representing that company. Would you stand, Mr. Murray? We appreciate very much his help and also the Kids Voting Board of Directors. We will leave with the young people today to tell you how they accomplished this task, what they learned and the great value of this experience to them. We are confident that you will be as impressed with their nomination as we are, Exhibit C, page 1 and 2.

DAVID SLATER (Teacher, John R. Beatty Elementary School, Las Vegas):
For the record, my name is David Slater, a teacher at John R. Beatty Elementary School in Las Vegas. I have with me three of my students, Lexie Arancibia, Ryan Underwood and Meagan Anders. We are here in support of Senate Bill (S.B.) 166 designating the official state insect of Nevada. We would like to thank you,

Chairman Lee, for inviting us, and the other Senators in attendance, and in particular, Senator Woodhouse for cosponsoring this legislation with Assemblyman Stewart. Thanks, too, to Ms. Judy Myers and her staff at the School-Community Partnership Program Office for organizing the Nevada State Insect Contest and to the corporate sponsors of that contest, Kids Voting of Greater Las Vegas and the Truly Nolen Company. Almost all the costs of our visit were generously paid by these sponsors. I would be remiss if I did not acknowledge the help received preparing this trip from my site administrators at Beatty, Principal Craig VanTine and Assistant Principal Tammy Villarreal-Crabb. The counsel of Ms. Joyce Haldeman of the Clark County School District was instrumental in organizing our testimony today. Heartfelt thanks there and to two more of my colleagues who are at the Grant E. Sawyer Building in Las Vegas, Ms. April Paris and Mr. Peter Kelleher, who are supervising the remainder of my class watching these proceedings on their much-deserved field trip.

I thought how we got here might be of interest to you, Chairman Lee. I read the contest announcement, including the prize, to my class and made participation completely voluntary. I was surprised the next day when seven students had done, in addition to their required homework, independent research at home. I had underestimated how hard some of my kids would work for a chance to win a day off from school and a trip here by air. Each of the seven gave an oral presentation about their insect to their classmates. The class voted Lexie's choice, Argia vivida, largely because of its coloration. I took the class to our computer lab and instructed them to find out everything they could about this insect. The next day a second contest announcement arrived, this time with a scoring rubric that was similar to the rubric, that, from the Nevada State Writing Exam, Exhibit D. That's an AYP test that my kids will take next year. From there, I simply followed the protocols of that exam and used the brainstorming template and model student persuasive essay materials provided in our reading and language arts program. Unhappily for my kids, they now had a three-day required writing project. While grading their final drafts, I looked for useful facts or phrases for our submission. The students did very well. I prepared a draft from their efforts and presented it

to them. We revised and edited as a whole class over two days. As my students watched a large projected image of our final draft, I footnoted the document—footnoting is a tad beyond what is reasonably expected of fourth graders—while pointing out the importance of attribution and the consequences of plagiarism. The submission was then mailed. In all, the project spanned eight school days and about seven hours of instructional time (Exhibit E, page 1).

So what did we learn? The importance of making a deadline was the first lesson. Only the original seven researchers were considered by me when selecting the students to come here today. The class was not informed of this until after the contest results were announced. Consequently, they remained motivated during the writing process, and we easily made the contest submission deadline. The seven students who took the early initiative gained experience in delivering a persuasive oral argument. All of my students had practice in using the Internet to obtain information they wanted or needed. We intend to do more of this in the future. Then there was five days of writing. That was good preparation for next year's examination. Finally, later this year when I present what has been in the past a rather dry lesson on how a bill becomes a law, my class will have vivid memories of this day to draw upon as prior knowledge. Here we are in the middle of that process, Exhibit E, pages 1 and 2.

LEXIE ARANCIBIA (Student, John R. Beatty Elementary School, Las Vegas):
For the record, I am Lexie Arancibia and I live in Clark County.

Our class has selected Argia vivida, the Vivid Dancer Damselfly, as our submission to the Nevada State Insect Contest. It is a small, about 1.5 inches in length, flying insect and belongs to the family Coenagrionidae of the order Odonata. It was first classified by Hermann August Hagen in 1865, the year after Nevada Statehood. Hagen later became the first professor of entomology at an American university, Harvard, Exhibit E, page 2.

We first voted for Argia vivida because of its colors. The adult male is a rich blue with clear wings that appear silver when rapidly

beating in sunlight. Silver and blue are Nevada's state colors. This color scheme is sometimes repeated during mating. While most females are tan or tan and gray, some are colored a silver gray. After mating, the male and female will fly in tandem, he protecting her from other males, to the spot where she can deposit her eggs on a vegetation just below the waterline, Exhibit E, page 2.

RYAN UNDERWOOD (Student, John R. Beatty Elementary School, Las Vegas)
For the record, I am Ryan Underwood and I live in Clark County.

Next we learned the Vivid Dancer Damselfly is abundant in all four regions of our State. Its habitat is the springs and ponds of Nevada. We thought it was important that the State insect not have a limited range or be endangered. It should represent and prosper throughout the entire State.

It was when we discovered Argia vivida is helpful to humans that we believed we had made a great choice. The Vivid Dancer Damselfly preys upon mosquitoes, flies, aphids and other pests. It isn't just pretty. It serves Nevadans by contributing to our economy and quality of life, Exhibit E, page 2.

MEAGAN ANDERS (Student, John R. Beatty Elementary School, Las Vegas):
For the record, I am Meagan Anders and live in Clark County.

There are 55 state insects. There are 24 butterflies, 17 bees, 7 ladybugs and 2 dragonflies on that list but not 1 damselfly. The selection of the Vivid Dancer would reinforce Nevada's status as unique among the states.

It is for these reasons, we nominate Argia vivida, the Vivid Dancer Damselfly, as Nevada's State insect, Exhibit E, page 3.

SENATOR RAGGIO:
We want to compliment you and your students on excellent work and research. I will certainly support this as I am sure the rest of the Committee will do.

SENATOR CARE:
I will support your bill. Like the minority leader, I commend you. If the bill comes out of the Committee, you cannot stop there. You need to work the bill and follow up. You can e-mail your representatives, so do not hesitate to write.

SENATOR MCGINNESS:
In the legislative process, this is what we do; we ask questions of the bills to find out everything we need to know so we have not left any stone unturned. Therefore, I will ask you a question one of you can answer. You made a great choice, but I am wondering, I have been almost every place in Nevada and have been bitten by mosquitoes. Since there are more mosquitoes than Vivid Dancers in Nevada, do you think we should have picked the mosquito?

SENATOR CARE:
I do not think Senator McGinness should be that hard, asking such a pressing question of the testifiers here. These are difficult choices for a State insect. You could have picked a mosquito, but I will go with your choice.

CHAIR LEE:
I will close the hearing on S.B. 166 and ask the Committee if they have pleasure in passing this bill today.

SENATOR TOWNSEND MOVED TO DO PASS S.B. 166.

SENATOR RAGGIO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
Students, you are halfway there. Congratulations. The Committee will now move into the work session. The first bill on our agenda is S.B. 155.

SENATE BILL 155: Provides for possible funding for the Commission on Economic Development for certain purposes related to military installations. (BDR 18-721)

SENATOR MCGINNESS:
I have a proposed amendment (Exhibit F). We want to take out advocating/to advocate "to the Defense Base Closure and Realignment Commission ..." in section 3, subsections 1 and 2 add the word "enhancement." We do not want to preclude important activities specifically to the Base Realignment and Closure Commission when it is not in session. If we add the word "enhancing," it gives us a reactive tactic, allowing us to add growth and development activities for military installations under economic development.

SENATOR TOWNSEND MOVED TO AMEND AND DO PASS AS AMENDED S.B. 155.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR JOHN J. LEE (Clark County Senatorial District No. 1):
I am the sponsor of the next bill, S.B. 173, that provides for the construction of bus turnouts at certain locations in certain counties. In southern Nevada, my intention is to get buses off the main arterial streets, off to the side, so we can continue the flow of traffic. The Regional Transportation Commission (RTC) is going to build the first ten bus turnouts with some Question 10 monies they have left over. Thereafter, we are asking each entity if they will build one per year. The RTC will give them a list of criteria stating ridership, traffic congestion, etc., for location. This bill has one or two technical issues we are working out, but all entities are onboard to start relieving the pressure off the streets. The work document lists nine things this bill will do (Exhibit G, original is on file in the Research Library). This is the same document we worked with during the original hearing. I propose to submit this bill for committee approval.

SENATE BILL 173: Provides for the construction of bus turnouts at certain locations in certain counties. (BDR 22-584)

SENATOR CARE:
The mock-up incorporates all nine discussion items into the amendment. Is this correct?

CHAIR LEE:
Yes.

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 173 WITH AMENDMENT NO. 3430.

SENATOR McGINNESS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR LEE:
Senate Bill 175 enacts provisions governing flood management projects. Naomi Duerr gave a great presentation on this bill. The Truckee River Flood Project is looking to establish the opportunity to raise funds and work in the community to finish this flood management project.

SENATE BILL 175: Enacts provisions governing flood management projects. (BDR 20-239)

SENATOR RAGGIO:
I need to make the disclosure that a member of my law firm appeared before the Committee in support of this measure, and even though I am in support, I will abstain from voting.

SENATOR TOWNSEND MOVED TO DO PASS S.B. 175.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RAGGIO ABSTAINED FROM THE VOTE.)

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CHAIR LEE:
The next bill in work session is S.B. 190.

SENATE BILL 190: Revises provisions regarding the acquisition and disposal of real property by fair and recreation boards in certain larger counties. (BDR 20-648)

MICHAEL STEWART (Committee Policy Analyst):
Senate Bill 190 repeals the requirement that a fair and recreation board located in Washoe County obtain the approval of the Board of County Commissioners before acquiring, leasing, selling or disposing of real property except as to land located in the City of Sparks. The City of Sparks provision is the subject of this amendment. This bill removes the City of Sparks from the exemption. In so doing, it will actually delete the measure in its entirety and replace it with the original language set forth in the introduced version of S.B. No. 302 of the 73rd Session which essentially proposed to repeal Nevada Revised Statute (NRS) 244A.627. If this Committee approves, the amendment is to repeal NRS 244A.627 which was the requirement that a fair and recreation board in Washoe County obtain approval of the Board of County Commissioners before doing these real property actions.

SENATOR RAGGIO:
John P. Sande II, who is a member of my law firm, appeared before us on this bill; therefore, I will abstain on this vote.

SENATOR TOWNSEND MOVED TO AMEND AND DO PASS AS AMENDED S.B. 190.

SENATOR McGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RAGGIO ABSTAINED FROM THE VOTE.)

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CHAIR LEE:
Senate Bill 194 is the bill for which Senator Bernice Mathews testified before this Committee.

SENATE BILL 194: Revises provisions governing the appointment and duties of public administrators and guardians. (BDR 20-181)

MR. STEWART:
Senate Bill 194 amends a number of provisions governing public administrators as it relates to public guardians. The amendment from Lora E. Myles is attached, Exhibit G, with two components. One affects section 3 of the bill, to remove the proposed language that would have prohibited a public administrator from entering upon real property that is the subject of a deed which becomes effective upon the death of the grantor. This amendment also changes the word "and" to "or" in a public administrator's authorization to secure the property of a deceased person if he finds there are no relatives of the deceased who are able to protect the property; "or" adds the new language, "failure to do so could endanger the property."

The section 5 amendment would remove language that would have required the public administrator to investigate whether there are beneficiaries named on any asset of the estate or any deed which becomes effective upon the death of the grantor and adds language to require the public administrator to determine whether there are beneficiaries named on any assets on file with the county recorder. The additional amendment to section 5 deletes the definition of "intestate decedent" and adds a definition of "intestate" to mean any estate where the decedent did not leave a valid will, trust or other estate plan.

Finally, the last amendment proposed for section 5 would add language to provide that a public administrator shall not cause to be probated any property held in joint tenancy unless all tenants are deceased, any property for which a beneficiary form has been appropriately registered and property from which a deed upon death has been recorded pursuant to NRS 111.109.

SENATOR RAGGIO MOVED TO AMEND AND DO PASS AS AMENDED S.B. 194.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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MR. STEWART:
AS you may recall, last week, the Committee approved S.B. 43 with an Amend and Do Pass. A need to clarify the intent of the amendment was brought to the

Committee's attention. I will read the clarification provided by the State Public Works Board (SPWB) to ensure we get the clarification on record as it relates to the settlement issue (Exhibit H).

> The Public Works Board will not look at the settlement per se but will look at the underlying action in the settlement. For example, if the contractor was fined or disciplined for hiring unlicensed subcontractors but ultimately reached a settlement; the SPWB would still consider the fine and/or discipline imposed against the contractor in evaluating the contractor's application for qualification.

SENATE BILL 43: Revises the criteria that the State Public Works Board is required to adopt to determine the qualification of bidders on contracts for public works. (BDR 28-323)

CHAIR LEE:
We want to ensure the amendment to S.B. 43 is easily understood. Now, moving out of work session, we move into hearing S.B. 189.

SENATE BILL 189: Provides for certain causes of action against employers. (BDR 53-1126)

STEVE ROSS (Secretary-Treasurer, Southern Nevada Building and Construction Trades Council):
I come before you today to speak in favor of S.B. 189 and the Southern Nevada Building and Construction Trades Council amendment to S.B. 189. Senate Bill 189 would clarify employees may enforce provisions of the labor laws dealing with wages and hours through private law suits. This clarification is necessary because of the Nevada Supreme Court's decision in *Baldonado v. Wynn Las Vegas,* 124 Nev. Adv. Op. No. 81 (Oct. 9, 2008) which held that the provision in the labor laws dealing with tip-sharing could be enforced by the Labor Commissioner. While that part of the Supreme Court's decision was correct, language in the decision has cast doubt on whether employees may enforce other parts of NRS chapter 608 (Exhibit I), page 1.

The clarification is necessary to avoid burdening taxpayers and the Labor Commissioner with exclusive responsibility for enforcing Nevada wage and hour law. The Labor Commissioner does not have the staff or resources to enforce all of these actions nor should taxpayers foot the bill to enforce Nevada's wage

and hour law in all cases. Furthermore, the Labor Commissioner's lack of resources will inevitably mean that meritorious claims from underpaid employees fall through the cracks. The Labor Commissioner agrees with this and supports section 1 of this bill, Exhibit I, page 2.

We do not agree with the amendment to section 1 that has been submitted. We would replace the clear language of the original, which states that employees have a private right of action to enforce NRS 608.015 to NRS 608.155 and NRS 608.165 to NRS 608.170, with a vague statement that employees have a private right of action to enforce claims for unpaid wages and compensation earned in the course of employment. Changes to section 1 will simply generate needless litigation over which parts of NRS 608 require employers to pay employee wages immediately on discharge and to pay the employee waiting time penalties if it fails to do so. Using the Labor Commissioner's version of section 1 will lead to needless litigation over whether employees have a private right of action to enforce this requirement. It makes more sense to specifically state the provisions of NRS 608 to which S.B. 189 applies as with the original version of S.B. 189, Exhibit I, page 2.

Although the Commissioner agrees there is a need to allow for private enforcement of claims for unpaid wages in violation of NRS 608, he does not want to allow for effective private enforcement of claims for unpaid prevailing wages. This does not make sense.

Section 4 of S.B. 189 would recognize the right of joint labor-management committees to enforce the prevailing wage laws. Doing so would have the same effect as section 1. It would relieve the Labor Commissioner and taxpayers of the responsibility of enforcing laws. States as varied as Alaska, Delaware, Indiana, Kansas, Missouri, Ohio and Wisconsin have recognized a private right of action to enforce prevailing wage laws. Several states, including California and Hawaii, have laws on the books recognizing the right of joint labor-management committees to enforce prevailing wage laws, Exhibit I, page 2.

Under S.B. 189, unions could not act alone to enforce the prevailing wage law. Rather, joint labor-management committees, which have both labor and contractor representatives, could enforce the prevailing wage law, Exhibit I, page 3.

It makes sense to recognize the right of joint labor-management committees to enforce the prevailing wage laws since the prevailing wage law is designed to protect responsible contractors who stand to lose if unscrupulous contractors underpay their workers on public works projects. Also, in many instances, workers who are not paid the prevailing wage will not complain for fear of termination. The only reason the Labor Commissioner has stated to us why he opposes having this effective and efficient enforcement system for prevailing wages is that it would increase the litigation costs for state and local agencies. But S.B. 189 would have precisely the opposite effect. Under the current system, the Labor Commissioner requires state and local agencies to enforce prevailing wage obligations on their projects. These agencies are required to send their lawyers to the Labor Commissioner hearings. Under S.B. 189, employees and joint labor-management committees could bring suit against the offending contractor, and the state or local agency would not have to be involved at all. This would save the agencies money, Exhibit I, page 3.

I would like to close with an example of how the Commissioner's process for dealing with prevailing wage caused waste for contracting agencies. In this example, Clark County Deputy District Attorney Carolyn Campbell was dragged into a multiday hearing before the Labor Commissioner. She was the prosecuting attorney in a case where laborers were claiming work the International Brotherhood of Electrical Workers had done. During the hearing, the employer realized their error and paid the wage violations, but only after several days of hearings. Had this particular issue gone to court, cooler heads, realizing they could end up liable for the other side's legal fees, would have resolved the matter much sooner without the County involvement. The Commissioner refused to resolve this issue by summary judgment, a procedure utilized by courts all the time instead of holding a full-scale trial. Not only was Ms. Campbell put out of the office for days, but several Water Reclamation District staffers also had to spend days working on this particular administrative hearing at the cost of the taxpayers. For your reference, this particular case is Public Works Case Number PWP CL 2005-141, Exhibit I, page 4.

STEVE REDLINGER (Southern Nevada Building and Construction Trades Council):
We bring before you today an amendment to S.B. 189 (Exhibit J). Section 1 of S.B. 189 would create a private right of action to enforce certain provisions of NRS 608. This is important because the Labor Commissioner's Office does not have the requisite staff and resources to enforce these laws and because the costs of enforcement should not be borne by the taxpayers.

CHAIR LEE:
Are we working off your proposed amendment?

MR. REDLINGER:
Yes.

CHAIR LEE:
We have no amendment in front of us. Mr. Redlinger, you are responsible for providing 25 copies. If you choose, you may proceed without the amendment but it will be more difficult for us to follow along.

MR. REDLINGER:
Section 2, Exhibit J, pages 1 and 2, reads:

> Section 2. NRS 608.180 is hereby amended to read as follows: 608.180 The Labor Commissioner or his representative shall cause the provisions of NRS 608.005 to NRS 608.195, inclusive, and section 1 of this act to be enforced, and upon notice from the Labor Commissioner or his representative: 1. The district attorney of any county in which a violation of those sections has occurred; 2. The Deputy Labor Commissioner, as proved in NRS 607.050; 3. The Attorney General, as provided in NRS 607.160 or 607.220; or 4. The special counsel, as provided in NRS 607.065, shall prosecute the action for enforcement according to law.

The language emphasized would create confusion. It implies the Labor Commissioner is responsible for enforcing the private right of action set forth in section 1. This would make no sense. The language added in section 2 should be omitted.

Section 3 is also confusing, Exhibit J, page 2. It reads:

> Section 3. NRS 608.195 is hereby amended to read as follows: 608.195 provision 1. Except as otherwise provided in NRS 608.0165, any person who violates any provision of NRS 608.005 to 608.195, inclusive, and section 1 of this act or any regulation adopted pursuant thereto, is guilty of a misdemeanor.

The language emphasized in section 3 also makes no sense. Read literally, it would mean that an employee would be guilty of a misdemeanor for failing to serve a copy of his or her pleadings on the Labor Commissioner. A judge who

did not award attorney fees under section 1, subsection 2 of the bill would be guilty of a misdemeanor. This is not the bill's intention. The added language in section 3 should be omitted.

References to section 4 of this act contained in sections 5, 6 and 7 of the draft bill should also be removed. The references are unnecessary since each of these sections deal with coverage of the substantive provisions of the prevailing wage law, while section 4 deals with who can enforce the substantive provisions.

Our amendment clarifies the confusing parts of S.B. 189 as written.

SENATOR CARE:
We have the bill, and we have had discussion on two amendments. Regarding section 4, are you saying the Committee would have standing to bring a private cause of action as to public works projects?

MR. REDLINGER:
Yes.

SENATOR CARE:
In section 4, there is an award of attorney fees provision. For clarification, if the Committee prevails, there is an award of attorney fees. If the employer prevails, the court must also find that the suit not substantially justified before an award of attorney fees. Is there similar language in NRS 607?

MR. REDLINGER:
I do not know.

SENATOR CARE:
Regarding section 1 of NRS 607, case law already recognized private cause of action, in some instances, as to the assignment of wages and unpaid compensation but maybe not everything under NRS 607. Some of that case law would show a union has standing to bring the action, not necessarily the employee. Does this sound familiar?

MR. REDLINGER:
Individuals already have the right to bring a private right of action.

SENATOR CARE:
This is the *Baldonado* case.

MR. REDLINGER:
The *Baldonado* court decision said the Labor Commissioner would be sole finder in these types of decisions. In section 1, we want to clarify that individuals do have the inherent private right to action.

SENATOR CARE:
The bill is intended to clarify which you believe should be existing practice. The Labor Commissioner would not read that case to say, "I do not have to do this anymore."

MR. REDLINGER:
We do not believe the Labor Commissioner would say that at all.

SENATOR CARE:
I want to qualify my remark. I am not trying to be unfair, as we have not heard from the Labor Commissioner.

MR. REDLINGER:
If you look at the Labor Commissioner's amendment and at our amendment, the provisions in section 1 are similar. He agrees a burden will come to his office. He is ill-equipped to handle these cases on his own, and it would be helpful to have available folks to take a private right of action. In his amendment, we have differences in specific wording. The core of this issue is the same, as a clarifier in response to the Nevada Supreme Court's decision.

HEIDI CHLARSON (Committee Counsel):
From a drafting prospective, sections 1 and 4 of the bill are adding new provisions to the chapter. When the Legislative Counsel Bureau (LCB) adds provisions, we indicate where those sections will be located if the bill is passed. The changes where you delete references to section 1 and section 4 of the act—those are technical provisions—are not substantive, so we would not be able to remove them from the bill.

MR. REDLINGER:
These references in sections 1and 4 are duplicated, creating confusion.

CHAIR LEE:
This is how the LCB writes bills.

SENATOR TOWNSEND:
There are two provisions in this bill. One deals with NRS 608 and the other with NRS 338. We know the latter is Public Works and the former addresses private activity. Is it your intention to have this broadly construed so it covers private activity as well as Public Works?

MR. REDLINGER:
The intent in section 1 is to clarify law that individuals have a right to private action. The way the Supreme Court wrote its decision brought this into question. In section 4, we are looking to expand upon that. In the section 1 provisions, we argue there are certain economic efficiencies to the State by clarifying this right exists.

SENATOR TOWNSEND:
Do you have copies of *Baldonado v. Wynn Las Vegas*? Can you quote the portion that is the premise for this bill so we know why clarification is needed?

MR. REDLINGER:
Absolutely.

SENATOR TOWNSEND:
I listen to your testimony, and I am trying to better understand the challenges causing a need of clarification since individuals already have this right.

DAVID KERSH (Carpenters/Contractors Cooperation Committee, Inc.):
We are here to support S.B. 189 and the amendments from the Nevada Building and Construction Trades Council. Private right of action should exist on both NRS 608 and NRS 338 with the same economic and staffing rationale. In both private projects and public works, many workers are denied wages. This will allow another avenue, in addition to the Labor Commissioner, to deal with these issues.

SENATOR TOWNSEND:
Do employees already have a private right of action, but this is a clarifying bill?

MR. KERSH:
I am of the same position of Mr. Redlinger. In terms of NRS 608 and NRS 338, it is looking to expand.

SENATOR TOWNSEND:
You are now seeing the bill as expanding.

MR. KERSH:
Clarifying the issue with the referred court case, *Baldonado*, and in regard to NRS 338, the bill creates another avenue.

MICHAEL TANCHEK (Labor Commissioner, Department of Business and Industry):
I have held this position of Labor Commissioner for the past four years. Five years prior, I was a deputy labor commissioner. I discussed this proposal several months ago with Mr. Ross and was thinking about a proposal myself because of the *Baldonado* decision by the Supreme Court on the Wynn tip case. I have requested an Attorney General's opinion on this issue as it relates to the *Baldonado* case. I signed in as opposed to the bill as written.

As Labor Commissioner, I asked myself, what do I need? And what I need is clarification. On NRS 608 and reflected in our regulations is a private right of action for a person who believes an employer owes them money for work performed. We consider two things when we receive a claim. Can the person afford to hire an attorney? If so, I will reject the claim and say, hire yourself an attorney and take them to court. This was the practice when I came to the Labor Commissioner's Office, and it continues to be the practice. I also look to see if the claim is sustainable. We get many claims, and we are told many things. My investigators must sort through the information. I must make the decision whether I want to take this person's claim and make it my own. Do I want to say "You no longer owe the person that money," Mr. Employer, "you now owe that money to the State of Nevada?" I will use the full power and authority of the State to collect that money for the individual.

About 60 percent of our claims are found in favor of the employee. It is not an advocacy position. It is about getting to the bottom of an issue and finding a solution. If the employee is owed money, we get him paid.

Nevada Revised Statute 338 is an entirely different animal. In this particular case, I am not sure a private right of action is the correct term as a private right

of action would accrue to that specific employee who might be owed wages, not to a third party who is trying to enforce statutes pursuant to somebody else's contract.

Mr. Ross referred to a hearing we conducted. I ended up directing the parties to settle the matter among themselves. It cost the parties a lot of money, it took up time, and it was almost an irresolvable conflict. Over the past two years, we have handled over 400 investigations in the Labor Commissioner's Office. Out of these 400 investigations, only four went to hearing. One of our goals is to resolve problems to prevent them from going through the time and expense of a hearing. We want to resolve problems properly and to get expeditious results. One fear this bill brings forth is a cost to local governments due to litigation. As it stands, the investigation process involves a complaint, an audit and a review of the audit. We take the compiled information, and we work it back and forth to determine any unresolved issues that then can go to a hearing. If this goes to litigation in the investigation process, the process of audit and the investigation function with discovery first will be replaced and become the norm.

In terms of understaffing, my staff is overworked. I considered hiring more people as part of my budget before the economic difficulties hit and before the *Baldonado* decision. We have always presumed a private right of action in NRS 608. We refer to people to court all the time. If a claim comes to our office, it gets resolved, taking three months or longer because of our workload. My investigators get a new case every four hours. We are doing what we can, but we are over-inundated. We are outnumbered. We get the cases in, resolved and out the door as quickly as possible. This is in regard to NRS 608. This is 85 percent of our workload. I have a staff of 17 people, and 12 are dedicated to the NRS 608 side.

In terms of investigation and resolution, we hold our own because we have people in departments throughout the State who assist us, such as individuals at the Nevada Department of Transportation and Clark County School District. These people handle investigations locally on the NRS 338 side. They complete their investigations or audits, they make their findings, and then they forward them to us to handle objections and, if necessary, for us to judicate. This side works well. The side of NRS 608 is difficult.

SENATOR CARE:
In your proposed amendment (Exhibit K), section 1 on NRS 608, you want to delete "a violation of NRS 608.015 to 608.155, inclusive, 608.165 or 608.170" and substitute that with "unpaid wages and compensation earned in the course of employment." This will be 95 percent of the claims. What other violations under NRS 608 can an employee, conceivably, bring a private cause of action to?

MR. TANCHEK:
There are many. There are break and lunch requirements.

SENATOR CARE:
How about the issue of uniforms?

MR. TANCHEK:
Uniforms are a wage issue. My employers are to provide uniforms free of charge to an employee. If they charge, it is a money issue. If there is a money issue and one wants to collect their money, I say, go for it. I will use my staff elsewhere. This can be expensive. The average recovery is $700 to $1,000.

SENATOR CARE:
Is there anything in NRS 608 or case law that stems from NRS 608 that has a provision similar to what has been proposed in section 4 about the award of attorney fees?

MR. TANCHEK:
A provision allows a court to award attorney fees to wage claimants. The attorney fees can be awarded to the attorney who represents the prevailing party. If I am the only one who can do that, of course, the prevailing party is the Attorney General because that is who represents me. Why is the language in there if there is not an assumption or implication a person can go to court with a private right of action? Other provisions determine whether I take a claim. One of the points I consider is whether a party can afford an attorney. If I have to take the case and provide the representation, what is the purpose of having the language? Cases throughout NRS 607 and NRS 608 lead to an underlining assumption that there is an embedded private right to action. Our agency has always proceeded on that assumption.

In regard to the *Baldonado* case, the way the court drafted it, they left open the idea that administrative remedies must be exhausted before going to court. This has caused confusion. I have had judges call my office and ask, "What am I suppose to do with this?" I give them a note stating I will not take the claim. On that basis, judges will then hear the case. There is confusion, and this is why I have asked for an Attorney General's opinion on this issue.

SENATOR CARE:
Let me address section 4, the public works provisions. A committee, recognized under federal law would be the one to bring a cause of action in State court.

MR. TANCHEK:
Yes.

SENATOR CARE:
You mentioned the audit and the investigations. This is the current remedy an employee has on a public works project. I understand your concern that if you go beyond what you are doing now, there would be the cost to litigation and the burden on your office, but is there anything that addresses this in statute? You have the audit and the investigation, but there is no statutory recognized private cause of action.

MR. TANCHEK:
There is not in NRS 338. What needs to be recognized is the requirement to pay prevailing wage is in statute. If you read the statute, that requirement is required to be embedded in the construction contract between the public body and the construction contractor. There is a contractual obligation to pay prevailing wage between the contractor and the awarding body.

SENATOR CARE:
If an employer does not get the money to pay the employee, is this a breech of contract action and the Labor Commissioner is out of it?

MR. TANCHEK:
It can be both. We have an issue going on with star bonds. There were problems with the statutes in that case. My decision in this case was: a contractual remedy exists that can be enforced in contract. In this case, there was an obligation on the part of the awarding body to investigate and resolve the problems. For instance, let us presume one is a worker on a prevailing wage

project. The process is to file a complaint either with the Labor Commissioner's Office or directly with the awarding body that has the contract. This kicks in the requirement for them to review the payment, payroll and everything the contractor or subcontractor has done on the project to determine whether he was paid correctly. Once the public body makes the determination, they notify the involved parties and forward the determination to my office for final action. If the contractor or employee wants to disagree with the findings, they bring their objections to me. We will work through it and try to get to the bottom of it. If we can resolve it, we resolve it and everybody gets paid or not paid as the case may be. If the issue cannot be resolved, we take it to a hearing and resolve it there.

ROBERT A. OSTROVSKY (Nevada Resort Association):
The Nevada Resort Association opposes the changes suggested in section 1 on private rights of action in private employer setting. We have no position or objection on the section addressing prevailing wage. We support the existing state of the law, requesting we seek out an administrative remedy to these matters before we start clogging the courts with these cases. These administrative remedies are built into the statute for a purpose. They are the most efficient way of handling and disposing of disputes relating to many issues in the law, including those in NRS 608 which cover pay, uniforms, lunch breaks and the like. I was an adjudicator of many grievances with labor unions during my 25 years as a casino executive. Clearly, we understand there are many cases with merit; however, there are many cases without. The Labor Commissioner must sort through and decide which cases do have merit. It is best for most employees to seek an administrative remedy up to and including the Labor Commissioner's right to charge a person with a misdemeanor. A lot of appropriate authority is given to the Commissioner. If there is confusion over the effects of the Supreme Court issue, I am sure we can find ways to resolve it. It works in everyone's best interest that the employer and employee, who may have a claim, to understand the law and their rights. If this is a muddy picture, this is not good for either party. Lawsuits should be the exception, not the rule. Section 1, with language not requiring administrative procedures to be exhausted but only notify the Labor Commissioner, is an invitation to additional litigation for most matters, which can be easily resolved with presented facts. The Labor Commissioner is the correct person. If there is not sufficient staff, I will be the first person to address the Senate Committee on Finance or the Assembly Committee on Ways and Means to fund appropriate staffing and

argue that administrative remedies save employers and employees a lot of money.

SENATOR CARE:
I am getting further confused. I thought testimony on NRS 608 stated a private right to action, but the Supreme Court decision has muddied the waters. You seem to be saying that one must go through administrative remedies offered under NRS 607 or NRS 608, and whatever the Labor Commissioner decides will stand, but I have heard testimony saying there is an existing private right of action. In some instances, case law under NRS 608 provides private right to action. Not just the employee but, in some cases, even a union can be a party that brings the action.

MR. OSTROVSKY:
The Labor Commissioner makes the decision to process the claim. If he does not, he tells the claimant, "Go hire an attorney and take the person to court." Where it gets muddy is if a person decides not to go to the Labor Commissioner, does not file a complaint of any kind and then goes to court under the provisions. As proposed, they would only have to notify the Commissioner with a copy of the complaint. This is in not in our best interest. If we want to codify the existing law—and I am not clear as to the private right of action—then we ought to clarify that. We are seeking clear water. The system has worked well for 20 to 30 years under the statutes in place. This is the first time we have faced this issue based on the new Supreme Court decision.

PAUL J. ENOS (CEO, Nevada Motor Transport Association):
I am here in opposition of S.B. 189 as written. I concur with the comments of Mr. Ostrovsky. We are bumping up against the issue of uniforms. We do not want to have to go to court or have that potential for a private right of action on the issue of uniforms. We prefer to go to the Labor Commissioner. We do take umbrance with that.

VERONICA METER (Las Vegas Chamber of Commerce):
We are in opposition of this bill. The system is working. The Labor Commissioner is doing a good job handling the wage and hour complaints that are presented. We are concerned this bill invites a way of litigation when situations can already be handled as is without turning every disagreement into costly litigation and clogging the courts. The Labor Commissioner has direct

understanding of these issues and is best equipped and experienced to handle them.

CLARA ANDRIOLA (President, Sierra Nevada Chapter, Associated Builders and Contractors, Inc.):
We are opposed to this bill as written. The best course of action is to look at the pending Attorney General's decision. There already is a private right of action in NRS 608. In addition, NRS 338 is a cause of concern with the processes in place. Essentially, a third party could create a bias, and we do not want that on any issue. The Labor Commissioner's Office should continue to provide the enforcement as the law is written, and we ask for it not to be changed.

BUZZ HARRIS (Nevada Chapter, Associated General Contractors):
We also are opposed to S.B. 189. We are opposed to both the amendment and the original bill. The administrative process should be the first course of action; administrative remedies can be taken care of most effectively on this level, instead of clogging up the courts and adding costs and burdens upon our court system.

LEA TAUCHEN (Retail Association of Nevada):
I echo previous comments and state our opposition for S.B. 189.

RENNY ASHLEMAN (State Public Works Board):
I am not in opposition of this bill. In section 4, when talking about the actions of NRS 338, we process complaints about payment on the SPWB level. We work with contractors, make decisions and sometimes refer them to the Labor Commissioner for decision. People ought to opt whether they sue the employer outside the system or get inside the system so we are not withholding funds and investigating matters that also go through the court system with possible contradictory results. Certainly, at a minimum, if they notify the Labor Commissioner, they should notify us as well as to what is happening on our jobs and the problems. We are not in opposition to this bill, but we want clarification on those issues.

CHAIR LEE:
Let us try and make this bill better. The hearing on S.B. 189 is closed, and we will open the hearing on SB. 191 brought forth by Peter Krueger.

SENATE BILL 191: Adopts the Uniform Mechanical Code and the National Electrical Code for use in this State. (BDR 28-1141)

PETER D. KRUEGER (Subcontractors Legislative Coalition):
We feel it is important to codify an additional mechanical code as is the Uniform Plumbing Code and the Uniform Electrical Code.

RICHARD PEEL (Subcontractors Legislative Coalition):
Our group is made up of union and nonunion companies as well as labor groups. We represent practically every subcontractor trade organization in the Las Vegas area as well as the Sheet Metal Workers' Union Local 88, Plumbers and Pipefitters, Local 525, and the Southern Nevada Building and Construction Trades Council. All are in support of S.B. 191. I will talk about why S.B. 191 is needed. First, the National Electrical Code (NEC) is a 112-year-old electrical code developed by the National Fire Protection Association that governs and provides uniform standards for installation and inspection of electrical systems. The NEC is the de facto standard adopted in most jurisdictions as applicable to electrical requirements throughout the United States. It also is mandated by Nevada law in NRS 278.583. The Uniform Mechanical Code (UMC) is a 42-year-old code developed by the International Association of Plumbing and Mechanical Officials (IAPMO) to govern the installation and use of mechanical, meaning heating, ventilating, and air conditioning (HVAC), combustion, exhaust and refrigeration systems. The UMC is generally recognized as the code and standards to be used in this State for mechanical systems. Both the NEC and UMC promote the public's health, safety and welfare as well as industry efficiency by ensuring that: the characteristics and performance of electrical and mechanical products and services are consistent; people use the same definitions and terms; electrical and mechanical products and services are tested in the same way; and the codes are updated and published every three years, allowing latitude for innovation and new technologies.

The problem is no uniformity or consistency in this State as it pertains to mechanical or electrical regulations. Many jurisdictions will adopt modifications to the NEC or modify the UMC significantly. Senate Bill 191 is intended to foster uniformity and consistency. It is our hope and goal to have a process or procedure where one voice, the SPWB, would oversee and determine what updates, as they pertain to each of these codes, would be adopted in this State and to approve regulations or ordinances as they come about by local governments. Senate Bill 191 will foster this uniformity and consistency by

requiring the construction of buildings or other structures in this State to be in compliance with the most recent updates of the NEC and UMC as may be adopted by the SPWB. I am referring our amendment (Exhibit L), pages 2 and 3, section 3, subsection 1. These codes will also require a single body in this State, meaning the SPWB, to approve the most recent updates of these codes as published by sponsors of the NEC and UMC. They will also require the SPWB to review and approve modifications to the NEC and UMC requested by cities or counties in the State. They will prohibit the adoption of a regulation or ordinance that does not meet the minimum standard as set forth by the NEC or UMC that has been adopted in the State.

The amendment is intended to address concerns certain groups posed in respect to the original draft of S.B. 191 by broadening the circumstances under which the State or local governments may propose amendments to the NEC or UMC, clarifying the NEC and UMC are published not adopted and making certain that modifications proposed by the State or local governments to the NEC or UMC that reduce the standards established in such codes would be unenforceable. We would have minimum standards that would be applicable.

Here is the problem. We have trades—plumbing, mechanical and electrical—that work in this State. As they travel from jurisdiction to jurisdiction, they are dependent upon what code or variation of a code is used without consistency and uniformity. This requires expensive training as workers need to get trained in all variations. It also leads to the possibilities of health, safety or welfare issues to the public. Workers are often not properly trained or do not know code variations. We want to ensure we have one voice, one body, to oversee, examine and make certain codes, as they come out, are either adopted or rejected as the case may be. Ultimately, we want this body to also approve modifications proposed by local governments to those particular codes.

CHAIR LEE:
We have laws we all understand as contractors, but regulations change within county to county and city to city. You are trying to bring these regulations into one set of statutes everyone would know.

MR. PEEL:
Correct.

SENATOR RAGGIO:
The bill originally allowed local governments to propose a modification of the code, if reasonably necessary and due to geographic, topographic or climatic conditions. Your amendment strikes those bases for modification. It uses differing conditions?

MR. PEEL:
Yes.
SENATOR RAGGIO:
Is this the only guideline, or are there specific guidelines remaining in your proposed amendment? I have not had the time to track it against the bill.

MR. PEEL:
Our intention in drafting S.B. 191 was to mirror the language set forth in NRS 444 where the Uniform Plumbing Code is codified. After S.B. 191 came out, it became apparent there was concern local government modifications go beyond geographic, topographic or climatic limitations. We inserted the word "differing" in place of those three words to give the SPWB more discretion so it can approve modifications proposed by local governments. On page 3, Exhibit L, subsection 5 has newly added language to section 5 that would put a limitation on the modification. Modifications could not reduce the minimum standards set forth by the NEC or UMC that have been adopted by the SPWB for this State. You can modify, but one cannot go beyond the minimum standards.

RICHARD LISLE (Mechanical Contractors Association, Inc.):
We have been interested in this legislation for two pieces. The three codes represent the plumbing, mechanical and electrical industry. We are trying to get a level playing field where we can bid work the same on every job. Local entities cannot create conditions where one cannot know what one bids upon. The biggest question is, why would we want to be regulated by the government? We see the solar industry coming at us. It would be prudent to codify the mechanical code along with the codified plumbing and mechanical codes. The code regulates the heating of water to any temperature and pressure. We do not know what kind of ingenuity will come out during this situation of promoting solar. We are interested in getting all three documents on the same level playing field.

SENATOR CARE:
If we provide uniformity on all the codes, would this in any way implicate an issue of liability that might be against a subcontractor? I am addressing the performance on the job itself. The subcontractor says, "Hold on. I complied with the code. I am not liable."

MR. PEEL:
I do not see this changing anything to that extent. Instead, I see this as giving us a governing body to oversee what codes and modifications would be used in the State. Let us use the NEC. It is mandated for use by way of NRS 278.583. Local governments are allowed to make modifications to it, but these modifications must be above the minimum standard set by the NEC. I do not see having the SPWB in the process to ensure consistency would abrogate or eliminate liability on the part of the trades; this is not our intent.

SENATOR MCGINNESS:
Does the SPWB look at codes now?

MR. PEEL:
Yes, they do on the Uniform Plumbing Code. The SPWB does require any ordinances or regulation modifications be submitted under NRS 444. They also oversee consistency without a codification of the NEC and UMC under their jurisdiction.

GREG ESPOSITO (Plumbers, Pipefitters and HVACR Technicians, Local 525):
We are here to support S.B. 191 as amended to maintain the integrity and quality of our craft which is mechanical piping.

SHERRY VYVYAN (Southern Nevada Air Conditioning Refrigeration Service Contractors Association):
I am also a member of the Coalition. I am a contractor myself. I have been an owner of a contracting company, HVAC Mechanical Company, since 1992. I have also been in the industry from a young age in Colorado. The uniform codes would help in many ways. One, we order equipment out of state. All refrigeration equipment for walk-in coolers is standardized and uses most of the uniform mechanical codes we suggest our State to adopt at the minimum standard. By adopting the minimum standards across the State, we will prevent a lot of costs and endangerment in the public because when equipment is not compatible, they have to modify units at the factory and special order. This runs

up the costs excessively. Under the minimum standard, we can uniform our ordering of equipment from out of state because most of our units are from back East. There is not a manufacturer that produces air-conditioning and refrigeration equipment in the Midwest, Southwest, at all. Oftentimes, the standards we have are set for the East Coast.

With everything we do in the State, we always wanted excellence and to excel in our building. Since the MGM fire in Las Vegas, we have increased our mechanical and fire safety codes because people who come to Nevada and stay in a hotel want to be safe. We have provided this safety. As contractors, we want to make Nevada a safer place. The codes will make this occur. We have the plumbing industry, the electrical industry and the HVAC industry. In the HVAC industry, we deal with electrical and plumbing. Line sets which run refrigeration gases to our units, the gas lines for heat pumps and gas units will become uniform, thus, simpler and safer to install.

To change and modify codes to higher standards for certain buildings will benefit us as contractors and as a State. Uniform codes ensure proper electrical loads on equipment. This is energy-saving. The Public Utilities Commission of Nevada, Southwest Gas and NV Energy are also members of the Southern Nevada Air Conditioning Refrigeration Service Contractors Association (SNARSCA). There are far-reaching implications if we do not have a uniform standard. Training my service technicians to recognize the different codes in Nevada's counties is expensive. If they are substandard, they often will not recognize it, as we have electricians running this, plumbers doing that and things we connect and disconnect. By having everything uniform, it will ensure the job is properly done in all of Nevada. When contractors travel and do work in other areas of Nevada, they will know how to do their job properly and not need to learn a new set of codes and instructions. This will lessen mistakes and increase safety. We want uniform construction in this State.

JEFFERY L. WESTOVER (National Electrical Contractors Association):
I am a 40-year resident of the State of Nevada with 32 years as an electrician. The National Electrical Contractors Association (NECA) is also a member of the Subcontractors Legislative Coalition (SLC). We have approximately 40 members who employ about 4,000 electricians. We favor S.B. 191 and the amendment as it would give consistency and uniformity to the governing bodies in the industry; therefore, I am asking the Committee to pass S.B. 191 and the amendment.

SHERRY HERNANDEZ (Administrator, Subcontractors Legislative Coalition):
The Subcontractors Legislative Coalition is comprised of a number of union and nonunion trade associations and labor groups within the southern and northern Nevada area. We represent the Mechanical Contractors Association, Sheet Metal and Air Conditioning Contractors National Association (SMACNA) of Southern Nevada, NECA of Southern Nevada, Plumbing-Heating-Cooling Contractors (PHCC) of Nevada, Nevada Underground Contractors Association, Southern Nevada Fire Protection Association, Southern Nevada Subcontractors Bid Depository, Glass and Glaziers Association of Nevada, Western Wall and Ceiling Contractors Association, Sheet Metal Workers' Union Local 88, International Brotherhood of Electrical Workers' Local 357, Plumbers and Pipefitters Local 525, and Southern Nevada Building and Construction Trades Council (Exhibit M).

The Uniform Mechanical Code was developed 42 years ago by the building code officials. It compliments and parallels the Uniform Plumbing Code which Nevada codified in 1971. It is vital that we maintain a family of codes that is both uniform and consistent in protecting the public's health, safety and welfare as well as our industry's efficiency.

I urge you to support adoption of S.B. 191 with the proposed amendments.

BRIAN C. KERZETSKI (Vice President, Universal Plumbing and Heating Company; Plumbing-Heating-Cooling Contractors of Nevada):
Tradesmen in this State have been trained using these codes for many decades. Providing uniformity and consistency of these codes throughout the States will help to ensure those who live here and visit this State will have confidence that projects are built to those high standards promoted by both our State and country.

BUZZ HARRIS (Nevada Association of Mechanical Contractors):
We are here in support of S.B. 191. In addition to presented testimony, the uniform codes are much easier to work with than having our trained people trying to figure out the variety of codes.

ARTHUR WHITE (Aqua Plumbing; Roadrunner Plumbing):
I favor S.B. 191 and the amendment. We need to keep codes uniform. It is practical to keep codes simple. We have to train our people, economically and ergonomically. From an economical standpoint, if we continue to have different

codes throughout the State, inspectors and workers must be retrained when they move to different counties in Nevada. Geographically, we have obstacles to hurdle, but this is the purpose of amendments. It is important we support this bill and amendment.

DAVE BOLD (Done Right Plumbing):
I am the past president of PHCC. We support this bill.

TYE HALVERSON (Southwest Air Conditioning; Sheet Metal and Air Conditioning Contractors National Association of Southern Nevada, Inc.):
Southwest Air Conditioning has had a license in Nevada since 1966. The SMACNA has been well associated with our public works and inspectors in southern Nevada. We have been involved with conformity since 1978. There was no uniformity in southern Nevada. We started the Uniform Codes Council with all the jurisdictions. At that time, we began working towards conformity. We have conformity in southern Nevada districts and associations with all the cities. We have a problem. My father and I have been called out by the SPWB, which is required to use another set of codes, to inspect properties outside of southern Nevada and Clark County at a different standard. We, therefore, must memorize those standards as well as advise the State Contractors' Board. The State Contractors' Board has mentioned to us several times they would like to have uniformity in the State so when they inspect or enforce regulations, these codes are uniform with southern Nevada and the rest of the industry.

BLAKE BALLARD (Sahara Air Conditioning and Heating, Inc.; President, Southern Nevada Air Conditioning Refrigeration Service Contractors Association):
I am the general manager and part owner of Sahara Air Conditioning and Heating. I have been a contractor for 29 years. I am also the president of SNARSCA in southern Nevada. We are very much in support of this bill. It will promote uniformity across the State. Lack of uniformity and consistency has historically been a thorn in the side of the contractors. It has caused us to incur greater costs and promote a higher potential for error. Uniformity and adopting this bill will allow us to be more competitive, ultimately bring more business to Nevada and provide a better and safer product to the consumer.

JOHN SEYMOUR (International Brotherhood of Electrical Workers, Local 401):
I am the business representative for the electricians' union in northern Nevada. I am also president of the Nevada State Electrical Workers Association. We support S.B. 191. Uniformity of these codes is important.

RANDY CANALE (Plumbers and Pipefitters of Northern Nevada, Local 350):
For the record, we are in support of S.B. 191.

CHAIR LEE:
I am disclosing that I am a plumbing contractor in Nevada. This bill will not affect me differently than anybody else.

GUS NUNEZ, P.E. (Manager, State Public Works Board):
We are in opposition of this bill. We concur with the goal of consistency, but this bill will not provide for this. It appears each governmental agency within the State can come to the SPWB and try to address local conditions for modifications. We feel the regulation process for code adoption, which provides for public hearings and workshops to gain input from the general public and industry representatives from the contracting end and design professionals, is the proper process to follow. This bill does not identify the process for this particular code adoption. It only provides 30 days for code review or the codes automatically become approved. This is from the day codes are published. This would not allow for the proper process of these codes. There would not be significant time to receive input and hold workshops and public hearings by SWPB to adopt these codes. There is also not time to take codes and coordinate them with the rest of the codes. All the codes should be adopted at the same time so they can be properly coordinated.

Our biggest issue, not a part of this bill, is that the Uniform Mechanical Code and the Uniform Plumbing Code, published by IAPMO, are not properly coordinated with the International Codes Council (ICC). It would be helpful if IAPMO and ICC were to get together and coordinate these codes to provide more consistency.

Section 5 of the proposed amendment is not clear as to who would enforce the provisions. The code presently provides an appeal process for any decision that a building official having jurisdiction can make. It appears the provisions of this section may be in conflict.

This bill will create other issues with the SPWB in regard to code coordination as we adopt these codes once every biennium. We should adopt all codes at the same time. Thirty days is not enough time. We need time to buy the books, train our people and enforce the codes. Working on generating consistency in

the codes and properly coordinating them throughout the State is certainly a good goal. This bill, however, is not the solution.

CHAIR LEE:
What if we use the population thresholds, counties over 400,000? Most of these people are in Clark County. The problem is North Las Vegas, the City of Las Vegas, Boulder City and Henderson all have different regulations. What can we do in Clark County to address this problem?

MR. NUNEZ:
I can only speak for the SPWB, and the comments I gave are in regard to our process at the SPWB. It may be best for the building officials in southern Nevada to address your question.

This bill and amendment do not achieve the objectives. They allow every single jurisdiction to come to us with differing conditions and with modifications after we adopt the main codes. You can still have a lack of uniformity because you would have, in fact, different conditions and presentations by these people. It gives the SPWB little time to do a great deal of additional work. The bill does not guarantee further uniformity nor do we have special expertise that exceeds Clark County building officials or those in Henderson or in Las Vegas. There is a problem, and something needs to be done. I echo that it is best to put it back in the hands of the local officials. I do not see how getting the SPWB embroiled is of assistance.

DON C. JEPPSON (Director, Department of Building and Safety, Washoe County):
I am also a licensed architect and a fourth-generation Nevadan. This bill does not meet the intent of safety or uniformity the industry thinks it will. The NEC is adopted statewide, and the UMC is also adopted by the individual jurisdictions statewide. The differences arise with the amendments. We had this problem in Washoe County. I and other building officials of about seven jurisdictions met this past code cycle. We engaged members of the industry, including architects, engineers and trade professionals, to address uniformity in our amendments to our code. It does not make sense because someone builds across the street, suddenly, we have an amendment. Together, we adopted the Northern Nevada Code Amendments. The Amendments cover changes we are concerned about with conflict of items within the code and the conflict of items with this code and other code and ordinances.

I am concerned that if the Stare adopts this bill and gives a time certain, it would not give us the flexibility to postpone adoption. We need time to do training, update handouts and do public outreach to get community input on the process. This takes about one year from the time codes are published to adoption. Other jurisdictions or contractors might find a financial burden when a change in the code costs additional monies for implementation. This can concern a code that is not a life-safety issue or one that is newly adopted. It costs a lot of money to do internal staff training and to buy the books and programs. At times, a jurisdiction will choose to skip a code cycle to save money or because of public outcry. For example, the International Building Code is requiring sprinklers in all single-family homes. This is a burden for people in rural Nevada who might not even have an adequate water supply; yet, the national code is mandating it. Amendments provide relief. We are also thinking globally. In northern Nevada, we are working with other building officials to streamline the process for contractors and developers.

SENATOR CARE:
Do these national uniform codes make allowances for geographical variations?

MR. JEPPSON:
The codes allow discretion with the building officials and the local organizations that adopt those to make changes. The code is also a minimum standard. Many people think these codes are a gold standard, but it is a minimum standard. In my jurisdiction, I have high elevations in Incline Village with snow loads and wind loads. I deal with the Tahoe Regional Planning Agency and four different fire districts that view the same fire code differently, so the code does allow for flexibility. I am disturbed by the language in the code addressing remodels and additions. The code already allows us a guideline on when to use a code for remodels, additions and alterations to existing structures.

RONALD LYNN (Nevada Organization of Building Officials):
I am also Director of Development Services with Clark County, a building official and the national vice president of the ICC which publishes codes.

The question right now is why? Why in a time of deep recession—indeed, the residential construction industry is in depression and the development community in distress—are we adding another layer of bureaucracy and expense? Why are we putting another burden on the State to use their scarce resources to review additional documents and to conduct comparative analysis

for no material benefits? Why are we adding additional delays to the construction and code enforcement processes by going through said review again for no apparent value? Why are we stifling innovation and technology, which can produce better structures more cost effectively? As this proposal requires State oversight, not only when looking at the code and getting a response back within 30 days, I can tell you—having done this for over 20 years in Clark County—in no time have I been able to get a response back in 30 days, ever! When talking about innovation, there are provisions for alternate methods, means and processes. These, too, would have to be reviewed by the State. They represent deviations from the prescriptive requirements of the code. Does the State have the necessary engineering and scientific capability to review testing results and engineering analysis and provide oversight of an organization's analysis for these alternates? Can it be done in a timely manner? Remember, time is money, and each day delay on a multibillion-dollar construction project can add considerable expense. Further, does this create an automatic discrepancy among the State, which is adopting a document, the local jurisdiction, which can do amendments, and the design professionals, who are also using other model documents and standards in their integration as referred to in the model codes. Would this require third-party arbitration to resolve in the event of a difference of opinion (Exhibit N, page 1)?

I want to bring forth two other points. For clarification, we adopt the same codes in southern Nevada. We adopt all the same amendments and have done so for over a decade, with the exception of one community that is now onboard. I am including Clark County and Pahrump. The NEC is functioned as the single electrical code adopted throughout the vast majority of the United States.

I am unaware of any jurisdiction in Nevada which adopts a code that does not use the NEC. The UMC is adopted virtually throughout Nevada as well. When addressing model codes and uniformity, the NEC is adopted in only three or four states. The International Mechanical Code (IMC) correlated with the International Building Code, the International Residential Code, the International Energy Conservation Code, the International Existing Building Code and the International Urban-Wildland Interface Code. These are all codes adopted by multiple jurisdictions. The IMC is adopted in 39 states and major jurisdictions in 8 other states. Indeed, even in New Mexico, where the UMC is adopted, the City of Las Cruces is using the IMC. I am not here to debate the value of the UMC. It is an excellent document, and we adopted the document in Clark

County. It may be appropriate to use something more neutral that will allow for flexibility as growth comes in the future. I have been active in trying to get the International Association of Plumbing and Mechanical Officials and the ICC to coordinate codes.

My second point is communication. At no point has anyone come forth to the Nevada Organization of Building Officials, which has membership from all jurisdictions in the State, or met with the jurisdictions in Nevada to talk about this bill and its possible consequences. If the intent of this bill is to achieve any level of uniformity, it cannot be effectively implemented by imperial mandate. It must be done through collaborative communication. I certainly have no objection to the State adopting those codes they feel are appropriate for their own buildings. However, to force it upon all jurisdictions without any communication appears contrary to the principles long held in the State of Nevada and demonstrated over and over by this Committee, Exhibit N, page 2.

CHAIR LEE:
A lot of things in Clark County are ambiguous, and contractors cannot keep up. Inspections are not uniform. We need to clean it up. Clark County needs to get onboard to make changes. We have a problem, and it needs to be fixed.

MR. LYNN:
I concur, there are differences between jurisdictions. This bill does not address this issue. Nothing in the UMC identifies procedural discrepancies. I agree, we need to work these out. I cannot dictate what other jurisdictions do, and this bill does not do it either. I have 139 inspectors, and I have uniformity problems. I am constantly doing classes every week. This, however, is not addressed in the bill. There may be another mechanism, but this bill does not do it.

CHAIR LEE:
I agree. This issue needs to be resolved.

WES HENDERSON (Government Affairs Coordinator, Nevada Association of Counties):
We are opposed to S.B. 191. We understand the desire and support the need for standardization and uniformity, where appropriate. There are instances where local flexibility is needed. The authority of elected governing bodies should not be transferred to an appointed State board. Elected officials should be able to set codes in their jurisdictions.

Regarding the plumbing code, under NRS 444.430, local jurisdictions do have to submit their proposed variations to the SPWB. The SPWB has 60 days to make a recommendation. The local governing bodies, however, can adopt the regulations with or without the recommendations of the SPWB.

BJORN SELINDER (Churchill County; Eureka County; Elko County):
In front of you is a statement from Elko County (Exhibit O). There are a number of concerns. Both Eureka and Churchill Counties concur with the statements. The biggest issue is the concern over the loss of self-governance. This has been addressed today. The existing statute does allow the right for local governments to adopt codes on the basis of whether those codes are suitable for their community. Of course, this is removed by S.B. 191. There seems to be a failure regarding the percentage of improvements to be made to any existing building where the codes would apply. Concerns are posed about ongoing financial hardships in these economically depressed times, and a concern is expressed by Elko County, which is afraid codes would chase away potential development, primarily in the areas of commercial development. There is also the matter of unfunded mandates to the costs of gearing up for new codes, training and so forth. A number of communities in this State neither have a staff nor a way to enforce existing building codes.

There is also concern that this proposal would take away the flexibility to adopt all or parts of the code. Perhaps we could support Chair Lee's mention of placing Clark County in a separate category. At this time, we urge a no vote on S.B. 191.

CHAIR LEE:
There is no further business. This meeting of the Committee on Senate Government affairs is adjourned at 3:59 p.m.

RESPECTFULLY SUBMITTED:

_____
Cynthia Ross,
Committee Secretary

APPROVED BY:

_____
Senator John J. Lee, Chair

DATE:_____