

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

**Seventy-Seventh Session
February 25, 2013**

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 1:33 p.m. on Monday, February 25, 2013, in Room 4100 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 nelis.leg.state.nv.us/77th2013. 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:

Assemblyman David P. Bobzien, Chairman
Assemblywoman Marilyn K. Kirkpatrick, Vice Chairwoman
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblywoman Olivia Diaz
Assemblyman John Ellison
Assemblyman Jason Frierson
Assemblyman Tom Grady
Assemblyman Ira Hansen
Assemblyman Crescent Hardy
Assemblyman William C. Horne
Assemblyman Pete Livermore
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

Assemblyman James W. Healey (excused)

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Matt Mundy, Committee Counsel
Leslie Danihel, Committee Manager
Katie Wilson, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Donald E. Jayne, Administrator, Division of Industrial Relations,
Department of Business and Industry
Stephen Coffield, Principal and Chief Administrative Officer, Nevada
Occupational Safety and Health Administration
Danny L. Thompson, Executive Secretary-Treasurer, Nevada State
AFL-CIO
Todd Koch, Regional Director, International Union of Painters and Allied
Trades, District Council 16
Paul McKenzie, Executive Secretary-Treasurer, Building and Construction
Trades Council of Northern Nevada, AFL-CIO
John H. Seymour, Assistant Business Manager and Organizer,
International Brotherhood of Electrical Workers, Local No. 401
Daniel J. Costella, Business Agent, International Association of Bridge,
Structural, Ornamental, and Reinforcing Iron Workers, AFL-CIO,
Local 118
Keith Lee, representing the State Contractors' Board
Craig Madole, Senior Associate, Associated General Contractors of
America, Nevada Chapter
Chris Ferrari, representing Associated General Contractors of America,
Las Vegas Chapter
Ronald P. Dreher, Government Affairs Director, Peace Officers Research
Association of Nevada
Leslie Bell, Workers' Compensation Representative, Washoe County
Sheriff Deputies Association
Paul Villa, Secretary, Peace Officers Research Association of Nevada
Patrick T. Sanderson, representing Laborers' International Union
Local 872
Raymond McAllister, President, Professional Firefighters of Nevada
George A. Ross, representing Nevada Self-Insurers Association

Chairman Bobzien:

[Meeting was called to order. Roll was called.] This afternoon we will be hearing a presentation on the Nevada Occupational Safety and Health Administration (OSHA) program.

Donald E. Jayne, Administrator, Division of Industrial Relations, Department of Business and Industry:

One of the divisions within the Division of Industrial Relations (DIR) is Nevada OSHA. Today we will do a presentation to give a historical perspective on OSHA and how we became a state plan in Nevada ([Exhibit C](#)).

Nevada OSHA was formed in 1970 when the Occupational Safety and Health (OSH) Act, formally known as the Williams-Steiger Act, was passed by Congress with bipartisan participation and signed by President Richard Nixon. The OSH Act applies to all employers and their employees throughout all 50 states, the District of Columbia, and a number of U.S. territories. Under the OSH Act, each state may have its own state plan, safety and health enforcement, and consultation sections. Nevada opted to become a state plan and began the approval process in 1974. On April 18, 2000, the final approval was granted for Nevada to become one of the 28 states with state plans.

The Nevada state plan is a part of the Department of Business and Industry, within DIR. Nevada OSHA is the enforcement section, and there is also the Safety Consultation and Training Section (SCATS). There may be some confusion in recognizing the difference between OSHA and SCATS. Federal OSHA views them as two separate entities. In fact, we do not necessarily have employees in the same building. We try to keep a firewall between OSHA and SCATS. As a matter of practice, SCATS does not know what OSHA is investigating and remains a separate arm. If an enforcement person from OSHA went into an employer's workplace and encountered SCATS there doing consultative work, they would leave. I had a conversation with an Assemblyman who recalled when Nevada was going through the components to becoming a state plan and "old OSHA" did not write many citations. Nevada was, in fact, criticized for not writing citations, and the non-citation writing side of Consultation and Training became what we know today as SCATS.

The SCATS staff abides by the same standards that enforcement does. They are invited to do safety consultations in the workplace. We do not charge for that work. Our SCATS professionals apply the same standards as OSHA enforcement would but in a consultative capacity, helping employers resolve hazards and improve their safety programs. We have an opening conference with the employers, and when SCATS comes into a workplace, the employer

has a commitment to solve the hazards that are found. If there are hazards found that they will not resolve, the claim is sent to OSHA.

Employers with good safety records are recognized upon completion of the Safety Health Achievement and Recognition Program (SHARP). It is an outstanding program and identifies those employers that are doing better than their peers in their particular industry codes and achieving good safety programs and results.

There is also a training section within SCATS. If we look back a couple of sessions to when we developed the OSHA 10 and OSHA 30 requirements here in Nevada, it is the SCATS division that does a lot of the training with those classes. We also have many materials that can be checked out or accessed online, and we offer the Safety and Health Practitioner Program, which lets people work toward certification in the safety arena.

Stephen Coffield, Principal and Chief Administrative Officer, Nevada Occupational Safety and Health Administration:

On page 7 of the presentation ([Exhibit C](#)), we list the types of inspections that are performed on the OSHA enforcement side. The first type, and our No. 1 priority, is imminent danger inspections. Those are situations that are called in which can cause death or serious physical harm from the viewpoint of the person taking the call. We respond to these immediately. As soon as we receive an imminent danger report, we dispatch a person or team as soon as possible. Our number two priority is a fatality or catastrophe inspection. Of course, we know what a fatality is. A catastrophe, in regard to OSHA, is the hospitalization of three or more people as a result of an occupational injury or exposure. The third type of inspection is an employee complaint or a referral from a county inspector or the fire department, for example. These are pretty commonplace.

Fourth is a follow-up inspection, where we go out after we have already been into a workplace and confirm that the violations have been corrected. Fifth are programmed inspections, which are inspections involving employers that have the highest accident rates in the state, as determined by the U.S. Bureau of Labor Statistics. We have a function in our office that is basically funded by the U.S. Bureau of Labor Statistics. They keep those Nevada statistics for both national and state use.

A whistle-blower complaint is our last type of investigation. A whistle-blower complaint may arise if an employer retaliates against an employee performing an OSHA-protected activity, such as filing a complaint, requesting an OSHA inspection, or being interviewed during an inspection. Employees frequently

find they are on the receiving end of adverse action of some type—being put on a different shift, moved into a different classification, or even terminated.

Employers are required by the OSH Act to provide a place of employment free from recognized hazards that could cause death or serious physical harm, and to do everything reasonably necessary to protect the lives, safety, and health of employees, as noted in *Nevada Revised Statutes* (NRS) 618.375. They are also required to comply with OSHA standards, according to NRS 618.385, and to train employees on safe work practices as in NRS 618.383.

Employers are afforded rights as well. When we perform an inspection, an employer is entitled to an opening conference. During the meeting we give them details about what type of inspection we are there for and discuss the walk-around. The employers also are more than welcome to accompany the inspector. The last thing we want to do, as compliance officers, is to walk through by ourselves; we prefer to have employee representatives go with us. Employers are able to ask any questions that they may have during the process. If they see us focusing on a particular area, they are welcome to ask what has caught our attention. When the inspection is completed, we will sit down with the employer and have a closing conference. If we have found violations—frequently we do not—we would discuss the proposed violations and penalties that we intend to go forward with. I emphasize the word "proposed" because the employers still have their due process to go through.

Employers have the right to come into an informal meeting with our local district manager, or they may appeal directly to the Nevada OSHA Review Board. If they have an informal conference initially, that does not preclude them from going to the Nevada OSHA Review Board. In the event that the employer is not satisfied with going to the Nevada OSHA Review Board, the next appellate level is District Court, and ultimately it could go higher. We have been to the Nevada Supreme Court on about a half dozen cases.

Employees have a responsibility to work safely. After they have received proper training, they are required to follow the OSHA standards and all other relevant safety and health advice their employer provides to them. This information will depend on what their occupation is. They must also properly maintain their protective equipment and report hazards or unsafe conditions to their supervisors. This is a key element of the OSHA process. Employees are entitled to call us directly, but things go better if they work within their company and report it to their boss.

Employees have certain rights, and these rights are what can get them into trouble as far as the whistle-blower program is concerned. They have a right to

safe working conditions. If they go to their boss and tell them they have an unsafe condition, and that angers their boss, you can see where a conflict can occur. Employees have the right to file a confidential complaint to OSHA, to receive appropriate safety and health training from their employer, and to participate in OSHA inspections. They also have the right to file a whistle-blower complaint if they feel they have been retaliated against by their employer for requesting an inspection or exercising any of the other rights discussed.

We have six types of violations that we issue citations for as shown on page 13 ([Exhibit C](#)). "Serious" violations could result in death or serious physical harm. "Repeat" violations are when we go into a company and they have been cited for the same issue within the past five years. "Willful" violations do not talk to the severity of the violation but to the state of mind of the employer and whether they are exercising willful disregard for the standards and for their employees' safety. "Other than serious" is a technical violation but does not really present a hazard. "Failure to abate" is when we have cited someone, and we have given them a certain amount of time to abate the hazard, and they have not abated it or asked for an extension. A "failure to abate" citation is basically a \$30,000 penalty. Finally there is an "egregious" violation, which is a willful citation that results in the death of an employee and where the employer demonstrates extreme bad faith. We have not had this type of citation here recently, but in federal OSHA a citation like this can result in millions of dollars' worth of penalties.

An adverse action taken against an employee for exercising their rights under the OSH Act falls under the discrimination and whistle-blower law. Filing a complaint about workplace safety conditions, for example, may cause an employer to discriminate against the employees. These complaints do not necessarily need to be filed with OSHA; employees might notify their supervisor and subsequently be discriminated against. Also, talking or pointing out hazards to company officials or enforcement officers in the course of an inspection, or testifying at an OSHA legal proceeding, may lead to discrimination.

Nevada OSHA receives oversight from federal OSHA. We have to be as effective as the federal program or they can take over the state program again. We received full jurisdiction in 2000, but if we do not continue to maintain the federal OSHA standard, they may lower that to concurrent jurisdiction or they may completely take the state plan away. Hawaii is going through a similar problem with federal OSHA, as is Indiana. We also receive a Federal Annual Monitoring and Evaluation (FAME) report. Federal OSHA will come in and look at our case files, our statistics, our serious rate, and other combinations of statistics to assess how well they think we are doing.

Don Jayne and I went through an evaluation by the U.S. Congress last summer. The Government Accountability Office conducted a study at the direction of the House Education and the Workforce Committee, and a report from that evaluation just came out this morning. We have not had a chance to fully digest it, but it would appear that Congress is telling federal OSHA that they are going to have to increase their oversight of the state plans. They are not happy with the current level of oversight.

The final thing federal OSHA will do with us is a special study. You may recall that when the construction boom occurred on the Las Vegas Strip, and we had many large projects; there were a number of fatalities. The media got involved and because of that, we had the pleasure of spending the summer of 2009 going through a pretty in-depth audit that resulted in the Nevada Legislature forming a subcommittee to oversee how we were recovering from that situation.

There were 57 findings identified in the 2009 special study. Of those 57 findings, all but one have been resolved. The only unresolved issue is the pay of our safety and health compliance officers, consultants, and trainers and of our mechanical inspectors. Federal OSHA saw that it was a problem in the sense that we had tremendous turnover, and we continue to have tremendous turnover.

Don Jayne:

The last two pages ([Exhibit C](#)) discuss the legislative involvement here in Nevada. As Mr. Coffield alluded to, a special subcommittee was created to observe and monitor how we were doing on the 2009 special study. It was a three-member panel. One of your Committee members, Assemblywoman Carlton, chaired that Subcommittee. We had a number of meetings and, as is not uncommon in the interim meetings, more than just the special study was discussed. There was a lot of effort to take a look at OSHA and to see what we could do to make some corrections. Several bills were brought forth last session; of the three that passed, two were ultimately vetoed.

Lastly, we wanted to discuss Assembly Bill 12, which we brought to a Committee meeting earlier this session. One of the things that we walked through earlier in the presentation was the whistle-blower law. This is the section of the law where we would like to strike the language associated with the required written notice to the employer. This is unique to the whistle-blower provisions of the OSHA law.

Assemblywoman Diaz:

I want more insight as to the most common types of inspections that are conducted by OSHA in our state and what the outcomes are of those inspections.

Stephen Coffield:

Employee complaints and referrals are the most common type of inspection. The second most common are the programmed inspections, where we do an inspection of the employers with the highest accident rates in the state. Fatalities and catastrophes would be the third. On the violations that pose imminent danger, we have gotten out fast enough that we have been able to intercede, and none of them have resulted in fatalities.

Assemblywoman Diaz:

What is the usual resolution that takes place with an employee complaint or referral? What is the usual outcome after the visits?

Stephen Coffield:

If the employers are violating one of the OSHA standards and there is employee exposure to the standard that is being violated, they will be cited depending on what the possible outcome is. It is not uncommon for citations to be issued occasionally. We get repeats and, very infrequently, we get willful citations.

Assemblyman Ellison:

We talked about this last session. There was a bill presented that looked at combining OSHA and the Mine Safety and Health Administration (MSHA). They are almost identical in nature; except for with the MSHA, training includes work underground. Have you looked at combining the training programs?

Don Jayne:

To the best of the knowledge, it really has not been addressed, so I do not have any unique insight into that. From a question standpoint, it probably would be more appropriate to say that SCATS is more similar to MSHA. The MSHA side is safety and training, but they write notice of violations. When it comes to the enforcement action, there is a federal mining counterpart that is based in the west, but it is not our employees that are enforcement for mines. To the best of my knowledge, there has not been a serious investigation into that.

Assemblyman Ellison:

Based on the 40-hour training requirements for MSHA and OSHA, it is basically the same training. It is just that one is held aboveground and one underground. Is there a way that we can take a look at that during the interim? A lot of

contractors that are mine-related are still required to do two separate 40-hour trainings for each employee.

Stephen Coffield:

We could work with MSHA and SCATS to see if we could put on some classes for the construction workers that would cover the mining portion and any ancillary OSHA training that would be helpful to the employers. We have not done that, but there is no reason we would not be able to do it.

Assemblyman Hardy:

What percentage of the complaints and referrals are substantiated, as opposed to frivolous complaints?

Stephen Coffield:

I do not have those exact statistics with me, but we do find that a lot of the complaints are not valid.

Assemblyman Hardy:

Is there anything in statute that protects the employer from these individuals continually filing frivolous complaints?

Stephen Coffield:

Yes, sir. I will not be able to cite NRS exactly, but there is a section in NRS Chapter 618 that says if the district manager believes that there is harassment occurring on the part of the complainant, we can consider it a nuisance and not take further action.

Assemblyman Hardy:

Mr. Jayne, I think we are both aware of one case that is not necessarily in the construction site that we have dealt with. Is there a reason you have not taken action against that individual as we continue to receive complaints?

Don Jayne:

That particular situation at this moment is still open and ongoing. I will have to limit my comments to it. We are looking for an appropriate way to resolve that issue. It is one person, on one work site, with multiple issues and complaints. We are looking at all of our options. The way Mr. Coffield was explaining it, and this would be the front end of that sort of situation, if we have repeated complaints, we look to have an employer protection. We are very aware of the one you are referring to, and hopefully it will come to resolution fairly quickly.

Assemblyman Daly:

Can you explain what you mean when you say a complaint is determined not to be valid? Is that saying that the situation was nonexistent, or just that you were not able to witness the violation?

Stephen Coffield:

Our enforcement inspections are legal processes. We have to prove a number of things before we can issue a citation. If a complaint comes in, it depends on the complexity and specificity of the allegation. We try, very diligently, to get as much information as we can about what exactly is the problem. Sometimes we are successful, and sometimes we are not. We have to have either employee exposure or access to the condition. The condition may have been corrected since the complaint was made. There are a lot of variables that come into play, so it is hard to say that there was malfeasance on the part of the complainant just because we were not able to witness the complaint.

Assemblyman Daly:

Are you allowed to take any other evidence? For example, a photograph or video? Or do your inspectors have to witness it? If there is video evidence that a violation occurred, are you able to use that as evidence? If that is the case, is there a way we can change that so you can get better compliance?

Stephen Coffield:

We are happy to accept photographs or videos from the complainant. We see this more and more because everyone has a smartphone. We cannot testify that that condition existed at that workplace. We have to see those conditions, according to the attorneys. Photographs and video can be helpful, but we have to determine it on our own so that we can testify to a review board or in court.

Assemblywoman Carlton:

When you do an opening conference and walk onto the site, they now know that you are there, and the things that may have been wrong now magically become right.

Stephen Coffield:

Yes.

Assemblywoman Carlton:

That is a part of the bill that was vetoed. Also, the department is totally fee assessment; you are not funded through the General Fund, correct?

Don Jayne:

That is correct.

Assemblywoman Carlton:

I just wanted to make sure people understand that. Also, OSHA is not the only program under DIR, correct?

Don Jayne:

We have the Workers' Compensation Section, which is responsible for that area. In particular, we do compliance audits and conduct trainings. We also have MSHA, SCATS, and OSHA. Finally, we have administrative and legal support. When I present the budget, I will be talking about authorization of 218 employees for DIR.

Chairman Bobzien:

Are there any questions? [There were none.] I would like to welcome our colleague Assemblyman Daly to the table to present Assembly Bill 86.

Assembly Bill 86: Creates a system for verifying that licensed contractors are in compliance with certain provisions of law. (BDR 54-276)

Assemblyman Richard (Skip) Daly, Washoe County Assembly District No. 31:

What we have in front of us today in Assembly Bill 86 is one way to achieve an idea. The idea behind the bill came from an area that I know and have experienced some issues. When the Nevada Legislature passes a bill, a requirement, or a law—having auto insurance on your car, for instance—we then put in a process that requires the Department of Motor Vehicles (DMV) to communicate with the insured that if you do not maintain insurance on your car, the insurance company will notify the DMV, and the DMV will suspend your driver's license until you can prove you are in compliance with your insurance requirements. We applied this same idea to a person's ability to maintain a contractor's license; one must verify that he is paying his workers' compensation and unemployment insurance to stay in good standing with the State Contractors' Board. This bill accomplishes that, although it may not be the best or most economical way. We would like the carrier of the insurance for workers' compensation, or those who are self-insured, to have some mechanism to report to the Contractors' Board whether or not the workers' compensation insurance is in good standing. We are open to figuring out the best way to go about this, but we believe that if you do not maintain your workers' compensation insurance, you should not be able to continue working on your job.

With some contractors, this becomes a cash-flow issue. I do not want anyone to be in a situation where someone has enough money to buy more materials, to continue working on the job, but not enough money to pay my workers' compensation. If no one knows that contractors have not paid their workers'

compensation, they expose their employees to potential injuries on the job. Moreover, they make the rest of the state pay for uninsured workers. This applies to unemployment insurance as well. We owe \$700 million to the federal government and need to collect as much of that as we can.

I have spoken with several of the people who will speak in opposition to the bill as written, but want to work together to find a way to move this bill forward. We will look into existing enforcement mechanisms may be enhanced so we can confirm compliance, which I do not think anyone is against. There are others who will come up in support of the idea, whether or not they are in support of every word in the bill. I think the letter that Mr. Lee produced is very comprehensive and contains some very good points which I agree with, but we would like to have further discussion on the bill, especially concerning the due process.

There is also a worry about how this would affect other contractors. If the Contractors' Board finds a code violation on the job, they can issue a red tag. I am sure they issue that red tag because they have the evidence and it is necessary. Their last consideration is whether or not it will affect other contractors on the job. I know this is a concern, but I do not feel it should be.

Chairman Bobzien:

You have expressed your intent and desire to continue working on this bill; nonetheless, we have a piece of legislation before us, so I am sure we will have a few questions.

Assemblyman Ellison:

Who is going to monitor and implement this? Is it the Workers' Compensation Section, or did you want the Contractors' Board to be responsible for filing?

Assemblyman Daly:

The way it is drafted was not my preferred way to do it, but contractors would have to purchase insurance, similar to purchasing car insurance. You pay for your insurance and you have a policy that is binding. If you are not in good standing on your insurance, we would like the insurance company to notify the State Contractor's Board, which would take action.

Workers' compensation is little tougher. If you are a part of a group insurance policy and you do not pay your premiums, they would notify the State Contractor's Board. If you are self-insured, you have to meet a certain dollar threshold, and there is a bonding process to confirm whether you have the insurance in place. If you are a small company and do not have the wherewithal, you cannot be self-insured.

Unemployment insurance would be done through the Department of Employment, Training and Rehabilitation (DETR) or whoever collects those funds. You will hear from other testimonies that this is a problem. I do not mean to pick on DETR, but I have experienced this myself. We inform DETR that a contractor is not paying, or not current on his unemployment insurance, and they do not care. Or they know the person has not paid, and they put a lien against them but still allow them to work. That is unfair competition for those people who are complying. If they never collect that money, the rest of the state pays in the form of higher premiums. These are the issues that we need to address.

Assemblyman Ellison:

I know that on just about every project we do, the general contractor requests a copy of their insurance policy prior to the start of work. At the end of the project, we still have to show a letter of completion that proves we had this throughout the whole project. Are you looking at small projects, large projects, or all projects?

Assemblyman Daly:

It would be for any employer who is required to have workers' compensation insurance and is also a contractor. If they are not in compliance and do not have a binding policy in place, a notification would go to the Contractors' Board, which would then take action.

Assemblyman Livermore:

What about contractors who perform multiple jobs for a homeowner? How would you know if he has current insurance?

Assemblyman Daly:

There are three different ways to obtain workers' compensation insurance. You can purchase an insurance policy through an insurance company. If they do not get paid, they will not continue to cover you; they will send you a notification that your insurance has lapsed and ask whether you would like to continue to be insured. We would want them also to notify the Contractors' Board. You can also go through group insurance. I know the Associated General Contractors (AGC) have a group policy, where members pool their money and purchase insurance coverage. We would ask that the same notification would occur if someone was to lapse on a group policy. If they do not pay their premium, the group would notify the contractor that they have lapsed and then notify the Contractors' Board. Self-insured employers have to have a certain amount of money in the bank and wherewithal to be self-insured. There are bonding requirements, that should the insurance lapse or they are not meeting their requirements, they would be reported to the Contractors' Board.

You also have to pay your unemployment insurance to DETR. There are a variety of issues with this, but we want to make sure that if you are behind on payments, DETR is reporting to the Contractors' Board as well.

Assemblyman Livermore:

How does a private employer who has hired a contractor for personal work confirm that he is in good standing? Is it his responsibility to make sure that the employee working on his premise is covered by workers' compensation? I do not see this clarification in the bill.

Assemblyman Daly:

Only if there is an employer-employee relationship. For example, if you own XYZ Muffler Shop and you hire someone to repair the door at your establishment, the person you hire is required to be licensed under *Nevada Revised Statutes* (NRS) Chapter 624 as a contractor to perform that work. The muffler shop does not have any responsibility to confirm whether or not they have that license or are insured. It is the responsibility of the contractor to have the insurance. If they do not have current insurance, it is the responsibility of the insurance company to inform the Contractors' Board. The person who hired the contractor does not have any responsibility.

Assemblyman Livermore:

If I hired someone to replace my door and, for some reason unknown to me, the company's insurance had lapsed, I am not responsible. The reason I am concerned is that this would be considered a class D felony. I would hate to see retailers or other businesses guilty of something that they are not even aware of.

Assemblyman Daly:

A class D felony would occur if the Contractors' Board wrongfully disclosed information that they got through a certain process. We need to have one process that we can use, as opposed to 50 different agencies using their own processes. But, no, there is no liability on someone who hires a contractor, basically as a vendor. What we are trying to say is, if the contractor does not have insurance and is not meeting his requirements by law, his ability to work should be at risk.

We put these rules in place to protect the general public. We want the public be confident that they are hiring a licensed contractor, and if they cannot be responsible and be a licensed contractor, then they should not get that work.

Assemblyman Hardy:

For clarification, in section 2, subsection 1, paragraph (b), is that referring to the Contractors' Board or to the employer?

Assemblyman Daly:

That would be referring to the Contractors' Board. To be perfectly frank, this is something that will not likely be retained in the bill.

Assemblyman Hardy:

So the intent is to allow the Contractors' Board to hire whoever they want to investigate this?

Assemblyman Daly:

As I read it, the Contractors' Board is supposed build a process in order to monitor the insurance information. They have to be proactive and reach out to whichever insurance company it is. The way I understand section 2, if they want to hire a third party to do that work, they could. This is not particularly the way we want this.

Assemblyman Hardy:

How many instances have you seen where contractors have not kept their workers' compensation or unemployment insurance up to date?

Assemblyman Daly:

You see this with unemployment insurance more often than not. What I see more than delinquency is fraud, where contractors will work an employee 50 hours in a week and will not pay any overtime. They will show on the paycheck that he worked 40 hours for \$10 an hour, and they would not report however many hours of overtime he needed to work to get the extra pay. They short not only the Internal Revenue Service and Medicare but also workers' compensation and unemployment insurance. This occurs more frequently than contractors not having a policy at all, but there are certainly cases of people letting their insurance lapse or become delinquent.

Assemblyman Hardy:

Would that not be a different type of law that we would need? If they are defrauding the overtime or workers' compensation, would that not be a separate issue?

Assemblyman Daly:

Yes and no. If there is a fraud investigation and you can prove that they have not been acting lawfully, we want the insurance company to notify the Contractors' Board. It is against the law to perform fraudulent acts like this and

the Contractors' Board can take other actions if they are made aware of it. There are contractors who have never had an issue. They are honest and remain in compliance but there are others who are not, and it costs all of us, including the honest contractors. So if you are fraudulent or delinquent in payments, the Contractors' Board should be notified. For example, one contractor was fraudulent, and by the time the insurance company became aware of it, he owed \$150,000. He paid it, but it would never have happened if he had not been caught.

Assemblywoman Carlton:

In this day of technology, I do not see this as a big ask. I think it should be possible to check a contractor online to make sure that he has all the documents that he should have before he shows up to do work on my home. It clearly states in NRS 624.256 that the applicant needs to submit a "proof of industrial insurance" to the Contractors' Board. When you read the bill, it is very clear that you cannot have a contractor's license if you do not have workers' compensation. We have watched contractors without workers' comp leave their employees hanging. We have taken this very seriously, both in 1999 and in 2007. What part of that is not working? Why would the Contractors' Board have a problem with this if it is already in statute?

Assemblyman Daly:

I think that would be more of a question for the Contractors' Board.

Assemblywoman Carlton:

I thought they might have shared that information with you.

Assemblyman Daly:

I do know there are instances of fraud that they may never have been made aware of. It is partly that you have to have the insurance policy when you receive your license, similar to needing an insurance policy when you register your car. You say you will maintain that policy as long as you have the license, but if the insurance does lapse, there is no communication between the insurer and the Contractors' Board. This is what we would like to fix.

Assemblyman Livermore:

To go back to your comment about the payment of overtime, is that not the duty of the Labor Commissioner to monitor? Are you creating a new organization with the Contractors' Board to oversee this?

Assemblyman Daly:

No, it would not be the jurisdiction of the Labor Commissioner to oversee unemployment, workers' compensation, or any fraudulent activity. The Labor

Commissioner would be able to come forward and say he feels that a person was cheated on overtime and needs to be compensated. If he makes the findings that there has been a wage violation, he can notify the Contractors' Board of that. Otherwise, he has no jurisdiction to enforce workers' compensation, unemployment, federal income tax, or any of the other requirements.

Assemblyman Livermore:

I am not quite sure I can separate the two.

Chairman Bobzien:

Are there any other questions for Assemblyman Daly? [There were none.] We will now call the proponents for Assembly Bill 86 to the table.

Danny L. Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:

For a big part of my life, I served on the Advisory Council to DIR. Every year that board is tasked with writing of millions of dollars of fines that are not collectable and money that is owed. Sometimes this money is owed by people who close a business and open a new one in a different name to get around an outstanding fine. It always bothered me when we had to write off the money because I knew that, in many cases, that they were still doing business in the state. When this occurs, every Nevada employer who is legitimate is harmed, especially with workers' compensation and unemployment insurance.

The worst example I can think of was a case in Gardnerville where an employer had workers degassing aerosol cans. They had a seafaring cargo canister and would take a two-by-four with a nail driven through it and stab the cans to pop the gas out of the cans. These products are flammable, and one of the cans ignited. There were men killed instantly, and the ones who lived had severe burns. The employer did not have insurance and was not paying workers' compensation or unemployment and, in fact, he was using undocumented workers. One worker's claim alone was over \$1 million. Every employer in the state of Nevada paid for that. I know the devil is in the detail and I appreciate the questioning, but I think what Mr. Daly is trying to solve is this sort of abuse. If you are a legitimate contractor and you are competing against someone who is not, it is difficult.

I agree with Assemblywoman Carlton; with today's technology, there is no reason that state agencies cannot work together better to report abuses. If there is an agency that knows the insurance has lapsed, with technology, it is simple to share that information. If someone is working without workers' compensation or gaming the system, he is not just cheating his employees; he is cheating every other employer in the state who is trying to do it right. We

support this bill. There are some issues that people would like to address, but the concept of the bill is a good one. I have to tell you that writing off the debts when you know the contractor is still in business under a different name is a bitter pill to swallow.

**Todd Koch, Regional Director, International Union of Painters and Allied Trades,
District Council 16:**

I appreciate how Assemblyman Daly presented his bill. I think that we can agree that it is not a perfect bill, but there is definitely an issue that needs to be addressed.

I will give you an example. The U.S. 395 widening project was up for bid around 2011. This was a very large project. The successful prime contractor on this project was a large multistate contractor known for doing quality work. They named a subcontractor for the painting, who we confirmed had a suspended license for outstanding fines. My organization reached out to the prime contractor and talked to them about the issue with naming this subcontractor. We informed them that they could review their contractor's license and view the outstanding fines. They said they would look into it and get back to us. They contacted us to say that they were going to continue working with the subcontractor because they were not told by anyone that they could not use that subcontractor. We then notified the Nevada Department of Transportation (NDOT). We informed them that the subcontractor who was working on the project owed fines to several state agencies. They said they would look into the issue, but we did not hear back from them until about a month after we filed the complaint. When they finally contacted us, we asked them if they were going to tell the prime contractor that they could not use the subcontractor. They said no, but that they were excited that they knew the subcontractor was working on a project so they could lien the project and get the fines that were owed to the state. That is frustrating.

I do not know if this bill is going to fix all of that. I think that is just an example of why this bill has been put together. This is an issue of fairness. If you are a legitimate contractor and trying to do business the right way—paying your workers' compensation and your employment security bills every month—you cannot compete against a contractor who is not. The workers are not being covered by the insurance that the employer should be paying. It is not fair to them either. I am in favor of this bill, but not married to the language. We just want the problem to be fixed.

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

The issue that we are discussing today is very real to responsible contractors working in the industry. Much like the civilian health insurance system—where the person who does not have insurance goes to the emergency room and gets treated—those of us who have insurance, or those of us who pay our bills, end up having to pay for the treatment that person receives. This is what occurs when a contractor does work without workers' compensation or insurance for their employees. We have an uninsured workers fund that is paid for by the premiums we pay. The more draws that occur on the fund, the higher your premium will go, regardless of whether you maintain the insurance on your employees. As Mr. Koch mentioned, this is an issue of fairness. Competing against people who are cheating and avoiding paying for things that are required by law makes me very upset.

I also agree with Assemblywoman Carlton that this is already in the law, but is not enforced. The reason it is not enforced is there is no reporting mechanism from the insurance company to the Contractors' Board so they know the policy has lapsed. A general contractor who accepts a letter from a subcontractor saying they have workers' compensation and unemployment insurance requires the contractor to take him at his word. There is a certificate that can be requested from the insurance company that confirms whether the subcontractor was current at the time they bid on a project, but that is not always used by contractors. Some contractors have circumvented these requirements. Many states require you to have a certification and a duration confirmation of the insurance when you apply for your contractor's license. If your insurance expires before your contractor's license does, until you submit a new certificate of insurance, your contractor's license is suspended. California and Arizona both have processes like that. If we can track when my car insurance has lapsed and suspend my license, we should be able to do the same for a contractor who has allowed his insurance to lapse. I feel as if my potential to do damage with my vehicle is much less than what we saw on the Strip a few years ago.

We are fully in support of the intent of this bill. We understand that there are some issues that people have with the legislation but would like to work together to resolve those issues.

Chairman Bobzien:

Mr. Koch, I am interested in hearing more about the U.S. 395 widening project situation. If there is any correspondence that you can compile and share with the Committee, it seems as if the reporting process also needs to be addressed.

Todd Koch:

I would be happy to see what we have in correspondence.

Chairman Bobzien:

Thank you. Is there anyone else in favor of A.B. 86?

John H. Seymour, Assistant Business Manager and Organizer, International Brotherhood of Electrical Workers, Local No. 401:

We, too, are in favor of this legislation. As stated, there are some problems that need to be worked out, but it is not fair to any reputable contractor that these kinds of violations are occurring. We have seen numerous violations where a contractor will gamble on not paying his insurance in hopes that he does not get caught while the good guys are doing it right. We also would like to work with the Committee to get something put together that fixes the problem.

Daniel J. Costella, Business Agent, International Association of Bridge, Structural, Ornamental, and Reinforcing Iron Workers, AFL-CIO, Local 118:

We, too, are in favor of the intent of this bill.

Chairman Bobzien:

Is there anyone else in favor of A.B. 86? Seeing none, we will go now to those who oppose A.B. 86.

Keith Lee, representing the State Contractors' Board:

We are in opposition, and I have filed a statement in opposition ([Exhibit D](#)). I began talking with Assemblyman Daly when this bill was first drafted, and we both agree that there is a need for the legislation, but the bill needs some work. I have agreed to get together with him, as many others have, to try to make this bill work. In anticipation of at least one question from Assemblywoman Carlton, we do enforce NRS 624.256, the provision that requires that upon licensure or relicensure, or during your period of being licensed, you must maintain workers' compensation insurance. If we are advised by whoever is responsible for making sure that insurance is maintained, presumably DIR, we will suspend the license. We have no problem with suspending licenses as a matter of policy. If we are advised by the appropriate agency that a payment that is otherwise due by law has not been made, and that is the final adjudication of that determination, we will suspend the license.

One of our concerns is that we do not want to be put in a position of needing to have a hearing on our own to determine whether or not the information we have received is a final determination and correct. We do not want to serve a

suspension order on a contractor who is disputing whether he owes money. If it is a final determination, we are happy to suspend the license. We do not believe it is in our purview to have to have a hearing based upon information that another agency is required to compile. As I said in the beginning, we have agreed to work with Assemblyman Daly to try to make this bill work so that we ensure those licensed contractors who follow the law, and play by the rules, are not penalized by those few contractors who try to game the system.

Assemblyman Ellison:

The insurance company is required to send a letter with proof of insurance to a contractor before a project begins, correct?

Keith Lee:

As far as I know, yes. We are not responsible for advising an entity that a contractor is fully insured under the law.

Assemblyman Ellison:

If a general contractor hires an unlicensed subcontractor and a complaint makes it to the Contractors' Board, would that general contractor also be at risk of losing his license?

Keith Lee:

That is correct. A licensed contractor puts his license in jeopardy if he hires an unlicensed contractor to perform some work on a job.

Assemblyman Ellison:

About 30 percent of the unlicensed people who are unemployed right now, and working under the table, do not hold any kind of workers' compensation or other insurance. Is this where the problem is coming from?

Keith Lee:

I cannot speculate on where the problem lies. We know that due to the tough economic times, a lot of licensees are not renewing. We are hearing that they cannot afford to renew their license or pay for all of the other requirements to be a licensed contractor. I assume, anecdotally, that what you are saying is correct.

Assemblywoman Carlton:

What part of NRS 624.256 is not working? If we have people performing jobs without workers' compensation, how is the Contractors' Board missing this?

Keith Lee:

We have not been advised by the self-insured, the insurance company, or DIR that a contractor has been delinquent in their payments. If we are advised that they are delinquent, we will suspend the license and have done so in the past.

Assemblywoman Carlton:

Something seems to be falling through the cracks. We need to figure out a way to make sure the Contractors' Board is getting the information. One side is saying there is a problem and they want to share that information, but then you say that you are not getting that information. Somewhere this is not working. As we heard earlier, if my car insurance lapses, I get a letter immediately. I am looking at this from a consumer's point of view. If I want to hire someone to do work on my house, I would like to be able to confirm that they are licensed and have the proper insurance. If they do not, my homeowner's insurance is going to be in jeopardy if someone gets hurt on the job.

Keith Lee:

It is not working because the two agencies that we feel are responsible for confirming the payments are not notifying the Contractors' Board when a licensed contractor is delinquent on those payments. Take your DMV example. The agencies responsible for making sure that we, as licensed drivers in the state, have insurance on our automobiles send a letter out if we are delinquent. If DETR or DIR would send a letter to the Contractors' Board or give us some sort of rapid notification that there has been a final determination that a contractor has not paid his unemployment or workers' compensation insurance, we will suspend the license. We have to be advised by the agency that is ultimately responsible for collecting the funds.

Assemblywoman Carlton:

So you do have a process set up to accept that information as it comes in?

Keith Lee:

I do not know that we have a system set up. If we receive notification from DIR or DETR that they have made a final determination that a contractor is not making payments, then we will suspend the license. I do not know that we need a formal system set up, other than them giving us notification. We need some sort of communication that we can act on.

Assemblywoman Carlton:

We have written in law that you have to have insurance to keep your license, but apparently we are not sharing the information appropriately to make sure those licenses are suspended when they need to be. We will have to find out where this information is falling through the cracks.

Craig Madole, Senior Associate, Associated General Contractors of America, Nevada Chapter:

We would like to express our opposition to this bill and would welcome being part of any working group that is built to start addressing this issue. We have three main concerns with this bill as it is written. First, there is a possibility that a computer glitch, as experienced by the Workers' Compensation Section a few years ago, could erroneously report a lapse in insurance coverage. When that happened, it was a very costly and lengthy battle to prove that a mistake had been made. We would like to make sure that there is something in the bill to prevent the suspension of those licenses when there is the equivalent of a computer glitch. Second, looking at section 8, subsection 1, paragraph (d), many licensed contractors do not have any employees working for them and therefore do not have to carry workers' compensation insurance. We do not see any safeguards in this legislation to ensure that those contractors do not have to report when they are not required to have it. Last, we fear an unintended consequence of this bill will be to force the insurance company to create a new reporting mechanism and a new section of the Contractors' Board. That cost will be directly passed to the contractor. In these tough financial times, we feel that any rate increase is something contractors cannot afford to bear at this time.

Assemblywoman Carlton:

Mr. Madole, do you agree that it is inappropriate and illegal for these contractors to be working without the insurance? It is our responsibility to figure out a mechanism to enforce the law. Sometimes this comes at a cost.

Craig Madole:

We absolutely agree that if contractors are not paying their workers' compensation or unemployment insurance, they should have their license suspended. However, we believe there are existing laws and, as written, this would be a duplicate effort to the current law. This would put an unnecessary burden on the Contractors' Board to create a new reporting mechanism and a new division to track what is already in the law.

Assemblywoman Carlton:

The last thing I am worried about is a burden to a board, because they are very sophisticated and can handle their responsibilities.

Mr. Lee, you also mentioned that you can suspend a license. Am I to understand that someone can still work under a suspended license until it is actually revoked?

Keith Lee:

I believe that if a license is suspended, the contractor can complete the job he is currently working on.

Assemblywoman Carlton:

Even though he does not have workers' compensation, he can keep working on the job and put employees in harm's way?

Keith Lee:

I believe that is correct.

Assemblywoman Carlton:

Mr. Chairman, that is another problem we need to resolve.

Chris Ferrari, representing Associated General Contractors of America, Las Vegas Chapter:

We are in opposition to the bill as written. We had an opportunity to meet with the bill sponsor and agree with the intent of the bill. We want to make sure there is not a duplication of existing reporting process and make sure the employee's privacy information, under state unemployment insurance, is protected during the transfer of information to any third party for verification. We would also like to make sure that if there is an unintentional lapse, it does not create a stop-work scenario that would put contractors and their employees out of business. We would like some component mandating notification to a general contractor should one of his subcontractors be found to have a lapse in insurance, so that the general contractor may also take preventive action with the subcontractor. We look forward to working with Assemblyman Daly and helping to move this bill forward.

Chairman Bobzien:

Are there any questions for Mr. Ferrari? [There were none.] Are there any additional opponents to A.B. 86? [There was no one.] Anyone in the neutral position hoping to testify on A.B. 86? Seeing none, we will close the hearing on A.B. 86 and look forward to productive conversations by all parties on this bill.

We will now open the hearing on Assembly Bill 90 and welcome our colleague Assemblyman Ohrenschall to the table.

Assembly Bill 90: Revises provisions governing representation of injured workers in hearings or other meetings concerning industrial insurance claims. (BDR 53-820)

Assemblyman James Ohrenschall, Clark County Assembly District No. 12:

I am here today to present A.B. 90. This bill is, in large part, very similar to Assembly Bill No. 267 of the 76th Legislative Session, as amended, which did pass the Assembly. It was scheduled for a hearing before the Senate Committee on Commerce, Labor and Energy but time ran out so the bill never received a hearing in the Senate. I do believe this bill is meritorious. I spent a lot of time in the interim talking to Ron Dreher and other members of labor organizations. This is a bill that is poignant to me. I was a member of Teamsters Local No. 631 for over six years. I was very lucky that I was never injured, but I did have coworkers who were injured. Two years ago the testimony given before this Committee on this bill presented the fact that only one union in our state has a full-time representative who can represent members at these hearings. This bill seeks to remove the requirement from *Nevada Revised Statutes* (NRS) 616C.325 that the employee of the labor organization must be a full-time employee. This would give unions in this state a lot more freedom in terms of being able to hire the best person to help workers at the very difficult time when they have been injured.

Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada:

We would like to thank Assemblyman Ohrenschall for sponsoring this legislation, which we believe will assist employees' due process when they are injured on the job and during the initial hearing officer phase of the workers' compensation process. What happened last session was that the bill appeared to be too broad, and as such there were people who believed that we were attempting to remove the attorney process from the appeals process after the hearing officer process. That is not the intent of the bill. The intent is specifically to remove two words, "full-time," and essentially replace it with one word, "employee." That employee would then have the ability to assist members when they go through the preliminary stages of the workers' compensation hearing officer process.

I have provided a synopsis of this issue ([Exhibit E](#)). I will give an example of what is currently happening. I receive phone calls from our members when their workers' compensation claims are denied. A couple of months ago a highway patrolman was on duty and sustained a heart attack. His claim was denied even though we have a conclusive presumption in the law. I am representing another officer who was injured on the job, and her claim was immediately denied. When someone is immediately denied, the individual has a certain number of days to appeal to the hearing officer process. At that point, we need help. I am pretty good at workers' compensation history and issues, but I am not an expert in the field. We like to bring in employees, such as Leslie Bell, who has experience in the state with that workers' compensation process.

With her expertise we are able to explain to the hearing officer why the claim was denied and why it should be overturned. If that hearing officer decides to rule in our favor, there is no more appeal and the process is done. If the hearing officer says the claim is still denied, it would be moved to an appeals process. At this point we would bring in an attorney to assist us.

This is not an attempt to eradicate the attorneys. It is an attempt to provide an economic way of having experts available for the member during the initial hearing officer process, and only the initial process. We have some wonderful workers' compensation attorneys that we bring in when the need arises. Bottom line, we are asking you to support A.B. 90 and remove those two words from the bill.

Leslie Bell, Workers' Compensation Representative, Washoe County Sheriff Deputies Association:

I have worked with the Washoe County Sheriff Deputies Association for 3 1/2 years assisting their members when they are injured on the job. The way it works is that a member reaches out to me and asks for assistance. I am available 24/7, and it is my interpretation that that constitutes a salaried employee of the association. However, that status is challenged on a regular basis. My job also entails going to doctors' appointments with injured employees. I assist them with their leave bank under their negotiated benefits packages. I attempt to avoid ever having to go to a hearing, but because I have alternative employment statuses, my status as a salaried employee and whether or not I am a full-time or part-time employee is often questioned and often becomes a barrier to my assisting the injured employee. I support this legislation because I believe it will clarify where there is not a statutory or regulatory definition of what is full-time or part-time work. This will also allow other associations to employ people on a part-time basis.

I do understand the opposition. I understand why trial attorneys would potentially be opposed. I understand why the insurers, particularly the self-insured employers and their third-party administrators (TPA), potentially would be opposed to it because it is, in their opinion, dangerous when employees know what their rights are and are helped. Workers' compensation is a very complex system, and assistance is warranted for these employees.

Paul Villa, Secretary, Peace Officers Research Association of Nevada:

We support this bill because in our view it is a triage situation. I would like to offer a brief analogy. For 23 years I was a police officer with the City of Reno. I speak some Spanish, but by no means am I fluent. As you all know, there is a tremendous need for fluent Spanish speakers at all levels in the state but particularly in law enforcement. Frequently I would arrive on the scene to a call

where they requested a Spanish speaker. I would respond, and because of my knowledge of the language and my ability to communicate, I could assess the situation and make a determination if a fluent Spanish speaker was needed. If so, I would take the steps to ensure that a fluent Spanish speaker was brought to the scene. This is the same situation. We are trying to get primary assistance up front to those who are in need. If it goes onto an appeals process, and we need an attorney, of course we will get that help for them.

Chairman Bobzien:

Are there any questions for the panel?

Assemblyman Daly:

On line 10, it requires someone to be "Employed full-time by the employer or trade association." Would you be opposed to letting them have part-time employees as well?

Ron Dreher:

I do not believe we would have any problem with them having part-time employees as well. But if you look at who we are up against, Cannon Cochran Management Services, Inc. (CCMSI), a national provider of claim insurance, and the problems that we have with that organization, it is very difficult for us to confront them on a part-time basis. When it comes to bringing in the attorneys during the appeals process, that is the time we need the full-time help. The law is very clear about the initial stages. Our sole objective in the hearing officer appeal process is to present evidence as to why CCMSI has denied the claim and why it should be overturned.

Leslie Bell:

I also work for a self-insured employer and owned a TPA. I have handled claims for employers and still do. Workers' compensation is a legal liability, and sides should not be taken. Employees' rights are in statute, and if they are eligible for the benefit, they are eligible for the benefit. It is very easy for me to do both sides, even though some parties would disagree with me. I see very clearly what a person's rights are and when they are being violated. I would have no objections to the employers' laws being less restrictive.

Chairman Bobzien:

Do we have anyone else wishing to come to the table today in support of A.B. 90?

Assemblyman Ohrenschall:

Before Mr. Thompson speaks, I think the Committee should know that he was the original author of this statute. This was a bill he sponsored back when he was Majority Leader.

Danny L. Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:

When this was enacted, we never believed that someone would be challenging whether someone was a full-time employee of the labor organization. Back in the day there was a man named Frank Cain who was the head of the Iron Workers Union, and he represented many workers' compensation claims. If you know anything about workers' compensation in Nevada, you know it is very complicated and very unique. We never thought this would be an issue. I would say that we put that in there because we choose who represents our members, whether they be full-time or part-time. Understanding that everyone has experienced cutbacks, including our local unions, if they have an employee who was moved to part-time, I do not think it is unfair to allow them to continue helping, especially at the hearings level.

I think Mr. Dreher did a very good job outlining the process. The hearings level is for the people to present their case. If you are going to get to the appeals process, then it is time to have an attorney, but we may want to hire someone like Leslie Bell, because I would put her up against anyone in the state of Nevada as far as knowledge of the workers' compensation system. She has effectively worked in the system her whole life.

Patrick T. Sanderson, representing Laborers' International Union Local 872:

Anyone can see what workers' compensation has turned into. You turn on your television and all you see is advertisements for lawyers trying to get your work. If you worked in the construction field, as I have, when you are injured you want someone who understands where you came from, what you were doing, and what happens on these job sites. You want someone friendly, and when you hire a lawyer, you do not know what kind of person they are. You might end up with a good one. You might end up with a bad one.

A few years back we started an ombudsman system in the state of Nevada, which was a terrific deal. I am sure that the reason the ombudsmen are gone now—they said it was money—is because of the lawyers. They did not want somebody to take care of your claim for nothing because it lowers the cost of doing business. We had a couple of terrific ombudsman here, and I would love to see them come back. In the meantime, we do not need somebody that is full-time; we need somebody who is going to protect the person who was injured. No matter where they come from, you should be able to go with the person you feel most comfortable with.

I do not think this goes far enough. Lawyers cost everything that you have made and everything you get out of a workers' compensation claim. It is horrible for the individual who gets hurt. Every single injury seems to go to an appeals board now. Even though your employer agrees to pay for it, no, it is going to appeals, where they will turn it down because they have a workers' compensation specialist who is going to say it should be appealed. Instead of taking care of the injured person, you are just given to the lawyers. This is a good step, and I hope that it moves forward.

Raymond McAllister, President, Professional Firefighters of Nevada:

We certainly support this legislation, and anything we can do to provide good-quality representation, while at the same time preserving costs at the bottom level of the process, is a positive thing.

Chairman Bobzien:

Is there anyone else who is in support of A.B. 90? [Tim Ross of the Washoe County Sheriff Deputies Association submitted written support ([Exhibit F](#)).] Seeing none, we will now move to opposition.

George A. Ross, representing Nevada Self-Insurers Association:

The Nevada Self-Insurers Association (NSIA) opposes A.B. 90. When you look at the current requirements, to represent for workers' compensation a person must be either a full-time union employee, an attorney, or someone under the direct supervision of an attorney. As someone mentioned earlier, Nevada has a very unique and complex workers' compensation system. It takes a tremendous amount of experience, knowledge, and understanding to properly work in the system. These requirements were put into the law to make sure that employees were receiving quality and skilled representation in those proceedings.

The concern of my client is that by weakening that requirement there may, in the future, come less competent and less qualified representatives. This, number one, puts a lot at stake for every individual who goes into a workers' compensation situation. Some are facing permanent disability, partial disability, or vocational rehab. It is very important that people facing these issues have the best qualified representation. While there may be, at this moment in time, some extraordinarily qualified people to assume that roll should this bill pass, one does not know if in the future or even today if there are others who are qualified. At a minimum we would hope that there would be some sort of licensing or certification, a way to determine the qualification of the individuals who are representing the workers.

There are other aspects of this bill to discuss. An attorney has malpractice insurance; others have errors and omissions insurance. Given that this employee would be in some sort of legal proceeding, should he or she not at least have errors and omissions insurance? If these representatives do not have the same qualifications as the current law says, there is a likelihood of more litigation. Also, the coordination between these representatives and the attorneys who take over the case would need to be arranged.

One of the things we are spending a lot of time on this session is independent contractors. For example, when exactly is a person an employee, when are they part-time, and when are they a consultant? We are concerned and would like to make sure that the intent of the law, as currently written, is obeyed. If the law is changed, there should be something shown to be really wrong with the law. It has worked well for a couple of decades, and something should be shown to be quite wrong with it before we try to change it and raise some risks to the representation of the workers.

Assemblywoman Bustamante Adams:

I hear your arguments, but I do not agree that there is nothing wrong with the current bill. We heard testimony that there is. If there is a problem, then I do not agree that you should have to be a full-time employee to perform these tasks. My question to you is, if it required, which I think it does, some sort of licensure or certification, would it meet the intent of what you are trying to achieve?

George Ross:

I think my client believes quite strongly that with a full-time employee, you have an individual who is dedicated and believes in the employee's welfare. One thing we know is that the unions are a brotherhood, and you know that the full-time employee has that employee's well-being at heart. The other option is the attorney. Attorneys have a legal responsibility to their clients. That is one of the fundamental principles of legal representation. We have two different sides of this issue, looking at a similar set of facts, and coming to different analyses and conclusions as to what they mean. If this bill were absolutely going to pass, my client would be much happier if there were some type of licensing or certification process spelled out that the people would need to have.

Chairman Bobzien:

We are trying to understand what the deficiency in the quality of representation would be simply because someone is part-time for the organization. Even if someone is only a consultant and has a contract with an organization for these highly specialized situations, that does not necessarily mean they are not qualified to do the work they are doing. Are there any examples that you have

seen that could substantiate what the concern would be? Or is this really a matter of some way of classifying qualifications of the person representing the employee?

George Ross:

I could not personally give you any examples. I am aware, having represented this client for several years now, that workers' compensation is very complex and unique. Secondly, except for the people who work in the workers' compensation system, I do not think that there are many people who understand how it works. That is a big part of it. You cannot walk into the workers' compensation system and decide you are going to help those employees. This requires an amazing detail of knowledge. In prior sessions when we negotiated these bills, there were only three or four people at the Legislature who really understood these issues. There are some brilliant people on this issue, but there are not very many of them. That is where the concern comes from. We want to make sure that if the door is opened, the people who come through the door are as capable as the people who are helping the workers today.

Chairman Bobzien:

I think that may be the point. There are not many qualified people to do this, so how can each organization around the state possibly expect to keep their own full-time employee to help with these matters?

George Ross:

The speakers who preceded me know the system very well and are very impressive. I understand what you are saying, and it is both a reason why some would say we need to open up the options, while others would say that we need to make sure the quality of people this would be open to is at the same level as those who are in the system now.

Chairman Bobzien:

Are there any additional questions for Mr. Ross? [There were none.] Do we have anyone else in opposition to A.B. 90? [There was no one.] Is there anyone in the neutral position? Seeing none, we will close the hearing on A.B. 90. Assemblyman Ohrenschall, could you please get together with the interested parties and see what you can come up with?

Assemblyman Ohrenschall:

Yes, Mr. Chairman. We will meet with all the interested parties and see if we can come to some sort of agreement.

Chairman Bobzien:

Do we have any members of the public wishing to give testimony? [There was no one.] Do we have any matters to discuss from Committee members? Seeing none, the meeting is adjourned [at 3:36 p.m.].

RESPECTFULLY SUBMITTED:

Katie Wilson
Committee Secretary

APPROVED BY:

Assemblyman David P. Bobzien, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 25, 2013

Time of Meeting: 1:33 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Donald Jayne/ Stephen Coffield	OSHA Presentation
A.B. 86	D	Keith Lee/Contractors' Board	Statement of Opposition
A.B. 90	E	Ronald Dreher	Bill Synopsis
A.B. 90	F	Tim Ross	Statement of Support