

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

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

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 1:46 p.m. on Monday, March 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 James W. Healey
Assemblyman Pete Livermore
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

Assemblyman William C. Horne (excused)

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Leslie Danihel, Committee Manager
Julie Kellen, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

John Skowronek, Managing Member, Square 1 Solutions, Reno, Nevada
Steve Bibby, General Manager, Victory Woodworks, Sparks, Nevada
Mandi Lindsay, representing Subcontractors' Legislative Coalition
Stephen Yohay, Attorney at Law, Ogletree Deakins, Las Vegas, Nevada
Chris Ferrari, representing Associated General Contractors, Las Vegas Chapter, and Nevada Contractors' Association
Micah Kennedy, Safety Coordinator, Par Electrical Contractors, Inc., Reno, Nevada
Jack Mallory, representing Southern Nevada Building and Construction Trades Council
Donald Jayne, Administrator, Division of Industrial Relations, Department of Business and Industry
Donald Smith, Senior Division Counsel, Division of Industrial Relations, Department of Business and Industry
Ron Cuzze, President and Chief Executive Officer, Nevada State Law Enforcement Officers' Association
James Wright, Deputy Director, Nevada Department of Public Safety
Ana Andrews, Risk Manager, Risk Management Division, Department of Administration

Chairman Bobzien:

[Roll was called.] We would like to open up the hearing on Assembly Bill 106. We will give our colleague, Mr. Hansen, a chance to get situated at the table.

Assembly Bill 106: Provides for the award of certain costs, fees and expenses to prevailing parties in actions before the Occupational Safety and Health Review Board under certain circumstances. (BDR 53-156)

Assemblyman Ira Hansen, Assembly District No. 32:

The bill I am presenting today is Assembly Bill 106. This measure allows prevailing parties and actions before the Nevada Occupational Safety and Health Review Board to be awarded certain costs, fees and expenses. The purpose of

this law is to mirror what is already in federal law, which applies to the 23 states that are under the federal Occupational Safety and Health Act plan.

I would like to open my testimony by providing members of the Committee with background information on this measure and highlight its key provisions. The Nevada Occupational Safety and Health Act is the state law that implements the federal Occupational Safety and Health Act, also known as OSHA. Twenty-seven states, including Nevada, have opted to implement their own state plans while the remaining 23 states are under the federal OSHA plan. The Nevada OSHA laws are administered by the Division of Industrial Relations of the Department of Business and Industry. The Division is tasked with providing safe and healthful working conditions for every employee by establishing regulations, enforcing regulations, educating and training employees, and establishing reporting procedures for job-related accidents and illnesses.

Under state law, there is an enforcement provision for suspected violations. If the Division issues a citation, an employer has 15 working days to notify the Division that it contests the citation. This appeal is sent to the Occupational Safety and Health Review Board, which consists of five members appointed by the Governor. The Board meets monthly and then holds a formal fact-finding hearing and renders its decision based on the evidence presented at the hearing. If an employer is unhappy with the Board's decision, it can appeal to the district court level. Nevada law does not now currently allow the prevailing party to be awarded attorneys' fees and expenses. However, if a state is under the federal OSHA plan, then the Equal Access for Justice Act (EAJA) applies. This act provides that a party prevailing against the United States in litigation may be awarded fees and expenses unless the agency's position was substantially justified. Fees and expenses can also be awarded if the agency proposed a penalty that was reduced because of litigation and subsequently determined to be unreasonable. These awards are statutorily limited to certain small entity parties with a designated net worth and number of employees. This federal law was originally put in place in 1980.

The key provisions of the bill, if you want to follow through, would emulate federal law. Sections 2 through 5 include key definitions of terms used in the bill. For example, expenses include the cost of studies, analysis reports, tests or projects necessary to prepare a party's case. Fees include reasonable fees for attorneys, persons representing a party before the Board, and expert witnesses. Section 5 limits the size of parties that are eligible for expenses and fees. A party is a natural person with a net worth of \$2 million or less. A party can also be a business with a net worth of \$7 million or less and 500 or fewer

employees. These are the same thresholds in federal law. The Division and its employees are not considered parties for purposes of this bill.

Section 6 awards costs to prevailing parties for actions against the Division or a court. Section 7 awards fees and expenses to prevailing parties unless the Board or the court determines that the position of the Division was substantially justified or that the existence of special circumstances would make the award unjust. The prevailing party would need to submit an application to the Board or court for fees and expenses within 30 days of the decision. Any fees awarded must be based upon the prevailing market rate for the type and quality of service provided. The Board or court may reduce or deny the amount awarded if a determination is made that the prevailing party engaged in conduct that unduly or unreasonably protracted the final resolution of the matter.

Section 8 provides that if the demand by the Division is substantially in excess of the judgment ultimately obtained by the Division and is unreasonable when compared to the judgment, the employer would be considered the prevailing party, unless the employer had committed a willful violation of law, had acted in bad faith, or there were special circumstances that made the award unjust.

Section 9 allows the Division to appeal the award of costs, fees, or expenses. If the award is affirmed, the Division must pay the interest.

Section 10 states that the award of costs, fees, and expenses must be paid by an appropriation by the Legislature for the Division. That is something we are going to work on.

Mr. Chairman, I would like to thank you for taking the time to consider this measure. That is my official testimony.

One of my constituents, who is now a constituent of Mr. Daly, has a business in Sparks called Victory Woodworks. It is a cabinet shop. It is a union cabinet shop, and they were doing some work in Las Vegas. I am going to turn it over to the gentleman from Victory, Steve Bibby. That is the genesis of this. As most of you know, I am a contractor. Mr. Bibby felt he had been completely unfairly treated by Nevada OSHA. When I researched it, not only did I agree with him, but it turns out Nevada OSHA board also agreed with him. When the smoke cleared, he had no way to be compensated for being unfairly treated.

[Submitted remarks, ([Exhibit C](#)).]

Chairman Bobzien:

Before you do that, I think we may have some questions.

Assemblywoman Carlton:

Before we get to the constituents, I would like to ask the sponsor of the bill to clarify a couple of things. I am always careful when we try to do anything that involves our state plan and how we look at our state plan. The last thing we want is for federal OSHA to come in. We like our state plan. When it comes to the feds, Mr. Hansen, how do they handle the prevailing side? Would this be comparable to that?

Assemblyman Hansen:

Actually, it would be identical. This is a verbatim copy of the federal rules and regulations. In fact, I also have John Skowronek with me, who is an attorney but is also an OSHA instructor. I took my OSHA 30 class from him. Mr. Skowronek, is that a question you want to address at this point, or do you want to wait until after the testimony?

John Skowronek, Managing Member, Square 1 Solutions, Reno, Nevada:

The legislation before you is identical language to what is called the EAJA that federal OSHA is covered by. If a similar situation would happen in Nevada state jurisdiction or in a federal OSHA jurisdiction, this would treat the Nevada jurisdiction the same as it would if it was in federal jurisdiction. There would be no difference.

Assemblywoman Carlton:

To clarify, it is my understanding that in this process of the awarding of these fees, if the state prevails, they are not allowed to receive these fees, but if the private party prevails, they will be allowed to receive the fees. To me, it seems a little lopsided on who gets to recoup the fees. Being always mindful of the fiscal note that you have attached to this, we never know what those fees could possibly be in the future. We would be putting our General Fund on the hook for this.

Assemblyman Hansen:

Yes, indeed in some of the fiscal things you and I briefly discussed earlier. We will try to work those things out. No question that is one of the things we would have to address. Obviously, we want to get through the policy side of this now, and then we will definitely look at how we would handle this. It should be relatively small amounts of money that we are talking about. These kinds of cases that can be contested to this point are fairly rare.

At this point, my concern is less for the needs for the state and OSHA but for the private parties that were absolutely abused by this process and had absolutely no recourse for their money. I have a contractor who is struggling. He is trying to keep men employed and is working in Las Vegas. When you

hear the details of the case, the concern for us should be on making sure government agencies treat people right. In this case, I think everyone, including the OSHA board, agrees that these guys were not treated right. At this point, it is wrong to leave a private party without any way to have any compensation for what they were forced to go through by what turned out to be an unjust citation. Having said that, I would like to turn it over to Mr. Bibby to go through what happened to Victory Woodworks.

Steve Bibby, General Manager, Victory Woodworks, Sparks, Nevada:

I am here to talk about the OSHA violation we received in January 2011. We had a subcontract to do work at the Metropolitan Police Headquarters in Las Vegas. We were notified by the contractor, which was Penta Construction, that OSHA had shown up during the day to do inspections. I had no employees on the job site. Penta called us saying that OSHA had requested us to send some employees out so they could go through our job box and make sure our paperwork was in order. We sent out two employees. They met with the OSHA inspector at the job site. The OSHA inspector proceeded to ask questions and checked our paperwork. That was normal. Our company, Victory Woodworks, spends a lot of time and effort making sure we protect our employees. I have numerous employees with OSHA 10, OSHA 30, and I have some with OSHA 300. I have consultants that work with us and do inspections of our facility all the time to make sure we maintain a safe job site. It is very important to us that we give a safe place for our employees so they can go home and see their families. We are not trying to get out of anything.

At this job site, we had a table saw. It was simple. You can go to a big box store, buy the table saw and take it to the job site. It was chained to the side of our job box. The OSHA inspector asked to unchain the table saw and demonstrate how it works. Most of the job sites do not have electricity readily, so it was probably 50 feet or more to the nearest plug. My foreman put the table saw together, got it all ready and ran the extension cord, which was around the corner, and plugged it into the house power, as is the normal process. He did not alter or change it. At that point, the OSHA inspector said to turn the saw on. He turned it on, and the OSHA inspector went to the cord and unplugged it. The saw turned off, which is what happens when you disconnect the power. He plugged it back in, and the power turned back on. He said, "You are in violation. This saw needs an anti-restart device." This is a saw that we purchased brand new and was sitting at the job site right out of the box. He said it failed, and we were in violation. It did not have an anti-restart device. He proceeded to tell us that if there was a power failure, it had to turn itself off so that it would not turn back on. He proceeded to go to our job box and was playing with a couple of different things in there. He said, this is what I am looking for: an anti-restart device that is an inline. Since it is

a ground fault circuit interrupter (GFCI), if you plug into and lose power, it will kick off and turn back on. It will not turn the power back on to the device without hitting the button. We had this at the wall source. We did not have it between the table saw and the extension cord but between the extension cord and the wall. In fact, we had this device in line, just in a different position than he was stating. At the time, he did not even check the wall device.

We had a conversation with him, and he said it needed it. In turn, we received a violation from OSHA. At that point, we contested it. This is not correct. Within the violation was an American National Standards Institute (ANSI) standard that was stated. That ANSI standard had been revised 40 years ago. That standard was well over 50 years old. Again, it had been revised. We asked what we could do to work this out. We were told we could not work it out but needed to go through the hearing. We contacted Bosch Tools and told them what was going on and how we bought one of their saws, and now we were told we are in violation. Bosch told us they found more information and OSHA was incorrect. They misstated the standard. We had correspondence back and forth, and we submitted Bosch's letter to OSHA.

We ended up having to go to Las Vegas. I had to take my foreman, Mike Marshall, who lives in Reno but was working at the time in Las Vegas and John Skowronek. We met with Curtis Quintana who is my superintendent of install. We all met with OSHA. During the proceedings, we went through all the facts and explained to them how this went about. We finalized that, and OSHA dismissed the complaint completely. We basically won with zero marks on our record, and there were no fines, although it cost well over \$8,000 in hard costs. That does not include my time or all the research that was done. It cost us \$8,000 to dispute something with OSHA. After we were told everything was dismissed, we wanted to see if we could recoup the costs, but we were told there was no way. It was not in the law. We are a small company and do a lot of work in Nevada. We are a union shop, and we were trying to keep a lot of employees going. We should not have to pay this kind of money to fight something that was that incorrect as the standards were not stated properly and doing everything we were supposed to. We were looking out for our employees like we are supposed to. That is why we are here.

A company smaller than we are might not be able to fight this. We had to fight this knowing we did nothing wrong, and every time we did a large job, I had to fill out prequalification forms. If I have an OSHA violation, it limits who is going to let me do work at their job sites. When we work as hard as we do to make sure we are a safe company and have something show up on there unjustly, it will affect our ability to get work.

Just prior to us going to Las Vegas for the hearing, they offered to drop the fine. They said they would offer to eliminate the fine but keep the citation. Again, that was an important thing to us because we need to do business, and in order to do business, we need a clean record. As far as we were concerned, we had a clean record. We take care of our employees.

[Submitted a memorandum and Victory Woodworks Final Order from OSHA, ([Exhibit D](#)) and ([Exhibit E](#)).]

Chairman Bobzien:

Do we have any questions?

Assemblywoman Carlton:

Since you were exonerated, if you had the choice of having it off your record but could not go after the financial side of it, would just having it off your record be good enough to get you through as far as putting on your next bids? Since it was clearing your name per se.

Steve Bibby:

No, I would not have accepted that within Victory Woodworks. If we paid a fine, it still shows on our record. It still shows up as our having an OSHA violation, and that is what was important to us.

Assemblywoman Carlton:

We get to change those rules. If we changed the rule to if you were exonerated and that violation could be taken off the record going forward, would that be sufficient, or do you still want to get the financial reimbursement?

Steve Bibby:

No. At what point in chasing this, do I make that determination? When they said they dropped everything, we had already spent a lot of money trying to fight this. I would say that even if they had come to us a little earlier, we still had to fight quite a bit to get there. If someone can prove that something happened to them that was not just, they need to be compensated for that. We were not looking for anything except the costs that went into fighting this. That is all we were looking for. Whether it is fighting it to the end or halfway, there are still costs.

Assemblywoman Carlton:

The state has to put just as many resources into it not knowing if it will win or lose. Yet, it cannot recoup the money. Whatever money the state spends comes out of the General Fund, which could be going to education, public safety, corrections, or a number of other different things. I understand where

you are going, and I have heard many of these stories in the last 14 years, but there needs to be fairness on the state side too. We have to put all that time and effort in to get this through fruition. That comes out of our budget. We are not allowed to come to you if we win and say we want our \$8,000. I am looking at a one-sided proposal here. It seems to me when parties get to recoup their losses, it should be fair to both parties. When the state loses, we eat the cost.

Steve Bibby:

There are many companies out there that cannot afford the cost to chase this. They will pay the fine unjustly. That is part of what needs to happen here. The tax dollars going from our company to the state are paying for them to come after us unjustly. Really, it is costing me to fight myself.

Assemblywoman Carlton:

Mr. Chairman, I will not get into a long, involved debate on assessments and how money goes back to companies with good workers compensation records and they receive a rebate at the end of the year rather than the money coming to the General Fund. I want to look at the fairness of this. I truly understand the frustration you have with it. If we are talking \$500,000, we have to find that someplace. To quote our former chair of the Assembly Committee on Ways and Means, "We've got no dough." That means we have to take \$500,000 away from another program in this state to make you whole, which would be wonderful if we had money right now, but we do not.

Chairman Bobzien:

Do we have additional questions?

Assemblyman Daly:

I look at this from the technical side as well. Assemblywoman Carlton's point is one I had also. Is "substantially justified" defined in the federal rules somewhere? As I read through it, who has to make that finding as substantially justified? People go to court cases all the time. Sometimes there are convictions, and sometimes there are not. That does not mean the case was not valid and the defense attorney did not have a case. It seems to me that if you do not like the Board's decision, you can appeal to the court. There are financial considerations people make on that stuff all the time. That is why we have plea bargains and the rest of it. Many times that is made for economic reasons and not anything else. Is there a definition for substantially justified, and who is making that determination? I am reading on page 3, section 7, subsection 3, paragraph (b). Are you going to put in your application or appeal to get your fees back? If I won, of course the case could not be substantially justified, and that is not always true. I would like a little more explanation.

John Skowronek:

The reason this language mirrors the federal language exactly is because there is a body of case law out there where the courts have determined what "substantial justification" is. Basically, what the courts say and the national OSHA Review Board says is that if there is no basis for OSHA's action, either in law or in fact, then it is not substantially justified. I have looked at the fiscal note as well as everyone else has. If you look at this from a practical standpoint, the fiscal note is as much a justification for passage of this particular bill in front of you as anything is. We would all hope the Department of Business and Industry, in carrying out its function, would act in a manner that is fair and would, in fact, enforce safety and health in the workplace; yet, on the other hand, not be too onerous and not abuse that power. That is why we have checks and balances and the EAJA, which applies not only to OSHA but to every government agency. It is Congress' way of saying, "Agencies, we want you to be reasonable." If they decide to get too heavy-handed and bring actions just for the sake of bringing actions or strong-arming people, people have to go through the work of trying to defend themselves for something that is not substantially justified. They should be entitled to their fees and costs. The important thing about this legislation is there is a body of law. The Ninth Circuit Court of Appeals has ruled on what is substantially justified, and there are Nevada state court decisions. There is no reinventing the wheel. When you have a state-run state like Nevada, in order for the Department of Labor to approve your program, your program has to be at least as effective as the federal OSHA. However, they do not require state programs to adopt the EAJA. In Nevada, we have not adopted that.

To answer the other question about fees and costs, there is going to be a very small number of cases, we hope, that would get to that point. This is OSHA's board. This is an agency, quasi-judicial board that is hearing those. They are the ones who make the decision. They hear OSHA cases exclusively. In fact, many people fault that process and ask, "Wait a minute. We are going to appeal an OSHA citation to an OSHA board?" How fair is that? That is the agency that makes a determination on substantial justification. As the Department of Business and Industry says, this is going to double the amounts of appeals and have a huge financial impact. My response is that we are bringing too many cases that are not substantially justified. The Board in the Victory Woodworks case specifically dismissed this with prejudice on the grounds that Nevada OSHA had no basis in law or fact for bringing the citation. It is not anytime somebody wins an appeal. It is only when it rises to that egregious level of having no basis in law or fact.

Assemblyman Daly:

You said a lot of things, and I am not going to go into why a fiscal note is on there or what the justification is. We all know people make various decisions. I thought I heard you say there is not a statutory definition for "substantially justified." The last time I checked in Nevada, the courts do not make the law. If you want to add a definition, you should ask us to put it into law. I hate it when the courts make law. I do not think that is a very good argument. If you want it in the law, then we should say what the law is.

The Board makes a decision or you get a review, and you are going to take it to the Ninth Circuit Court, who is paying for those costs? Someone can say I won my case, and I am saying he or she is not substantially justified. Someone now has to decide that. We need to put it in statute what it is, and then you still get to go to court. I think there needs to be a cutoff and you won your case or you did not win your case.

John Skowronek:

Point well taken. Who is in the best decision to make sure that these situations do not get to that point? It is not the employer. It is the Department of Business and Industry. In the Victory Woodworks case, we were close to selling. We said we will settle this case, just dismiss it. I have letters to the attorney for the state where I wrote, let us dismiss this. The American National Standards Institute said this is an outdated standard. The manufacturer says we cannot provide these restart devices because we are not required to provide them, so it has to be something aftermarket. It is no longer a valid standard. Just dismiss it, and we will pack up our bags and go home. We would not have had a hearing or any reason to bring a motion for costs and attorneys' fees. They were the ones who had the best opportunity to say that.

As far as putting a definition into law, I have no problem with that. If you want to put a definition in there that says substantially unjustified means no basis in law or in fact, that is fine, but you know how attorneys are. Attorneys are going to figure out a way to question what law and fact mean.

Chairman Bobzien:

Do we have additional questions?

Assemblyman Frierson:

I have a couple of questions. The first is about the reference to fees and expenses. Although it is in the EAJA, it does not seem to be that terminology is as common in Nevada statutory language and would potentially open the door for some confusion about what we are talking about. I think in Nevada, we generally talk about fees and costs, but when we start talking about

expenses, that is one of the dangers of adopting language from outside of the jurisdiction. It is not necessarily transferrable to Nevada statutory schemes. I want you to answer a question about that and how you would deal with transferring over whatever the federal government considers to be expenses versus what is considered fees and costs in Nevada.

John Skowronek:

That is precisely why when I helped draft this legislation, I made sure to follow the federal language exactly. The converse of that is it not doing exactly what the federal OSHA requires and we are trying to bend it a little bit. I happen to agree with you. I thought the language was cumbersome as well. When talking about fees here, they are talking about both attorneys' fees and nonattorney representatives, which are allowed in Nevada under OSHA. Fees and costs would be fine to me. We can make any amendment the Committee would like to make it easier. The idea was that if we mirror the federal language, at least there is a body of law out there and case law to interpret it. To your point, I think it is a good point, and I do not have a problem. I am sure the Legislative Counsel Bureau (LCB) could help us make any changes that are necessary to make sure it conforms with the other wording in Nevada statutes.

Assemblyman Frierson:

My other question is more of a concern than a straightforward question. I certainly understand the frustration of feeling like I have not done anything wrong, so why am I incurring these costs? We are proposing to adopt language from a federal statutory structure where the federal government can operate in a deficit. The state cannot. We are treating the state system the same, although we cannot operate in a deficit. We have to balance our budgets every session. I am expressing a concern and I welcome any response to it that we are adopting something from the federal government when they are allowed far more flexibility than we and many states are with our budget.

Assemblyman Hansen:

On the fiscal side of this, this is a policy committee. I do agree we need to look at the fiscal things. Do we want to set up a policy where when someone is wronged by a government agency that he has some remedy in law so that we have something for an individual entity like Victory Woodworks to potentially recoup its costs? That is the first thing we need to address.

Then there is the issue of what it is going to potentially cost the state. I agree completely with you. I do not want to do anything that will cause big financial problems. In that statement and acknowledgement, our OSHA folks are out of control because we will have all of these huge fines coming up. I do not think that is really the case. Right now, I think we need to look at financial, and this

will end up going to the Assembly Committee on Ways and Means. However, do we, as a Legislature, want to provide for honest people who are abused by government agencies and give them some way to recoup costs they should not have had to incur? That is what I think we should focus on. This is not a fiscal matter. I do not want to see it shot down. Was Victory Woodworks treated wrongly? If we agree it was treated wrong, in Nevada there is no way for it to have any kind of recourse. That is all we are trying to do here. We are trying to give them an option. Mr. Skowronek, how many states have already adopted this? Is it 23 or 27 states? This is common practice across the country.

Chairman Bobzien:

As a follow-up to that, do we have stats of other states and their approaches to this? Do all of them follow the federal language exactly, or have they made some sort of modified attempt? Is there one process for costs and another process for fees and other associated items?

John Skowronek:

I have not spent a lot of time researching how many states have adopted this. I know Washington State has. I only know that because the LCB did a memo for Assemblyman Hansen. In there, they cited Washington as one of our closest neighbors who has a statute. I cannot answer exactly how many of the 26 state-run states have adopted similar language.

Chairman Bobzien:

Do we have additional questions from the Committee?

Assemblyman Hansen:

One quick point. We are completely open to amendments. What Assemblyman Daly recommended or Assemblyman Frierson. If you have some ideas on how to clean this up, I am all for it. We are just seeking to allow someone like Mr. Bibby to have some kind of redress for being treated unfairly by the government.

Chairman Bobzien:

I appreciate that Mr. Hansen. Do we have any further questions?

Assemblyman Frierson:

I am also curious about the \$2 million threshold for net worth and where that came from, and if that is consistent with what other states have adopted.

John Skowronek:

That came right out of the EAJA.

Assemblywoman Diaz:

I am curious about the \$8,000 in hard costs and what those were. Could you spell out what those expenses were?

John Skowronek:

I will try to address that. When you make a petition for fees and expenses under the EAJA, you have to specifically itemize every single one of those fees and costs. Those fees were my professional fees for representation, attendance at the hearing and some of the investigative stuff that was done. It included the travel costs because we had to fly back and forth. They would not allow us to present our testimony via telephone before the Board, and the hearing was in Las Vegas but Victory Woodworks' office is here, so three of us had to fly down there. It would be the same fees and costs you would have anytime you would have a hearing as part of the legal system. We did not really have an expert witness, but had we called in an expert witness, those fees and costs would have been included. That is pretty much what those fees were. Those were specifically itemized to the Board. We did make a claim under the EAJA because at the time we just assumed it applied. Because state OSHA stands in the shoes of federal OSHA, we thought everybody played by the same rules. We actually made the formal petition and submitted the fees and costs. It was the Board that came back to say unfortunately you met the criteria of not substantially justified and we cannot make the award.

Assemblyman Ellison:

Under civil penalties, can you go back under the district or federal court and file suit for reimbursement of costs?

John Skowronek:

I think the EAJA makes that provision from a state standpoint basically severing sovereign immunity by the federal government. In the memo provided by LCB, it was said there was no provision, even under civil law in Nevada, that would allow somebody similarly situated to go after that claim.

Chairman Bobzien:

Any final questions? [There were none.] We will take additional testimony at this time. Do we have others signed in to speak in favor of A.B. 106?

John Skowronek:

I did have testimony I submitted to the Committee ([Exhibit F](#)). I think you have it. I will not go over it because I believe we have covered everything.

Chairman Bobzien:

We have it, and thank you for highlighting that you submitted it to us.

Mandi Lindsay, representing Subcontractors' Legislative Coalition, Las Vegas, Nevada:

We are very much in support of A.B. 106. If I could, I do have a speaker in Las Vegas named Stephen Yohay. I think you will find that his testimony is quite adept at expounding on the positive tenets of this legislation. With his years of experience, I think he will add a nice flavor. With that, I will turn it over to Mr. Yohay in Las Vegas.

Stephen Yohay, Attorney at Law, Ogletree Deakins, Las Vegas, Nevada:

As Ms. Lindsay stated, I am here to offer support for A.B. 106 on behalf of the Subcontractors' Legislative Coalition based out of Las Vegas. I know you have testimony before you ([Exhibit G](#)), and I am going to try to shorten some of it because many of the points I was planning to make you have already heard. I have been representing employers nationwide in OSHA citation litigation for 36 years. [Read from prepared testimony.] As you have heard a good deal about the federal law, I will not go through all of that. I do have firsthand experience in litigating this concept.

[Continued to read from prepared testimony ([Exhibit G](#)).]

With all due respect to my colleagues in the Division, they have not cited any evidence to suggest that the EAJA has resulted in an avalanche of litigation against the federal government. As was pointed out, the EAJA applies not only to federal OSHA but to all federal agencies. I do not think we are going to see that result if the Legislature adopts this bill. And with all due respect, the prediction of doubling the caseload of the Review Board is a bit exaggerated. To make it clear, the bill as you heard only comes into play when an employer receives a citation and cannot settle it.

Here is an important point to make and it goes to the financial burden you are concerned about. Most OSHA citation cases are settled. I am not sure what the number is, but I would not be surprised if it was up in the 90 percent range. In the majority of cases, this situation is not going to arise. It only applies to that small percentage of cases that are tried to a decision, where the employer prevails and then shows the position of the agency was not substantially justified. This is a critical point the Division misses. It is not simply that the employer prevails. It has to go beyond that and show that however the term is defined, the employer bears the further burden of showing that the government's position was not substantially justified. What that means is that it wasn't much of a case to begin with and should never have been brought. That happens occasionally, and then it is the Board that makes the determination that the case was without merit but also not substantially justified.

[Continued to read from prepared testimony ([Exhibit G](#)).]

Is this a case that really should be brought, or might there be a better way to allocate the Division's resources?

[Continued to read from prepared testimony ([Exhibit G](#)).]

I am not here to bash the Division. There are good people who work hard, but sometimes mistakes are made.

[Continued to read from prepared testimony ([Exhibit G](#)).]

The better use of the scarce resources this agency has would be to benefit the people who go to work every day. We want the agency to use the resources you give it to the best possible effect. If this bill would have the effect of making the government think twice before bringing a case, I think that is a win-win situation for everybody.

[Continued to read from prepared testimony ([Exhibit G](#)).]

For these reasons, we really think this is truly a bipartisan approach because the ultimate benefit would go to the employees and to the community. We think this bill deserves your support.

If I may, I would like to comment on a couple of issues that have arisen so far. I think a question was posed about why the state does not get compensated if it prevails. With all due respect, I do not know of any provision where the government gets recompensed, especially by a small employer. Second, if the employer does not prevail, he or she has to pay the penalty. The penalty is proposed by OSHA, and it can be modified by the Review Board. I do not pretend to know how funding works in this state, so I do not know what happens to the penalties they collect. Of course the employer would have to pay the penalties.

[Assemblyman Frierson assumed the Chair.]

Acting Chairman Frierson:

Are there any questions?

In reviewing a couple of other states, including Washington, I think aside from the value this bill proposes, I believe the State of Washington is \$1 million and \$5 million with an out regarding whether or not they are the prevailing party, there seems to be a provision that allows the court to either not award fees

if the claim was reasonable or to reduce the fees. Are you familiar with the State of Washington and what they do?

Stephen Yohay:

I am not familiar with the State of Washington. It is clear that it is not simply that you prevail that entitles you to fees; it is that you prevail and show the position of the government was not substantially justified. It is not simply you win the case, there is an additional burden. Then, as was pointed out, the employer must submit a petition for attorneys' fees, which lays out item by item what was spent and what it was spent on. The Board makes an independent assessment as to whether those expenditures are reasonable. There are quite a number of hoops to jump through before an award can be made. I hope that answers your question.

[Chairman Bobzien reassumed the Chair.]

I am not directly familiar with the net worth or individual worth triggers in the State of Washington.

Chairman Bobzien:

Do we have additional questions?

Assemblywoman Bustamante Adams:

Is there a place where I can find the flow chart of this process so I can know what the steps are? I think you said that even if the small business owner or business owner wins their case, it does not stop there. Where can I go to find the process?

Stephen Yohay:

I am not aware of a flow chart. The bill does lay out that an award cannot be made unless it can be shown that the government's position was not substantially justified. Of course there are cases under the federal act that make it clear. I do not know the protocol of the Committee well enough, but if we can provide information to help clarify that, we would be happy to do that.

Chairman Bobzien:

Please do if you can. It would be helpful.

Do we have additional questions for Mr. Yohay? [There were none.] We will pick up here with Mr. Ferrari.

Chris Ferrari, representing Associated General Contractors, Las Vegas Chapter and Nevada Contractors' Association:

I am here today in support of A.B. 106. This bill will afford Nevada employers the opportunity to be made whole for dollars they expended to defend their companies from alleged wrongdoing. The fees and expenses are only payable if it can be proved that the Division's actions were not substantially justified. Understanding some of the issues raised by the Committee, we believe this is a fair, commonsense bill that deserves the Committee's strong consideration. We are happy to work with the sponsor and all interested parties to bring it to fruition.

Chairman Bobzien:

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

Micah Kennedy, Safety Coordinator, Par Electrical Contractors, Inc., Reno, Nevada:

We fully support A.B. 106. We also support Assemblyman Hansen's comments completely on this. There were many good points brought up in the other testimony I heard. That is all we have to say.

Chairman Bobzien:

Are there any questions? [There were none.] This is the last chance to speak in favor of A.B. 106. Is there anyone opposed? [There was no one.] Is there anyone neutral?

Jack Mallory, representing Southern Nevada Building and Construction Trades Council:

Officially we are neutral. We believe that Assemblyman Hansen is open to discussions about some refining of this bill. I think it is best to leave it at that.

Chairman Bobzien:

Are there any questions for Mr. Mallory? [There were none.]

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

We have signed in as neutral to the matter of public policy here. We believe we understand what is being brought forward as you have already heard testimony on today. The states that administer federal OSHA do have a similar program to this. We had attempted to do some research. I have Donald Smith, our division counsel in Las Vegas, and he was tasked to make some phone calls to learn about other state plans. We are trying to get a feel for what is out there just to get a measure for it. We too are finding what you heard from the first group to testify. There are various different levels in different states that

have state plans. From the standpoint of what we have here, what we are seeing is something that is impactful and is new. State plans like Nevada do not have to adopt this provision.

There were a couple of comments made that I will briefly comment on, and then I will ask Mr. Smith to clarify the record from his end. It was pointed out that the OSHA Review Board is the body this goes back to for the decision. I want to point out for the record that the OSHA Review Board is appointed by the Governor. There are an equal number of labor representatives and management representatives and also a general public representative. I do not chastise them when I agree with their decisions or when I disagree with their decisions. They are an independent body and have their own legal counsel. It is that body that this would go back to for the determination on whether the justification was there for the citations that were written.

In the matter of policy, we are neutral. It is something we do not have in Nevada. Could we administer it? We could if it was to be public policy. We do believe it has some impacts. I would like Mr. Smith to add some clarifying comments if he may.

Chairman Bobzien:

Mr. Smith, good afternoon.

**Donald Smith, Senior Division Counsel, Division of Industrial Relations,
Department of Business and Industry:**

One of the things I have done is taken a look at the EAJA to look at how many states have adopted it that are state plans as opposed to federal OSHA plans. I have not completed my analysis. So far I have 14 of 21 states that are full-time state OSHA plans. Of that, we have seven states that have no provision at all for attorneys' fees. There is no ability for someone to get attorneys' fees as the result of an OSHA Review Board hearing. I have three jurisdictions that have adopted the EAJA approach: Arizona, Minnesota, and Washington. I have four jurisdictions that have various circumstances where they allow somebody to recover against the Board. These are California, Michigan, Tennessee, and North Carolina. The EAJA, in terms of state plans, is not wholly adopted. I will gladly make my notes available and send them to the Committee.

Chairman Bobzien:

Do we have any questions?

Assemblyman Daly:

I read through the report regarding Victory Woodworks ([Exhibit E](#)). I have been on a few OSHA inspections myself. They call me at my regular job to represent workers on the job. I am curious how the system broke down so badly on this particular job that we got all the way to the hearing in front of the Board when there was no case. That boggles my mind. I have had situations where we have called OSHA because there was a ditch that was wide open and deeper than it was supposed to be, and the OSHA inspector turned around and walked away because there were no workers there. I have no idea how the system broke down as far as it did. I hope you can explain that and see if there is a remedy for that somewhere. It is a bad case, and it was a good example to bring with this legislation.

Donald Jayne:

It is a legal question, and in many ways I am going to toss it down to my legal counsel in Las Vegas. To answer your question as directly as I can, I did not participate in the case and did not sit in through the settlement conferences. Whether you are trying to support the issue or not support the issue, on one hand we hear there are a small number of these cases, but they do happen. I have no personal knowledge of this case. I did not come today in an attempt to relitigate this case. It was heard before the Review Board and ultimately they won, and they brought that case before this Committee to entertain whether or not there should be a remedy in Nevada to recoup those legal fees. If Mr. Smith wants to address the case specifically, he is in a better position.

Donald Smith:

I, like Mr. Jayne, also had no involvement in the hearing itself. I was not even with the Division at the time the case was heard. I can tell you that in every case that has occurred since then, I have not seen another case where this kind of factual scenario was pursued. I have read the transcript and taken a brief look at the OSHA file as well. This case was an aberration. Contrary to what others have seen, and in terms of what I saw, what was found was that there was no employee exposure and the standard did not apply. That is a lawyer's answer to say this case was not dismissed. It was in fact heard and decided on its merits. It is an aberrational case, and I have not seen one since then.

Assemblyman Daly:

The buck has to stop somewhere. Who is reviewing these cases before you decide you are going to go forward with the case? I know there is a review somewhere. There was talk earlier that if we get to a settlement, dropping the case or not have it be on the person's record. Working in the industry and having an OSHA citation affects your ability to successfully be jobbed. It does not matter if you are union or nonunion or public or private work; the violations

are on the record. If they deserve them, throw the book at them, but if they do not deserve them, is there a way to have the settlement where this comes off their record?

Donald Jayne:

I appreciate that question. There is a series of questions in there that I will try to paw through a little bit. I have touched very lightly on the process. I think the question does go to the process. When you go through the OSHA experience and end up with a citation, that does not come without thought and research by the individuals involved. The inspector will return to the workplace, consult with reference manuals, do the research, talk to the supervisor and talk to the manager. There are a number of levels that would normally catch a case if it were that far astray. I cannot dial back and say what went wrong in this case. There is a process there that would normally catch those. The OSHA inspector will talk to the supervisor, the supervisor will talk to the manager, and they will have a conference when a citation is issued.

The employer has an opportunity to contest the citation within 15 days. I think we both understand the process, and I do not mean to bore you with that conversation. As it goes through, there is some oversight there that, for whatever reason in this case, failed. I do not want to go off on a different tangent. We are training as best we can, and these things do not happen very often. I think you have heard both sides say it is an isolated occurrence. There are not many of them out there. If someone continued to have citations that were not sustainable through the hearings and appeals process, I would have to wonder about the individual competence of that person. We would counsel and train that person.

Is there a way we can work some of this out in the settlement? I have not looked at that. My understanding of what you were suggesting was that would be removed from their record in the settlement. I do not have any individual knowledge in the settlement today about what the parameters are. Perhaps Mr. Smith can address it.

Chairman Bobzien:

Do we have additional questions for Mr. Jayne? Seeing none, is there anyone else wishing to speak in neutral on this bill? [There was no one.] Let us bring Assemblyman Hansen back up for some final words. I think we have a direction starting to emerge for this legislation. Maybe you could bring us home.

Assemblyman Hansen:

I agree with Mr. Smith and Mr. Jayne. This was an aberration and an isolated situation. I think we need to keep that in mind as we look at the fiscal potential

to this. What we really seek to do here is write in law a remedy for improper government actions. The bill provides for a venue for cause of action in civil matters like this and allow those charged in torts such as these, who were issued a citation they feel was unjustified, a vehicle to be restored to the same financial status they held prior to being cited. This is a basic fairness thing. I think it will be fairly rare, but when those aberrations occur, there should be a legal way to redress it. This is all this bill seeks to do. I will work with anyone who has an interest in amending this so it is good for all parties.

Chairman Bobzien:

Thank you for bringing this matter before us. I think after folks have a chance to think about this a little more and review what some other states are doing and get a handle on the full picture of the liability under existing legislation, maybe we can find something to move forward with. With that we will close the hearing on A.B. 106.

[Mandi Lindsay submitted a flow chart after the hearing ([Exhibit H](#)).]

We will open the hearing on Assembly Bill 297.

**Assembly Bill 297: Makes various changes relating to industrial relations.
(BDR 53-928)**

Assemblyman John Ellison, Assembly District No. 33:

We are here today to speak on A.B. 297. This was a working document that has been worked on since 1995, and which was in the law. When we found out there was a piece in there that might have been excluded for definition, we figured we would bring it up for clarification. We worked with the Legislative Counsel Bureau (LCB) on this bill to try to define the language that was missing. It is a "definition of 'police officer' for purposes relating to occupational diseases by replacing obsolete job titles with current job titles; providing penalties; and providing other matters properly relating thereto." With me today, I have Mr. Ron Cuzze who can present the facts pertaining to the bill. If you look under section 1, subsection 3, it reads, "As used in this section, 'person' includes, without limitation, a government, governmental agency and political subdivision of a government." He can explain what that actually means. I will turn this over to Mr. Cuzze.

Ron Cuzze, President and Chief Executive Officer, Nevada State Law Enforcement Officers' Association, Las Vegas, Nevada:

We had found in some of the workers compensation issues, specifically in the heart and lung cases, that there was no even playing field for the employee. We asked Assemblyman Ellison for subsection 3 of section 1, and that was

put in. However, in doing so, they put that in, but if you look in section 2, they completely eliminated the Department of Public Safety (DPS), which was not the intent of our request for an amendment. We had spoken with DPS, and the Deputy Director is here today. There are many words they took out, but we came up with a one sentence remedy for it ([Exhibit I](#)). Under section 2, subsection 2, we thought it would be simple if you amended it to say, "All sworn positions of the Department of Public Safety." It might be good what LCB did. They eliminated a lot of wording in a bill. With that small sentence, it would put everybody in DPS back in.

Assemblywoman Kirkpatrick:

When did this become a problem? Why are we fixing it now? I would also like to know who a "lieutenant colonel" and a "major" are. Those do not register with me when it comes to a police department.

Ron Cuzze:

It says "lieutenant colonel, major, captain, lieutenant, sergeant" of DPS, but they took out all of the officers. It was an error. I do not know why they would put that in and take everyone else out.

Assemblyman Ellison:

When we found this language was not in there, they said under a court of law it could probably be challenged and would probably prevail. However, we should clean it up and clarify it and put that language back in there. Those were some of the problems we were running into with clarification. Was it in there or not in there?

Assemblywoman Kirkpatrick:

Maybe I am not reading the bill right. In section 2, subsections 2 through 6, with the exception of the "lieutenant colonel, major, captain, lieutenant," et cetera are in it. If I were to read the bill, it would say, "A sheriff, deputy sheriff, officer of a metropolitan police department or city police officer." Then it goes on to "lieutenant colonel, major...of the Department of Public Safety." Are you saying that is incorrectly written? If we are reading it wrong, I do not have an amendment and I am confused.

Ron Cuzze:

Yes. Where they put in lieutenant colonel, major and all of that, that should not be there at all. The only amendment ([Exhibit I](#)) should be in section 2, subsection 2, line 33. It should read, "All sworn positions of the Department of Public Safety." Everything that has been taken out can remain out.

Assemblywoman Carlton:

Assemblyman Ellison, do you know what you are trying to fix so we can understand how to help you? We have a bunch of guys called peace officers right now. My husband's retirement identification card says peace officer.

Assemblyman Ellison:

Correct.

Assemblywoman Carlton:

You want to change it to police officer. My understanding has always been that all peace officers are police officers but not all police officers are peace officers.

Assemblyman Ellison:

Correct.

Assemblywoman Carlton:

If you are going to start combining all of these into one category, what are you trying to fix?

Assemblyman Ellison:

Well, from what I can understand from LCB, when they did go back into the language, they said they were deleted from clarification. That is what this was supposed to do. This was supposed to go back and put the peace officers and police officers back into the language.

What the problem was is that LCB said it could be challenged and won, but some of the peace officers, or the ones who work for state prisons and stuff, were not actually put in here. That is what we are trying to do and to make sure they are protected under this law. The biggest thing was to make sure there was no fiscal note. They are covered, but when they made the language change, that is when they fell out from underneath this.

Assemblywoman Carlton:

Just for clarification, when you read *Nevada Revised Statutes* (NRS) 617.135, and you go to the Attorney General's opinion that follows it, which we all recognize. When you get into these heart and lung statutes, it does include corrections officers there. They are included. It would seem to me that the easiest way to do this would have been to add another line and put in "corrections officers category 3" to make sure we were fine and did not have to actually change the definition of a police officer. They can be considered a peace officer, but I do not think anybody would ever consider a corrections officer a police officer. I am not sure what direction you have to go, but I understand what you are trying to fix now. It is to make sure corrections

officers have the same opportunity in the heart and lung provisions that everyone else has.

Assemblyman Ellison:

Correct.

Ron Cuzze:

They did not remove corrections officers or university police officers or anybody like that. Who they lined out in the amendment were only DPS employees. We never asked for anyone to be eliminated. We were trying to change subsection 3 of section 1. For whatever reason, LCB struck everybody in DPS. We are asking DPS be put back in it. Instead of referring to each individual division, list it as "all sworn positions of the Department of Public Safety." I apologize for any confusion.

Assemblywoman Carlton:

Assemblywoman Kirkpatrick, I will volleyball it back to you and see where we go from there.

Assemblywoman Kirkpatrick:

Let us start over. The impression I am getting is LCB came and said, "Here is a problem within our statute. Fix it." That is the impression I am getting. I am struggling because I know that LCB does not normally do that. They have a cleanup bill at the end of session. I want to start fresh to know who has the problem, so we can help fix it.

Ron Cuzze:

Our only request—

Assemblywoman Kirkpatrick:

"Our" meaning?

Ron Cuzze:

The Nevada State Law Enforcement Officers' Association.

Assemblywoman Kirkpatrick:

Okay, perfect.

Ron Cuzze:

We asked that subsection 3 of section 1 be added. That is all we wanted. Without checking with anybody, LCB lined out everybody in DPS.

Assemblywoman Kirkpatrick:

I am a big defender of our staff because our staff works tirelessly. It sometimes turns out the legislator or whoever they were dealing with submitted six lines, and they are guessing what to do. Before we beat up LCB, let us try to fix the problem. I am afraid maybe they were not understanding what we were trying to fix. I know Mr. Mundy is our Legal Counsel, and he is fabulous. I want to make sure it is clear. I want him to know specifically what we want to do.

Ron Cuzze:

As I said, their lining this out helped because everything they lined out can be replaced with one small sentence: "All sworn positions of the Department of Public Safety." That handles everyone from the Parole and Probation Division, Nevada Highway Patrol, Capitol Police, the Nevada Division of Investigation and all of them.

Chairman Bobzien:

Our Legal Counsel is going to look at this and try to get a handle on the drafting history. Rather than us going back and forth right now, we can probably get this cleared up outside of this meeting and then come back and have another discussion.

With that, do we want to move from the bill and hear from others in support?

James Wright, Deputy Director, Nevada Department of Public Safety:

I can hopefully shed some light on this. We were concerned when this came out and saw the language that was stricken from here affected the entire Department of Public Safety and the positions that we had. Granted, those titles that were used in the first strike outs were older titles, and they were replaced on page 3, lines 8 and 9 with the current civil service classifications of DPS employees. The "lieutenant colonel, major, captain," et cetera are current civil service classifications of our individual employees in those classes. However, that did also eliminate the chiefs of the divisions, which were included in that original language that was struck. In looking at this and to find a way to help clean this up, we came forth to offer a simple suggestion as to add that one sentence to include, "All sworn positions of the Department of Public Safety." That would cover everything that was stricken and saves the wording from listing every individual civil service classification.

Chairman Bobzien:

Do we have any questions for Mr. Wright? [There were none.] Is there anyone else who wants to come to the table in support of this measure? [There was no one.] We will move to opposition.

James Wright:

I had to officially sign in opposed to this because of the language confusion. I shared with you what we think is a friendly amendment.

Chairman Bobzien:

Do we have anyone else wishing to testify in opposition? [There was no one.]
Do we have anyone wishing to come to the table as neutral?

Ana Andrews, Risk Manager, Risk Management Division, Department of Administration:

We are neutral on this bill, but we did want to suggest that if the bill goes into effect, that it becomes effective on July 1, 2014, instead of July 1, 2013, to allow the 31 Capitol Police officers to have baseline testing.

Assemblywoman Carlton:

This opens up a new can of worms. So Capitol Police officers are currently not included in the heart and lung bill?

Ana Andrews:

Yes, that is correct. They are not covered under the bill right now.

Assemblywoman Carlton:

So we would be expanding heart and lung provisions to a new classification of employees in this bill?

Ana Andrews:

Yes, we would.

Assemblywoman Carlton:

Bingo, we now figured out what is going on. Is there anyone else we should be aware of Ms. Andrews?

Ana Andrews:

Those are the only ones we are aware of. We know DPS submitted an unsolicited fiscal note providing for the cost of those physicals.

Assemblywoman Carlton:

We do not have that, but thank you for mentioning it. If the language went back to the original language, and there was no amendment, there would be no change in adding in a new classification to the heart and lung provision? If we went back to NRS 617.135 originally and went back to square one, we would be fine.

Ana Andrews:

Yes, that is correct. We would go back to square one without the 31 Capitol Police officers.

Chairman Bobzien:

Assemblyman Ellison, do you want to come back up for some final words?

Assemblyman Ellison:

As far as LCB goes, they are probably one of the hardest working departments in this building. When we did meet with them on the bill, the number one question was if there were any fiscal notes that would be included, and the answer was no. That was our main concern. We did not want to create another debt back to the state. They assured me this bill will not.

Assemblywoman Kirkpatrick:

For historical purposes, this is always an issue. A couple of sessions ago, it was letting park police in, and then another classification was being let in. That is why we were asking the questions. It does create a fiscal impact to the state. Maybe there is a way to get to what you are trying to get to, but there are many unintended consequences anytime you open up that statute for heart and lung. That is the case we were trying to make. It is an impact we have to look at.

Assemblyman Ellison:

We need to note that.

Chairman Bobzien:

So noted. We will go ahead and close the hearing on A.B. 297.

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Is there anyone wishing to make general public comments? [There was no one.]

Do we have any matters to come before the Committee? [There were none.]

The meeting is adjourned [at 3:20 p.m.].

RESPECTFULLY SUBMITTED:

Julie Kellen
Committee Secretary

APPROVED BY:

Assemblyman David P. Bobzien, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 25, 2013

Time of Meeting: 1:46 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 106	C	Assemblyman Ira Hansen	Remarks
A.B. 106	D	Steve Bibby	Memorandum
A.B. 106	E	Steve Bibby	Victory Woodworks Final Order from OSHA
A.B. 106	F	John Skowronek	Prepared Testimony
A.B. 106	G	Stephen Yohay	Prepared Testimony
A.B. 106	H	Mandi Lindsay	Flow Chart
A.B. 297	I	Ron Cuzze	Proposed Amendment