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

Seventy-Seventh Session
February 6, 2013

The Committee on Commerce and Labor was called to order by Chairman David P. Bobzien at 1:35 p.m. on Wednesday, February 6, 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 Cresent Hardy
Assemblyman James W. Healey
Assemblyman William C. Horne
Assemblyman Pete Livermore
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Kelly Richard, Committee Policy Analyst
Matt Mundy, Committee Counsel
Leslie Danihel, Committee Manager
Linda Conaboy, Committee Secretary
Earlene Miller, Committee Secretary
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
Jack Mallory, Assistant Business Manager/Secretary-Treasurer, Director of Government Affairs, International Union of Painters and Allied Trades, District Council 15
Warren B. Hardy II, representing Associated Builders and Contractors, Nevada Chapter
George A. Ross, representing Nevada Self-Insurers Association
Chris Ferrari, representing Associated General Contractors Las Vegas Chapter
Thoran Towler, Labor Commissioner, Office of Labor Commission, Department of Business and Industry
Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO
Robert Ostrovsky, representing Nevada Resort Association/International Alliance of Theatrical Stage Employees Local 720 Training Trust

Chairman Bobzien:
[Roll was taken, and a quorum was present.] I welcome everyone to the Committee on Commerce and Labor. I look forward to working personally with all the members of the Committee. I extend a welcome to the members of our audience in Carson City as well as those attending in Las Vegas. We also are

presenting our proceedings online, which is a great new feature this session for members of the public who wish to stay involved in the legislative process.

I represent Assembly District No. 24 in Reno. This is my fourth legislative session and my first on this Committee. I appeared before this Committee numerous times in previous sessions, and I am honored to be serving as the Chairman.

I would like the members of the Committee to introduce themselves. I will start by recognizing my Vice Chairwoman, Speaker Marilyn Kirkpatrick.

Assemblywoman Kirkpatrick:
I am excited to have a new committee and to bring some historical value to this Committee. I am happy to serve and to be the Vice Chairwoman.

Assemblywoman Carlton:
I am from Assembly District No. 14 in Las Vegas. This will be my eighth session serving on the Commerce and Labor Committee in the Legislature.

Assemblyman Grady:
I am from Assembly District No. 38, which covers all of Churchill County and the majority of Lyon County. This is my sixth session. I have been on this Committee since my first term.

Assemblyman Ohrenschall:
I represent Assembly District No. 12 in Clark County. I am excited to serve on this Committee.

Assemblywoman Diaz:
I represent Assembly District No. 11, which includes parts of northeast Las Vegas and North Las Vegas. This is my second session and my first time on the Committee on Commerce and Labor.

Assemblyman Hansen:
I represent Assembly District No. 32, which includes most of Washoe County, all of Humboldt, Lander, Pershing, Mineral, and Esmeralda Counties, and a large portion of Nye County.

Assemblyman Daly:
I represent Assembly District No. 31 in Sparks. This is my only committee that is the same as last session.

Assemblyman Ellison:
I represent Assembly District No. 33, which includes Elko and extends south to Caliente. This is my second time on this Committee.

Assemblywoman Bustamante Adams:
I represent Assembly District No. 42 in southern Nevada, the Spring Valley area of Las Vegas. This is my second time on this Committee.

Assemblyman Livermore:
I represent Assembly District No. 40, which includes Carson City and part of Washoe County.

Assemblyman Healey:
I represent Assembly District No. 35, one of the new seats in the far southwestern part of Las Vegas.

Assemblyman Frierson:
I am from Assembly District No. 8. This is my second term in the Assembly and my first on this Committee.

Assemblyman Hardy:
I represent Assembly District No. 19, which includes the eastern portion of Clark County.

Chairman Bobzien:
This great diversity of background and perspective should be a wonderful asset to our Committee. Now I would like to introduce our Committee's staff: Legal Counsel Matt Mundy; Committee Policy Analyst Kelly Richard; Committee Manager Leslie Danihel; Committee Secretaries Linda Conaboy, Earlene Miller, and Katie Wilson; and Committee Assistant Olivia Lloyd.

I will take a motion on the adoption of the Committee policies (Exhibit C.)

> ASSEMBLYMAN ELLISON MOVED TO ADOPT THE ASSEMBLY COMMITTEE ON COMMERCE AND LABOR 2013 LEGISLATIVE COMMITTEE POLICIES.
>
> ASSEMBLYMAN FRIERSON SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMAN HORNE WAS ABSENT FOR THE VOTE.)

The Policy Analyst will now go over the Committee Brief.

Kelly Richard, Committee Policy Analyst:
I have prepared a Committee Brief (Exhibit D). The document is available to everyone on the Nevada Electronic Legislative System (NELIS). This Committee is traditionally one of the busiest in the Legislature. We had almost 150 bills heard in this Committee last session. Expect that there will be many measures considered this session as well. There were a few vetoed measures last session. None were overridden, but you might expect some of those bills to be returning for your consideration. Among the topics are employee misclassification and renewable energy.

The Committee generally has jurisdiction over a wide range of issues relating to commerce and labor. More specifically, these might relate to commercial instruments and transactions; financial institutions; insurance; manufactured housing; trade regulations and practices, such as deceptive and unfair trade practices; labor and industrial relations, including workers' compensation and safety; professions, occupations, and businesses, ranging from veterinarians to chiropractors. Energy and public utilities are addressed as well.

Specific policy issues session may include regulation of health care professions and health insurance, and some of this will relate to the coming implementation of the Affordable Care Act. Some bills may relate to many health care professions; other bills may apply to only one.

Renewable energy, energy efficiency, and energy conservation are additional topics. Nevada is the leader in energy efficiency and renewable energy, and has been since the renewable portfolio standard was enacted in this state. In 1997, Nevada was the third state to enact the renewable energy standard.

During the 2011 Nevada Legislature, Assembly Bill No. 416 of the 76th Session was potentially the most far-reaching energy bill of that session. It generated some controversy and was vetoed by the Governor. Several provisions of that bill may come up this session. More information is in the Committee Brief.

Other Committee topics that generated headlines last session were mortgage lending and foreclosure issues, that remain major areas of public policy attention. Two significant bills in 2011 were Assembly Bill No. 273 of the 76th Session, which ramped up protection for homeowners and investors after foreclosure and a short sale, and Assembly Bill No. 284 of the 76th Session, the robo-signing bill, which protected homeowners from fraudulent and illegal foreclosures.

Workers' compensation and worker safety, as well as labor minimum wage and unemployment, are other topics for bills this session. An important deadline for this Committee is April 12, which is the first deadline for committee passage out of the house of origin.

On pages 6 to 8 are contacts for agencies testifying in front of this Committee. You may wish to reach out to the various administrators and agency heads with questions. I can provide contact information. The Research Division is available to assist Committee members on matters before the Committee. All information is confidential.

Chairman Bobzien:
We will open the hearing on Assembly Bill 12.

Assembly Bill 12: **Removes the requirement that an employee notify his or her employer before filing certain complaints with the Division of Industrial Relations of the Department of Business and Industry. (BDR 53-352)**

Donald E. Jayne, Administrator, Division of Industrial Relations, Department of Business and Industry:
We are here today to present Assembly Bill 12 for your consideration [Submitted Exhibit E]. We will be dealing with a section of *Nevada Revised Statutes* (NRS) 618.445, subsection 2, which is the Occupational Safety and Health Act (OSHA) language for Nevada; that is Nevada's state plan for OSHA. There are federal states and there are state plans. About half of the states are federal states, as opposed to state programs like Nevada's.

The intent of the OSHA program for Nevada is to be similar to and as effective as the federal programs. That is one of the things driving this bill. *Nevada Revised Statutes* requires that an aggrieved employee notify the employer of his or her intent to file a whistle-blower complaint with the Division of Industrial Relations (DIR)/OSHA before the employee can file the complaint.

Federal OSHA believes this requirement may discourage the employee from filing a complaint or hamper timely investigation of the complaint, and as a result Nevada OSHA is not as "effective" as the federal program.

We did some research, and as best as we can tell, it was in 1975 that the criteria for a written notification were inserted in Nevada statute. Unfortunately, the 1975 records have not allowed us to find any really solid legislative history as to why those changes were made.

This requirement deviates from federal guidelines covered in *Whistleblower Investigations Manual,* September 20, 2011. Federal OSHA performs an audit on an annual basis detailing Nevada's compliance with federal OSHA statutes.

In each audit, there is an area of emphasis, and last year the area of emphasis was whistle-blower programs. During the audit, it was noted that the criteria within NRS was for written notification, and the recommendation from the federal audit was to have the offensive language removed.

We have not had time to talk to all of the impacted parties; however, we have made commitments to talk to different groups. For example, if an employee makes a workplace safety complaint to OSHA, who then investigates it, the employee has protection under the federal whistle-blower statutes. If the employer takes action against the employee, certain sections of the statute will protect him. In Nevada, there is a written notice requirement, which does not exist in any federal programs, nor does it exist in many states' programs. This causes Nevada to be out of compliance with federal statutes and is the reason for the bill.

Assemblyman Ellison:
It seems this law will bypass the attempt to resolve a problem, so the employer will be fined by your agency. It creates a burden on the employer and a burden on your office to follow these complaints. How long is the employee under protection? Can this employee never be fired? I do not want unnecessary regulations on the businesses that are not making it now when they can resolve these issues. They should have the right to appeal this, and the way it is written now, they will go straight through to you, and you will fine the employer.

Donald Jayne:
It is easy to become confused with the issue. There is no change of that section of law in this bill. It is after the event happens that the protections to the employee who made the complaint come into play. We are addressing that section. I think you are experiencing some of the concerns of OSHA as an enforcement agency.

Stephen Coffield, Principal and Chief Administrative Officer, Nevada Occupational Safety and Health Administration:
People often become confused between the inspection and the safety process, where, because of employee complaints, we inspect the workplace, as opposed to someone who was perhaps interviewed during an inspection or was raising an issue to an employer. There could be many ways for an employer to become upset because of the employee's steadfastness regarding an issue. Those are

the kinds of issues that end up under the whistle-blower discrimination statute in the OSHA world.

When employees call our office, we recommend they try to resolve the issue with their employer first, but that would be on the safety and health side of the house. If the employee decides to make the complaint—either because the issue could not be resolved through the employer or because he simply wants to make the complaint, which he is entitled to—the whistle-blower protection would come into play if the employer determined which employee made the complaint and then took some kind of adverse action against the employee.

Assemblyman Ellison:
The bill removes, "after first notifying his or her employer." I believe the first round should always be to recognize the problem. Now it reads that any complaint must be filed with the Division within 30 days. To me it seems we are not working with the employee and the employer. I think the dialogue must be between the employee and the employer, but that is not what this says.

Additionally, when you arrive at a job, now it is your policy, under OSHA, not to recognize the problem and then fix it. You are fining every employer you work with, is that correct? Our training people have told me this. That is not good business practice.

Stephen Coffield:
The OSHA process has two arms. The first is the enforcement arm, which issues the tickets. The other is the consultation and training side, which does not give tickets if they find deficiencies. That is the way federal OSHA required us to set the program up in the mid-1970s. It continues to be that way.

Assemblywoman Kirkpatrick:
I would like to discuss the merits of the bill. This is a passionate issue, but this is about the safety of the employees. The bill says "may file a complaint." This makes me think the employee will already go to the employer. If the employer does not handle the complaint, the employee has the right to make a complaint with the Division and be held harmless if the employer is upset by this action.

I understood that complaints are anonymous so there is no retaliation. This says that you may file a complaint, but it does not say you have to file it, is that correct?

Donald Jayne:
Again, NRS 618.445 is specific to whistle-blower statutes. To be in this section, an employee, by definition, has already made a complaint via mail or

phone. Now it goes to the actions in the workplace. If the employee feels he is being retaliated against, and wants to make a whistle-blower complaint, that is where this section comes into play. The old language that has been in Nevada since 1975 required them to notice their employer in writing. It is specific to that whistle-blower category. If we can zero in from there, that would be helpful.

Assemblywoman Kirkpatrick:
You are right, but I thought we were getting lost in that piece of it. It is after the fact, but this also is a deficiency found in an audit division, correct?

Donald Jayne:
Yes. It was uncovered in a federal audit of our OSHA program. The Office of Inspector General, on a federal basis in 2009, with a report produced in 2010, increased the offenses for the federal government on the overall whistle-blower program. This program is deemed important to encourage employees to speak out in the workplace and to help ensure a safe workplace. It became federal emphasis that they look for in their audits. It was during an audit that they found this and made a specific recommendation that the written requirement is not as effective as the federal program.

Chairman Bobzien:
We are interested in state privacy, and that is why we are taking this up. Is that the point?

Donald Jayne:
Yes, technically that is correct. With us, we reduce our provisions into NRS. Our provisions are now inconsistent with the federal government. The term discussed and debated is "as effective as," rather than one being supreme to the other. If we can prove that we are "as effective as," we can deviate from the federal program. However, in this case, it is straightforward and we are recommending the consideration of the removal of the requirement.

Assemblyman Livermore:
There is a document provided by the Associated Builders and Contractors (ABC), Nevada Chapter. In the document, there is a request that ABC Nevada has additional concerns and believes that the bill needs to be further reviewed by interested parties. Have you taken the time to go through industry partners to find out how this may impact them and to gather support from them?

Donald Jayne:
Going first has its advantages. No, we have not talked to all interested parties. I have talked with some people today. We stand ready to meet with legislative

members and interested groups. We will spend whatever time is necessary to increase their comfort level with it.

Chairman Bobzien:
Does anyone one else wish to speak on this subject? We have several people who have signed in as neutral.

Assemblyman Livermore:
To create good legislation, you need to bring everybody to the table. In regard to Mr. Ellison's comments, this bill may be a threat to his livelihood. If we are going to create good legislation, I suggest the partners air this. We may need to revisit the bill later. However, I suggest you take a look at the partners who may want to discuss this.

Donald Jayne:
We will do so.

Chairman Bobzien:
We appreciate the comments; that is the process. If there is any other testimony, we will hear it. Otherwise, we are not going to move this bill today. We will have ample opportunity to talk about it further.

Assemblyman Frierson:
It feels as if we have gotten away from what we are trying to accomplish. My reading of the bill says, under current law, if an employee files a discrimination complaint, he has to notify his employer. The new wording would say he no longer needs to notify the employer of the impending complaint; he simply files it. We are talking about what happens after the complaint has been filed and how the employee goes about addressing his feelings of discrimination. Is this correct?

Donald Jayne:
That is a reasonable interpretation of what we are addressing. This is after an initial safety or health complaint is made. It comes after the fact, when the employee feels discriminated against, maybe picked upon, perhaps facing a change in shifts. Something has happened in the workplace that causes him to believe he is being retaliated against because of the safety complaint. The change would be, now, they must notice in writing. If the bill is processed, they could make the complaint with OSHA.

Stephen Coffield:
I would add that when the complaint is opened with an employer, they are informed who the complainant is. It is not as if the complainant is not known.

At that point, the protection of the law wraps around the employee until the investigation is finished and until the merit of the case has been determined.

Chairman Bobzien:
No one signed in in favor of the bill. Please be forthcoming as to whether you are for, against, or neutral on a bill. If no indication, preference will be given those who state their position when they sign in.

Danny L. Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:
I have been involved with this issue since the beginning. It goes back to when Federal OSHA was created. Nevada did not have the state plan it has today. After the 1970 act, Nevada applied for the right to control its own destiny. The law says that you must have the minimum level of protection that Federal OSHA has. Prior to Nevada's **s**tate plan approval, there was Federal OSHA in Nevada. Everyone wanted Nevada to adopt its own plan. As the years passed, DIR was established as the police agency, and Nevada was on probation for a decade or longer before Federal OSHA approved our plan.

Recently, we had a long string of work-related fatalities, triggering much scrutiny by the federal government. When you undergo a federal audit, it is to determine whether you are meeting their requirements, even minimally. This bill conforms only to the bare necessity. If you do not adopt this bill and conform to the federal plan, you endanger the state. I know when we had fatalities on the Las Vegas Strip, a lot of explanation was required. We had the largest privately funded job in the world. We had close to 20,000 people on one job. There were problems. It was unfortunate, and maybe some people made some mistakes. At the end of the day, you are jeopardizing the state's right have the Nevada state plan if you do not process this bill.

Jack Mallory, Assistant Business Manager/Secretary-Treasurer, Director of Government Affairs, International Union of Painters and Allied Trades, District Council 15:
We are in full support of this bill. I signed in in support of it but did not intend to testify. Our interpretation is the same as Assemblyman Frierson gave and was clarified by Mr. Jayne and Mr. Coffield. District Council 15 fully embraces the concept of open discussions about safety between employees and their management. We encourage our members to bring a safety issue to their supervisor's attention so it can be immediately addressed. We have assisted numerous employers in developing safety programs that incorporate these types of provisions. Regarding the ability to terminate someone for cause, Assemblyman Ellison, I do not believe this provision provides a shield for terminating someone for cause.

Warren B. Hardy II, representing Associated Builders and Contractors, Nevada Chapter:
This is required to bring us into state law. We are in support of the bill as written for that purpose. We may take the opportunity to trust and verify, but I have no reason to distrust Mr. Jayne.

Chairman Bobzien:
Are there any questions? [There were none.] Is there any additional testimony in the "for" position on A.B. 12? [There was none.] Is there any additional testimony from Las Vegas? [There was none.] Is anyone in opposition to this bill? [There was no one.] Is there anyone in the neutral position?

George A. Ross, representing Nevada Self-Insurers Association:
Until we learned why Mr. Jayne brought the bill, we did not realize it was because of a federal audit. That tempers what I want to say. There is one item that our client would like to have on the record. If you want a safe workplace, and there are problems in the workplace relating to workers' safety, you want those workers coming to their employer and discussing the issue so it can be fixed. Our concern is that, by taking away the notification of the employer, the employer may not be aware of the issue until OSHA arrives. That could cause a delay, and someone could be injured in the interim. That is our only concern. We understand why the bill was introduced, but we are afraid there are behaviors that may be inhibited because of the bill. We would like to have an opportunity to be a part of a meeting to discuss the bill with Mr. Jayne.

Assemblyman Hardy:
I need to understand this bill better. As I understand it, a violation happens and has already been dealt with, after the fact, and an employee has only 30 days to say he has been unjustifiably dealt with because of his whistle-blowing action. Is that correct?

George Ross:
That is not the way we understand the bill.

Assemblyman Grady:
We need a sentence in the bill saying the employee went to the employer. If there could be a word or two saying they had taken this first step, I would feel better about this.

Assemblyman Healey:
I believe that the complaint process is another topic. This is dealing with once the complaint has happened and action has been taken against an employee.

The initial complaint, or what the penalty was to the company, is not what is being discussed in this bill.

Assemblywoman Kirkpatrick:
No bill is simple. I have the statute, and it is clear under the heading of NRS 618.445: "Employee protected from discharge or discrimination; procedure for reinstatement." The statute prior to that, NRS 618.435, talks about the complaint of the violation and how that works.

I feel that we are all reading this incorrectly, and that it is not clear what we are trying to achieve. I think everybody on this Committee wants to make sure that the employer has the ability to be heard and to rectify the problem if there is one. I feel that we are making more out of this than was intended. I do not want the federal government to come in and run OSHA. We know that does not work for our state, and we know that is a reality if we do not come into compliance. We need to clarify this. The bill does not say what the statute is about. There is no heading. I am wondering if we can fix that and discuss that.

Donald Jayne:
As has been said, there is no simple bill, because one has to read it in context and compare it to the other components of the OSHA law. This section, as specific to NRS 618.445, pertains to the "after the fact." We absolutely encourage employees to talk to their employers about safety in the field and I think it happens every day in many work sites. That interaction is normal and appropriate.

This section of law will come into play after an employee has chosen to make a complaint with OSHA. The employee who makes the complaint has some protections because they made a complaint about safety. Those are the Whistleblower Statutes we are talking about here. It is confusing to an extent, but it is segregated to "after the fact." It is not normal and does not happen all of the time. We may see 50 complaints in a year of this nature. These would be downstream, after the fact, after an employee hopefully has talked to a supervisor, and pointed out a hazardous condition, and the hazard has been fixed. This would be after the complaint has been filed.

Assemblyman Frierson:
Correct me if I am wrong, but if an employee observes a dangerous condition and reports it to an employer, the employer will address it or not. But either way, the employer might then demote the employee. This bill now says there is no reason for an employee to tell the employer he is filing a complaint. It is not the hazardous condition that is being dealt with; it is the potential punishment for bringing it to the employer, correct?

Donald Jayne:
You have introduced a new wrinkle to the scenario. The new wrinkle being that the employee in your example did not file an OSHA complaint, but talked to the employer. Then you are jumping past the filing of an OSHA complaint to the protections of the whistle-blower statute. Mr. Coffield, would this apply to this scenario?

Stephen Coffield:
The Assemblyman is right. It is not just a complaint. It could be anything related to workers' safety, and it does not have to be a complaint filed with the OSHA office; it could be another work issue. The complaint could cost a lot of money or it could slow down the project. There could be many different reasons for the discriminatory action. So, all of a sudden, the employee who makes the recommendation finds himself working graveyard or terminated or something along those lines.

Assemblyman Frierson:
This addresses NRS 618.445, while NRS 618.435 addresses the steps involved in contacting your boss and having someone accompany you to inspect it. The portion about notifying your boss first seems to be addressed in the previous section.

Assemblyman Daly:
First, employers are required to provide a safe workplace. It is an employer's responsibility from the beginning. Almost every employer I deal with is proactive with morning safety meetings, morning safety sheets, and providing extra training, and OSHA has staff to help. If you can demonstrate that you have safety protocols in place, should you get a citation, this all goes to your credit and is taken into consideration when it comes to enforcement. I have been to the hearings, and I have been there to defend contractors, but things happen and mistakes are made. I am all for this bill. It is clear. Let us get back to reality. We need to clarify the language so it is not offensive to the federal government and move on.

George Ross:
I understand the bill now, and I will go back to my client and explain it.

Chris Ferrari, representing Associated General Contractors, Las Vegas Chapter:
Our workers compensation committee only requested the opportunity to have a dialogue with Mr. Jayne to further understand how this would be applicable on a day-to-day basis. We have spoken with Mr. Jayne, and he is willing to have that dialogue with us.

Chairman Bobzien:
We will close the hearing on A.B. 12 and move to Assembly Bill 36. The Labor Commissioner will present the bill.

Assembly Bill 36: **Makes various changes concerning apprenticeships for federal recognition of the Office of the Labor Commissioner as the State Apprenticeship Agency. (BDR 53-357)**

Thoran Towler, Labor Commissioner, Office of Labor Commission, Department of Business and Industry:
This is a prefiled bill. For those who may not know, apprenticeship is a system of supervised training, leading to certification in a trade, occupation, or craft. It combines on-the-job training with classroom-related instruction. The Office of the Labor Commissioner provides administrative as well as oversight functions to the State Apprenticeship Council, which provides for the registration of approved apprenticeship programs.

Any and all matters decided by the Council involved in a registered apprentice or apprenticeship program, union or nonunion, is subject to review or appeal by the Labor Commissioner. There are now 98 approved apprenticeship programs in Nevada, and in those programs there are 3,399 registered apprentices. On December 10, 2010, before my time, the Office of the Labor Commissioner submitted an application for continued recognition as the registration agency for federal purposes in Nevada.

The Federal Office of Apprenticeship completed its review of Nevada's application for recognition as the registration agency for federal purposes. Their review revealed that Nevada's apprenticeship laws do not fully conform to the requirements of *Code of Federal Regulations* (C.F.R.), Title 29, Parts 29 and 30. The goal of this bill, and the only goal, is to correct and identify nonconformities. Nothing else.

The request to change, as set forth in this bill, is necessary for the State Apprenticeship Council to continue to be recognized as the registration agency for federal purposes in the state of Nevada. If the bill fails, the State Apprenticeship Council will likely no longer be recognized as the registration agency for federal purposes in Nevada. This could lead to a reduction in apprenticeship programs as well as a reduced number of trained apprentices.

The reason the state council should be federally recognized is so that we can offer better protection to our Nevada apprentices and Nevada employers. Neither 29 C.F.R. pt. 29 nor 29 C.F.R. pt. 30 offers a direct appeal procedure for the apprentice. The state does offer an appeal process, including necessary

hearings to ensure apprentices are treated fairly with regard to the state's Equal Employment Opportunity (EEO) plan. Federal recognition also allows the state to ensure that the training offered in Nevada is quality training that will continue to facilitate both employer and employee growth.

Assemblywoman Carlton:
In order to avoid the round-robin confusion we had previously, it would be good for us to understand some of the history of this issue. We have been out of compliance for a number of years. I am confused as to whether we are trying to reinstate or start a new application process, where the history is, and where we are trying to get, so we understand how these terms will apply to the state.

Thoran Towler:
It used to be that any state that wanted recognition by the federal government as a state apprenticeship body could be so recognized. Around 2007, the federal government, through the U.S. Department of Labor, started to look into the different programs because they wanted uniformity. I do understand their position.

At that point, they started to require all of these states to submit their materials to see if they were in compliance. At that time, December 2010, we, like 30 other states and territories, submitted our materials. In the past three years, we have been given provisional recognition from the federal government, so we are still recognized. I communicate with the U.S. Department of Labor regularly to discuss our progress. A lot of the changes they would like made are regulatory changes that we can do through the *Nevada Administrative Code* (NAC). These changes need to be made through the statutes. We are continuing to be recognized. Some states are farther along than we are, some not as far. California chooses not to pursue continued recognition, so they are not recognized. At this time, we are recognized and will continue to be as long as we keep making progress.

Assemblywoman Carlton:
I am concerned there were regulations promulgated in 2008 and 2013. I am apprehensive about how far out of compliance we are with 2008, considering how much we have had go on in this state in the last few years. That is a long time. There have been several sessions where we could have addressed this issue. I would like to know where it fell through the cracks.

Thoran Towler:
I am not here to make excuses. I was appointed to this position in November of 2011. From my first week, I have taken this on and have tried to push it through. The 2008 regulations are no longer in compliance. We had two

workshops, and we have gone forth with a new set of regulations that will need to be pushed through. They are ready to go, but they would have been temporary regulations. So we thought as soon as, and if, this bill is passed, we are ready to go forth with the regulatory changes.

I understand there is a lot of frustration in the state and the federal government too. I had a conference my first week with them. They are supportive of the new regime and changes we are making. We had one person in my office working with the State Apprenticeship Council; now there are five of us. We are working on the problems and ready to move forward.

Assemblywoman Carlton:
Apprenticeship is an important issue in this state, especially if we want to expand it into other areas. We want to be careful that whatever we do here does not hinder the apprenticeship programs in the state.

Assemblywoman Kirkpatrick:
I need clarification. I would like to have a white paper on what the federal government says are our noncompliance issues. I need to know how this will affect the constituents in the state.

To Mrs. Carlton's point, I have concerns on page 9 of the bill. It changes the word "trade," which is both union and nonunion. They are the folks who have been paying into this fund for a long time. If we change "trade" to "occupation," as on page 9, I am assuming it is because we are trying to open it to our seven sectors, but who is paying the bill? The construction industry has been footing the bill for many of the apprenticeship programs. Have we had that discussion as we make these changes?

Also, in the past, it appears that the advisory council had a lot more say in how we did things. It seems now the new Director dictates things. Let us talk about that, because the advisory council is made up of folks throughout the state who represent the industry. The State Director, who dictates things, does what they would like. Let us have that discussion.

Thoran Towler:
In response to the first question, yes, especially in Nevada, but in a lot of states, apprenticeship programs have been for the trades. They have been paying the bills. That has not changed. I have been trying to spread that out to the other trades. There are many people here with the trades, and I have not heard any objections to that.

Assemblywoman Kirkpatrick:
Have they been told that the money that took seven months to get, which in the past was three months, now will be dispersed to more than another million people? Let us give them the fairest estimate of what we are trying to do.

Thoran Towler:
It is not my intent to spread that money out. What I said from the beginning is that I am trying to come into compliance. If we are not in compliance, that is fine. I do understand many people would be concerned. I am not saying that would be fair, but it complies with what the federal government is asking us to do.

You said the Director would have control. I am the Secretary-Director, so when you refer to Director, that would be me. I fully agree. For those who may not know, the State Apprenticeship Council is made up of seven people. I appoint them. Three members represent employers, and three represent employees. There is one member of the public, which I recommend and the Council votes on. I have been talking with interested parties, and there has been a request that we not use that language. We are switching the authority from the Council to the Director. We feel that switching it back and keeping it the way it was, and giving it the authority with the Council, is my preference and would still comply with the federal government. I agree, there are people here who have been on the Council and people who would like to be on the Council. I am not looking for a dictatorship. I think the Council does a great job meeting four times each year. Those seven people can do a lot more than I can do.

Assemblyman Livermore:
The way I read this bill, it makes the Labor Commissioner the head of the apprenticeship program with the salary paid by all of the taxpayers in Nevada. Because Nevada is a right-to-work state, how do you deal with nonunion people in the apprenticeship program?

Thoran Towler:
The State Apprenticeship Council includes three employer representatives and three employee representatives, so there is that mix. There are many interested apprenticeship programs, both union and nonunion. We do not favor one or the other; this is a right-to-work state, and there are many nonunion programs that we fully support. Members of ABC have been on the Council in the past. We try to have interest from both sides because that is the only fair way. That is another reason why I prefer the Council of seven people as opposed to me. I am one person, and there are seven people, making it the most fair. As the Labor Commissioner, I am the Secretary-Director. I am not a

voting member. I try to keep my comments brief. I let them run the meetings as they see fit.

Assemblyman Ohrenschall:
On page 13, lines 13 to 17, is that special provision in apprenticeships for veterans, women, and minorities raised into compliance with federal regulation, or has there been a problem trying to encourage those groups to join a trade?

Thoran Towler:
That is an exact match of federal requirements. We do have requirements now regarding minorities and previously unrepresented groups. We are trying to improve that every day, but no, we have not had huge issues historically.

Assemblyman Daly:
We do have to make some changes in order to come into compliance. If we do not pass this exactly, we have some flexibility. You alluded to that in the role of the State Apprenticeship Council. There is more than one way to get something done, so this bill, exactly the way it is, does not have to be passed in order to be in compliance. We may want to look at a variety of things to make it more palatable and address the concerns that have been brought up today. Is that correct?

Thoran Towler:
I agree. If this passed exactly the way it is written, there is no guarantee the federal government would approve it. I can tell you that Montana is the only one of the 29 states that is in compliance. There are 28 of us in the same boat. We do not have to feel bad about ourselves. But, whatever you think is best; I am here to help, and there are many interested parties here. I am not trying to push any agenda through. I need to get something passed that I can take to the Department of Labor and tell them this is substantially compliant. That is the goal, and we can get there in a number of ways.

Jack Mallory, Assistant Business Manager/Secretary-Treasurer, Director of Government Affairs, International Union of Painters and Allied Trades, District Council 15:
I have had discussions with two of the current members of the State Apprenticeship Council. When this issue was discussed in workshops, it did not include the transfer of power from the State Apprenticeship Council to the Labor Commissioner. I appreciate the Commissioner's willingness to reverse that position. It is something that will remain in compliance with the federal regulations.

In the regulations, 29 C.F.R. Section 29.13(a) audit explains the duties and roles of both the State Apprenticeship Agency and the State Apprenticeship Council. The ability for the Council to take a regulatory role rather than an advisory role, as is outlined in the bill as it is currently drafted, has been our main opposition to the bill. It tends to change the regulatory scheme that exists in Nevada, where the State Apprenticeship Council has a regulatory role, and that there is an appeals process to the Labor Commissioner acting in his capacity.

This change would cause a situation where if the Labor Commissioner, as the Director of the State Apprenticeship Council, made a ruling and a party disagreed with it, the only way to address that disagreement would be through the courts.

We appreciate the Commissioner's willingness to reconsider that provision, and we fully support him, not only on that matter, but also in the concept of becoming fully compliant with the federal requirements.

It has not been introduced or discussed yet, but there are a couple of issues with the proposed amendments from the Associated Builders and Contractors (ABC) I would like to touch on. One is their desire to remove the word "joint" in section 8 of the bill. A joint apprenticeship committee does not distinguish between a union and a nonunion apprenticeship program. A Taft-Hartley apprenticeship or journeyman training program requires representatives of both employers and employees. It does not matter whether it is something that is created by or affiliated with a union program.

It is our belief that the word "joint" should remain in statute. I understand the concern about, on the ABC's third item, those "who are represented by bona fide collective bargaining agents." With a nonunion apprenticeship program, there would not be collective bargaining agents involved. There should be some distinction for the purposes of those programs. I have offered my assistance in making sure there are collective bargaining representatives for those people.

As far as the amendment proposed by Mr. Ostrovsky on behalf of the International Alliance of Theatrical Stage Employees (IATSE) Training Trust, I fully support that. There is a problem in statute that does need to be addressed, although our program trains both journeymen and apprentices. Under the current statute, there is a provision that treats an apprentice as an employee while they are receiving training from the apprenticeship trust. The apprenticeship trust is required by law to provide workers' compensation coverage for those people while they are in training.

It does not affect what happens while they are on the job. If they are on the job and they are injured, they are covered by the employer's workers' compensation coverage. If they are in training and they are injured, they should be covered by the Apprenticeship Training Trusts.

Mr. Ostrovsky has identified an issue with this as it relates to journeymen. We do train journeymen as well, and this is of concern. If it is not clearly defined in statute that it is an apprentice or journeyman trainee, then the sponsoring program has the ability to obtain workers' compensation coverage that protects the program. The workers' compensation system is unfortunately an exclusive remedy system. There are limitations in statute because of that. If there is no coverage mandated under statute for those journeymen trainees, and there is an injury, rather than it being referred to a workers' compensation carrier, it could create a situation where the program is sued and it would go against the general liability policy, which is different. Because of that, we support Mr. Ostrovsky.

Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO:
We are in opposition to the bill as it is currently written. We understand and support the fact that we need to bring our state law into compliance with the federal regulations. Our current state law does not need to be changed to come into compliance.

The State Apprenticeship Council has, since the inception of our apprenticeship program, been the approving authority for apprenticeships. It has been the disciplinary committee for apprenticeships, where an apprentice can appeal a disciplinary action through a committee that represents him. This provision in the proposed bill would change that status. We are uncomfortable with that.

Our apprenticeship program has been successful. Some of our major issues with the program have been caused by the overriding of the Council's decisions. That has been done by the previous Labor Commissioners. In most cases, the Commissioner has not come from an occupation represented in the apprenticeships. His knowledge of the training and participation in the necessary programs has not been as all-encompassing as the people who sit on the Council. This bill would give the Labor Commissioner the sole power to do the Council's job. However, he does not have the industry experience that Council members have.

We have been talking for many years about coming to this body in an attempt to change this provision, so the Labor Commissioner does not have the power to override the Council, and while that he directs the Council members as to what the law requires him to do, their decision would be the final and binding

action of the apprenticeship. We feel that that is one of the things the C.F.R. strives for by making the board regulatory rather than advisory.

Many times our Council is treated like an advisory board, and not a regulatory board, even though the statute says it has the final say. With that say being overridden by the Labor Commissioner, with no appeal process short of court, the final say now falls to the Labor Commissioner. Many times, we have tried to alleviate that problem. He has overridden some decisions that the Council does not agree with, but because of the appointment process in Nevada, the Council members do not feel secure in pursuing an appeal of a Labor Commissioner's decision because it could cost them their seats on the Council.

Looking at Section 29.13 of the C.F.R., subsection (a)(2), the State Apprenticeship Agency is described. This is one of the things that have been used in this legislation to turn this into an advisory council. The CFR says, "The State Apprenticeship Agency must establish and continue to use a State Apprenticeship Council, which operates under the direction of the State Apprenticeship Agency. The State Apprenticeship Council may be either regulatory or advisory" and must meet certain requirements.

We would like to make this a regulatory council. The perfect Council would have an experienced person who knows apprenticeships, rather than the Labor Commissioner, who has a legal background in labor law, possibly, but not necessarily experience with labor or apprenticeship programs.

Most provisions in the rest of the bill modify terminology, while others are term changes to match the wording in our legislation to what is in the C.F.R. Much of the language remains similar to the 2008 version. Other than the language about the Council, we would support this legislation, but with the language about the Council in it, we need to oppose it.

Assemblyman Daly:
Most of those issues were with the previous Labor Commissioners, is that correct?

Paul McKenzie:
Yes, the problems are not with the current Labor Commissioner. While we may never have problems with the current Labor Commissioner, there may be problems with the next one. The statute must protect citizens of the state over endless time, not just now.

Assemblyman Daly:
For the record, the current Labor Commissioner is not the source of some of the angst.

Warren B. Hardy II, representing Associated Builders and Contractors, Nevada Chapter:
I have with me the new President of ABC, Michele Daugherty. We are in opposition to this bill as written; however, we have had conversations with the Labor Commissioner, and we would like minor changes to the bill to make it useable (Exhibit F). This answers Mr. Livermore's question about how the nonunion trades are treated by the current system. The majority of the nonunion apprenticeship programs are represented by ABC. Dealing with the State Apprenticeship Council has not always been a good experience. We have had to file lawsuits in order to get our programs approved in the past.

However, that circumstance does not exist any longer. We feel well treated by the Apprenticeship Council, including the representatives of organized labor who are on the Council. They have come to our defense on many occasions. We support the language and the Labor Commissioner's desire to go back to the Council as opposed to the Director. We like the status quo, and if the federal requirements will absorb that, that is what we prefer.

Our concern is with the verbiage. Mr. Mallory identified some of the issues. The language in the bill, as currently drafted, is more closely tied to union programs, for example, state joint apprenticeship committees. Our committees do the same thing theirs do. They are made up of an equal number of members representing labor and management, but we do not call them joint apprenticeship committees. We would like language that is more neutral, and I think Mr. McKenzie's suggestion that we tie some of it more to the C.F.R. verbiage might take care of that issue. In section 8 of the bill, subsection 3, on page 8, where it talks about "employees who are represented by bona fide collective bargaining agents," that does not apply to the nonunion contractor.

We would like more neutral language there. Speaker Kirkpatrick brought up a point relative to "occupation" versus "trade." On initial read, changing "trade" to "occupation," caused no objection. That more broadly represents what the apprenticeship programs are about and encourages additional apprenticeship programs. However, in light of the Speaker's comments, we would like to spend time investigating the problem she identified.

Anticipating Mr. Ostrovsky's amendment, we have no objection; however, we would like to state for the record that his language does not in any way change

the existing relationship between apprentices and employers relative to workers' compensation for construction purposes. He indicated that is not his intent.

Robert Ostrovsky, representing Nevada Resort Association/International Alliance of Theatrical Stage Employees Local 720 Training Trust:
I am a 15-year Trust member. I believe it has been the policy of the state that every worker should be covered by and subject to worker's compensation statutes. No one should, as the result of an injury, have to concern himself or herself with fault, appropriate medical care, or finding the ability to get back to work. This Trust provides training to people who are on the dispatch list, union or nonunion, at IATSE Local 720 in Las Vegas. It was created pursuant to a collective bargaining agreement under the Taft-Hartley Act, and a labor-management trust group manages those dollars, which are a percentage of payrolls that employers pay into the fund.

We provide training, from basic carpentry to ground rigging, high rigging, and the operation of electrical boards and soundboards. We run thousands of stagehands through these training programs annually, whether they are learning new skills or upgrading skills. A few years ago, being a soundman was easy. Now, it depends on who has the latest soundboards, upon which we must train.

It has come to our attention that the Trust attempted to buy a workers' compensation policy to cover those employees. We were turned down. The insurance companies told us they are not employees of any employer, because they are not apprentices who are working for anyone. They are not employees of the Trust, because we do not pay them a wage; therefore, we cannot sell you a workers' compensation policy. If someone is injured on the job, they are subject to your general liability policy and then they are going to be subject to a lawsuit.

We want to provide them workers' compensation insurance. The purpose of my amendment (Exhibit G) is to give a training trust the ability to buy a workers' compensation policy to cover him or her. In order to do so, we have to have a deemed wage. This statute now requires a deemed wage for apprentices. You have to have mechanisms with which to pay the premium. It is based on the deemed wage, plus the medical costs of any claims. We have never had a major claim, but we are concerned about the future. Having workers' compensation insurance is an appropriate, no-fault, exclusive remedy to provide this. The Trust has a worker's compensation policy that covers the Trust director and covers the trainers, which we hire and pay a wage, but if you are in the trainee class, you are not covered.

We believe this change would cover this need. I am neutral on this bill because I have no position on apprenticeship. This is one of those situations where an opportunity arose. We want to make sure you do not have to purchase a policy, but every wise employer or trust would do so. I will work with anyone who has questions about how the language was crafted.

Chairman Bobzien:
Are there questions or comments from the committee? [There were none.] We will close the hearing on A.B. 36. The meeting is adjourned [at 3:24 p.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Conaboy
Committee Secretary

APPROVED BY:

_____
Assemblyman David P. Bobzien, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 6, 2013 **Time of Meeting: 1:35 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Chairman Bobzien	Committee Policies
	D	Kelly Richard	Committee Brief
A.B. 12	E	Donald E. Jayne	Statement of Intent A.B. 12 Written and verbal testimony
A.B. 36	F	Warren Hardy	ABC statement of Explanation concerning A.B. 36
A.B. 36	G	Robert Ostrovsky	NRA/IATSE proposed Amendment to A.B. 36