

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

**Seventy-Seventh Session
March 12, 2013**

The Committee on Government Affairs was called to order by Chairwoman Teresa Benitez-Thompson at 9:04 a.m. on Tuesday, March 12, 2013, in Room 3143 of the Legislative Building, 401 S. Carson St., Carson City, NV. 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:

Assemblywoman Teresa Benitez-Thompson, Chairwoman
Assemblywoman Dina Neal, Vice Chairwoman
Assemblyman Elliot T. Anderson
Assemblywoman Irene Bustamante Adams
Assemblyman Skip Daly
Assemblyman John Ellison
Assemblyman James W. Healey
Assemblyman Pete Livermore
Assemblyman Harvey J. Munford
Assemblyman James Oscarson
Assemblywoman Peggy Pierce
Assemblyman Lynn D. Stewart
Assemblywoman Heidi Swank
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Jennifer Ruedy, Committee Policy Analyst
Bonnie Hoeffcker, Committee Manager
Maysha Watson, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Todd Koch, representing Building and Construction Trades Council of Northern Nevada
Bill Brooks, representing Sheet Metal Workers International Association Local 88
Paul McKenzie, representing Building and Construction Trades Council of Northern Nevada
Jack Mallory, representing Southern Nevada Building and Construction Trades Council
Danny Thompson, representing Nevada State American Federation of Labor and Congress of Industrial Organizations
James Halsey, representing International Brotherhood of Electric Workers Local 357
Warren B. Hardy, representing Associated Builders and Contractors of Nevada
Chris Ferrari, representing Associated General Contractors, Las Vegas Chapter
John Madole, representing Associated General Contractors, Nevada Chapter

Chairwoman Benitez-Thompson:

[Meeting was called to order and roll taken. Protocol was reiterated.] Today we have just one bill we will be hearing: Assembly Bill 218.

Assembly Bill 218: Revises provisions relating to public works. (BDR 28-981)

We will dive right in, and I will welcome Mr. Koch to the table.

Todd Koch, representing Building and Construction Trades Council of Northern Nevada:

I want to thank Chairwoman Benitez-Thompson and the Committee for bringing forward this bill that the Building and Construction Trades Council has asked for. I have a couple of exhibits up on the Nevada Electronic Legislative Information System (NELIS) that I will be referring to periodically. I just wanted to draw your attention to that.

Let me start by saying that this is an important issue on workers' benefits, which are being reported as wages paid on public works projects. *Nevada Revised Statutes* 338.010, subsection 22 currently defines wages as "the basic hourly rate of pay; and The amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training or other similar programs or other bona fide fringe benefits which are a benefit to the worker." The local union I work for is the International Union of Painters and Allied Trades in the north. In Washoe County, in round numbers, a painter's prevailing wage rate is \$34 an hour. Twenty-four dollars an hour in my local union goes on a check, and \$10 goes into benefits. If you add the two together, that brings you up to the \$34, and that meets the current definition of wages under NRS 338.010. That is how that works.

Prior to this bill, however, there has been no definition of bona fide fringe benefits. Labor commissioners before our current one have allowed such things as gym memberships, shoebox plans and such to be considered as bona fide fringe benefits. Let me describe a shoebox plan for you. It is where employers claim to be their own third party administrator and put money into a shoebox for future benefits for their employees. Often this money reverts back to the employer because it is not a true trust fund.

I would draw your attention to my first exhibit (Exhibit C), pages 24 and 25. You can see the highlighted yellow part; this is all the same employer. You will see that the names are very similar here. A.J. Kirkwood and Associates Training Trust and A.J. Kirkwood and Associates Benefit Trust, the address is the same for both. It is all on Walnut Avenue in the city of Tustin in Southern California. You can see that this employer is claiming that they are administering their own trust funds. That employer is holding that money presumably for these employees.

I want to continue by showing some more examples of why we need this bill, and then I will share with you how we want to fix it. First, you must be wondering why employers do this. Why are they putting such large amounts of money on prevailing wage projects? I am going to show you some examples here in a moment. On a public works project, an employer has an option. They can take the prevailing wage—and again, I am using the example of a painter in Washoe County—of \$34 and put it completely on a check, or they can put some of it on a check and some of it into benefits. Why would they put so much into benefits and so little on a check? The answer to that is quite simple. In the case of a painter who earns \$34 an hour, if you only put \$14 an hour on the check and you put \$20 an hour into benefits, the wage is based on the \$14. The payroll roll-up taxes would only be on the \$14, which is Social Security,

Medicare, employment security or unemployment, workers compensation, et cetera. That is all based on the wages you are paying.

There is a large benefit to the employer for putting a lot of money into benefits and as little money as possible on the check. The other reason they typically do that is that if their painter is used to making \$14 an hour, there is a reluctance to put him on a public works project and pay him the \$34 that prevails in that industry and that county. They do not want their employees to get used to making the higher wages and to start thinking about what they make when they are working on private work projects. That can cause some dissension, obviously.

I would like to draw your attention to my first exhibit again (Exhibit C), pages 2 and 3. You see the first example there is Alberto A. You see the box that we have put onto the right side of the page just below the middle. It says: "Same employee, different classifications, wages never change but pension contribution does." You see there under the first column where it says "hourly rate of pay" that the employee is making \$15 an hour, and it does not matter whether he is being classified as a laborer or a carpenter journeyman. He is making \$15 an hour. What changes is the pension contribution two columns to the right. It says "contractor plan." You see he is working as a laborer and getting \$11.30 into his pension. When he works as a carpenter, he is making \$18.38 into the pension. Again, \$15 is put on the check and \$18.38 into the pension.

We have also seen contractors reporting fringe benefits such as health insurance on only some of their employees working on a project. I am going to refer you now to pages 13 and 14. On page 13, you see the first employee there named John. He is receiving \$1.43 into health and welfare. Now, I do not know what kind of plan you could get for \$1.43 working 17.5 hours a week, but you see he is getting \$1.43. The next two employees on that page are not receiving anything. If you turn to page 14, the first two employees, Gustavo and Gualberto, are also receiving no health and welfare, but the next employee, Moses, is making \$1.25 and Johnny below him is getting 68 cents into his health and welfare. You can also see the pension contributions changing there in the column just to the right. Some contractors have resorted to reporting large amounts of benefits under the header of "other."

I will take you to page 16 (Exhibit C). By the way, if I did not explain this previously, these examples are of certified payrolls from public works projects. These are public documents that we have received from different public entities to check and make sure that people are being paid the proper prevailing wage rate. For Henos, the first employee on page 16, you will see under the column

"Other" to the far right, that it says \$460.97. For Mark, the employee below him, it says \$403.22. I will draw your attention to several columns to the left where it says "H & W," meaning health and welfare, and you see that it says \$20.16 on the first employee and \$20 on the second. Those are quite large contributions. On page 17, for the employee with the first name Barney, you will see under "Other" that this gentleman has received \$626.28. We are not sure what that is, but I can tell you that "Other" has proven to be problematic because the public entity has no way to ascertain what that means or what kind of plan that is. Is it bona fide? We do not know.

I have not addressed each of the pages in this exhibit (Exhibit C) and I am not going to, but I wanted to give you a lot of examples. That is why there are so many pages in there. This is not a problem that involves just one or two contractors. It is a problem that has gotten bigger and bigger. I want you to understand that it is starting to happen more and more. As you know, federal health care reform does not apply to construction employers with 50 or fewer employees. What that means to us is, in the future, this problem is going to become more pronounced.

I would like to take a look at A.B 218 at this time and go over some of the changes to the bill. I am going to start with section 1, subsection 2. This section defines bona fide fringe benefits. It takes care of that issue of what is bona fide and what is not, as with the example I gave you of putting so much money into "Other" and not being able to tell if it is bona fide or not. This would handle that. These bona fide fringe benefits as a contribution would have to be made at least monthly to an independent third party pursuant to a fund, plan, or program established only—and I will stress only—for the benefit of the worker or his or her family. The assets cannot revert back to the employer or sponsor of the fund, plan, or program. Toward the end of that, you will see that all benefits pursuant to a collective bargaining agreement are also included in this definition.

Moving on to page 4 of the bill, look at Section 1, subsection 14, paragraph (b), line 26. This adds as an offense a contractor failing to discharge an obligation to pay wages in a manner that violates *Nevada Revised Statutes* 338.035. This particular statute allows a contractor to count contributions to a third party pursuant to a fund, plan, or program in the name of the worker as part of the prevailing wage. Again, going back to the example I gave you about a painter working in Washoe County—\$24 on the check, \$10 in benefits—this allows the contractor to claim that \$10 of benefits towards the prevailing wage.

On page 6 of the bill, section 2, subsection 2 adds exception to the enforcement of NRS 338.010 to NRS 338.130 as provided in NRS 338.035.

Again, this statute allows a contractor to count contributions to a third party pursuant to a fund, plan, or program in the name of the worker as part of the prevailing wage.

Now, I am going to draw your attention to page 6, lines 40 and 41 in section 4, subsection 1, down toward the bottom of the page. This is the part that adds annualization. This is the public policy that we are trying to get to with this bill. Subsection 1 replaces the current language "making contributions to a third person pursuant to a fund, plan or program" with a newly defined "providing bona fide fringe benefits." Subsection 2 only allows for bona fide fringe benefits that are annualized to count toward wages.

Turning to page 7, if we look at section 4, subsection 3, that requires contractors to provide information to verify compliance with this new section, and that verification would be provided to the public entity that put the job out to bid and is paying for the project. As I pointed out earlier, you can see in some certified payroll reports that employers are turning in that they are putting numbers like \$400 or \$600 a week into "Other." This would allow the public entity to drill down and see what those benefits are going toward.

I would like to add at this point that public entities right now are required under law to send filed complaints regarding prevailing wages not being paid properly to the Nevada State Labor Commission, and the Labor Commissioner refers those complaints to the public entities that have those projects. They are currently investigating those complaints. In the case that I gave an example of earlier, they cannot tell what "Other" is. They may not get the cooperation of the contractor to show them what "Other" is. This language would make it so that the contractor has to supply that information, show what that plan is, show how the plan works, and show that the money is going to the benefit of the employee and his or her family. Those complaints are already coming in to the public entities. This is just going to allow them to be able to see a little bit further into this issue and verify that they are bona fide fringe benefits.

Section 4, subsection 4 provides for violation penalties; the workers being made whole, the reporting of the violation to the Attorney General for possible prosecution, notification of the violation to the Nevada State Contractors Board along with the provider of workers' compensation and the Employment Security Division of the Department of Employment. Finally, it provides for a notification to the public body that awarded a contract for the public work. You may ask why those entities need to know that there has been a violation. Well, if there has been a violation and somebody is reporting that they are paying bona fide benefits, and it turns out that they are not bona fide, then they are going to owe that worker more money on the check. Therefore,

they are going to owe more money on workers' compensation, employment security, so on and so forth. That is why we would notify those entities.

Section 4, subsection 5 exempts benefits to workers paid pursuant to a collective bargaining agreement. Subsection 6 defines "annualized" as an amount paid equally for all hours worked in a calendar year by the worker for the contractor providing the bona fide fringe benefits.

I would like to draw your attention to my next exhibit at this point (Exhibit D) and explain to you exactly how "annualized" would work. If you look at page 2, this is a construction wage survey that has been submitted to the Nevada State Labor Commissioner in pursuant to establishing the prevailing wage rate for the craft code of 10. The Labor Commissioner does a survey every year, and this is the survey for 2012 to 2013. This is a survey of work performed by this employer from July 1, 2011 to June 30, 2012. This particular employer has reported that he performed work on these projects. Some of them were private work, and some of them were public works. The employer turns this in to the Labor Commissioner. The Labor Commissioner does a collection of all the surveys in this particular craft code 10 in Washoe County so he can make a determination to what the prevailing wages for craft code 10 in Washoe County, which would start on the next October 1.

I just wanted to draw your attention to what the employer is doing here. You see on the first project [(Exhibit D), page 2], the base rate of pay per hour is \$20, and there are no benefits being paid to these employees. The second job, employees are being paid \$38.08 on the check and \$12.70 in benefits. You see on the next two, one project the employer is paying \$25 an hour, another one is \$20, so on and so forth. If you look at page 3 (Exhibit D) you will see that, again, he has got three private jobs there and one public works project—T.J.Maxx near the Sparks Marina—where he has reported a \$38.08 base rate per hour and \$12.70 fringes per hour.

If you flip to page 4 (Exhibit D), I will show you what we did here in a spreadsheet. We took all of his information that he reported to the Labor Commissioner, listed all the project names, the number of hours worked on those, the base rate per hour, the fringes per hour, the total wages, and the total benefits. If you look at the total number of hours at the bottom under "Totals," you will see that it was a total reported of 1,700 hours. If you go to the far right to "Total Benefits," he had a total of \$7,918.45 in benefits that he paid on the public works projects. Here is how annualization would work. The total benefit divided by the total number of hours equals the amount to be annualized. In that first line there below the spreadsheet, you see the total benefit was \$7,918.45 divided by 1,700 hours, which allows this employer to

have \$4.66 for bona fide fringe benefits, and that would be annualized for the year. Under annualization the employer would be able to claim \$4.66 an hour for fringes, and the employer would owe the worker an additional \$8.04 per hour for hours worked on public works. The way you arrive at that figure is by subtracting the \$4.66 that he would be allowed under annualization from the \$12.70 that he reported paying on public works, and that leaves \$8.04.

Section 6, subsection 2, paragraph (a) of the bill on page 8, allows for exception of assessment as provided in subsection 4 of section 6. That talks again about allowing the benefits toward the prevailing wage. There would be no assessment for doing that. Subsection 4 allows the contractor to claim as part of wages the portion of bona fide fringe benefits that is annualized pursuant to subsection 4, paragraph (c) of NRS 338.035.

That is the extent of the changes in the bill. In conclusion, I wanted to make a couple of points. The problems that I have outlined this morning have led to unfair competition. They have led to employees being given benefits that they have had trouble collecting. They do not know where to go to get them because they cannot get hold of those plans. It has led to the public subsidizing benefits on private work. What some of these employers are doing, as you can see in that last example that I gave you [(Exhibit D), page 3], you can see that that employer is taking the public's money and putting it into benefits on public works projects at a high rate so that he could subsidize the benefits on his private work. That is the public policy that we are trying to get to.

This bill will not affect contractors that make the same benefit contributions on all their projects or contractors that only perform on public works projects. This bill only makes changes to NRS Chapter 338, which is what governs public works projects. It does not make changes to NRS Chapter 608 titled "Compensation, wages, and hours." That is what governs private works. It adds no burden to public entities for investigation because they are already doing so. These complaints are already being filed. They are already being investigated. It just allows them to drill down into these benefits to verify that they are indeed bona fide. That is the end of my comments, and I would be pleased to answer any questions that you might have.

Assemblyman Stewart:

I want to clarify your first example with Pedro, who is making \$34. Regarding the \$24 he is getting paid on his check, is there a limit to how far down the contractor can go to arrive at that \$24? Can he go down to \$22? Does the Labor Commission set that? Who sets it?

Todd Koch:

No, it is actually set through our collective bargaining process. If we are talking about my particular union, Labor and management sit down together and they collectively bargain about what the benefits should be. That is a decision that is made by labor and management. The benefits could expand or they could contract, if you are talking about the dollar amount that is being paid toward them. In that \$10, Assemblyman Stewart, there is actually pension contribution for retirement, there is health and welfare that provides for health insurance for the employee and his family, and there is also money for a training fund so that the employees can keep up to date on all their skill training and safety training.

Assemblyman Stewart:

Through collective bargaining, could you not make it easier for the employee to follow up and collect that \$10 instead of dissolving it?

Todd Koch:

I am not sure I understand your question.

Assemblyman Stewart:

You said that all this is set through collective bargaining. The \$24 is set through collective bargaining. Could we not through collective bargaining make sure that the \$10 was bargained in such a way that the employee would be able to collect that \$10 and not have a contractor assume it to be put in other areas?

Todd Koch:

That could happen during collective bargaining, but this bill is not aimed at affecting collective bargaining. In fact, the bill exempts collective bargaining and the union contracts from it. The issue is not shown to be union contractors with their union employees working under a collective bargaining agreement receiving benefits. That has not been an issue. When we first saw the issue, we saw out-of-state contractors coming in. Open shop contractors do not have a collective bargaining agreement, and they are putting whatever amount of money into the benefits that they deem. That was not a decision that was made by labor and management.

Assemblyman Oscarson:

My question is really twofold. First, it seems to me that when you showed us information, you are basically alleging that there are fraudulent business practices taking place during these wage reporting scenarios. If that is the case, what mechanism did you utilize to report that or talk to somebody about it? Secondly, if there was an investigation, was there an opportunity for you or

some entity to visit with these employees that had those higher-end numbers of monies held out of their wages, and what was the outcome of that?

Todd Koch:

There have been investigations done, and as I said before, the complaints are typically made to the Labor Commissioner. The Labor Commissioner then sends those complaints to the public entity that led the project. The employees of that entity, whether it is Washoe County or Reno or Sparks or the State of Nevada, then investigate that complaint. They can go talk to those employees. The employee is not necessarily going to know where his benefits are going or how to collect them. The investigator can then ask the employer what "Other" is. In the past, they have said that "other" is a gym membership, which makes the employees healthier. At that point, the public entity makes a recommendation on whether that is considered a bona fide benefit or not, and then that gets sent back up to the Labor Commissioner for final adjudication. In some cases, several former labor commissioners have said it is a bona fide benefit, and that is the end of that. That is why we are asking for this bill.

Assemblyman Oscarson:

Have you had any cases that were ruled on by the current Labor Commissioner alleging these kinds of activities? Do you have any examples of rulings that the previous labor commissioners made in regards to the allegations you are making?

Todd Koch:

I do not have those on me, but we can definitely get those to you. We have some records of those adjudications by the previous Labor Commissioner, and we would be happy to provide those to you, Assemblyman Oscarson. I personally do not have any issues with the current Labor Commissioner and cannot give you any examples of him doing this.

Assemblyman Livermore:

I am trying to visualize your prevailing wage job examples. If a painter is paid \$47 an hour, is there an employee component to that where the employee pays part of their retirement or part of their health and welfare? Back down to collective bargaining, is there a "normal" where the employer or the contractor would pay to somebody? If they are nonunion, who do they pay it to? If they are union, they probably pay to the carpenters union and that payment goes to that organization. Is there any difficulty with somebody collecting their retirement from their union payment plan?

Todd Koch:

Let me see if I can answer that by saying a collective bargaining agreement is an agreement between a group of laborers and an employer. It is spelled out that contributions will be made to trust funds. Now, these are Taft-Hartley trust funds. Contributions are made to these trust funds. The money is earned by the employee, but it is paid by the employer. It is not something that is taken out of the employee's check. A Taft-Hartley trust fund is a third party. It is made up of equal amounts of labor and management. The trustees sit down together, and they make decisions on how the money is spent; the benefits that are provided to the employees. This is done separately from the employers and from the labor union. That money is being put into these funds, and employees collect the benefits depending on what kind of benefits they are. If they are pension, they do not collect them until they retire. If they are health and welfare benefits, they collect them when they or their family member need to go to the doctor. I hope I answered your question.

Assemblyman Livermore:

I think you did, but a normal employer knows somewhere along the line he is going to pay at an hourly rate with 20 percent going to benefits. I do not see anything here that tells me this. Is this wide open? Help me understand that.

Todd Koch:

There are no percentages set in this bill. We are not trying to impose a percentage upon employers and employees on what they can and cannot claim as a portion of prevailing wage and benefits. We do not want to intrude on that relationship. We want them to be able to set that as they will and as they deem needed. If they need to put more money in some of the benefits, we do not want to have anything to do with that. We are simply in this bill trying to make an annualization of the benefits paid. As a public policy, we want to stop the practice of employers paying benefits only on public works projects and not paying any under private work projects. In the example I gave you, I think there were about 3 out of 12 projects or so that were public works. That employer, as you saw, was not paying any benefits on the 75 percent of the private work. He was simply taking a large amount of money from public works and putting it into the benefits for those employees.

Assemblyman Livermore:

But they are still required to pay Social Security and things like that, are they not?

Todd Koch:

Yes. They are still required to pay Social Security, Medicare, unemployment, workers' compensation and all of that on the wage, not the benefits.

Chairwoman Benitez-Thompson:

In section 1 where we are talking about a bona fide plan, is the intent for it to go anywhere as long as it is a structured third party plan? It could be a 401(k) or something like that, just as long as it goes to a defined, structured place that is named and an entity that is not managed by the contract donor. Is that right?

Todd Koch:

That is correct. The idea here is that the employer cannot take this money that he is calling his benefits and put it in a shoebox in his own office and dole out the money as necessary to give an employee benefits. As it says in subsection 2 of Section 1 of the bill, the idea is that it goes to an independent third party pursuant to a fund, plan, or program. In that case, there would be no question where the employee would go to collect his or her benefits because they simply go to that independent third party, and they make a claim for those benefits.

Chairwoman Benitez-Thompson:

Is there no language in statute right now that talks about the benefits and fringe benefits having to revert back to the employee on prevailing wage jobs?

Todd Koch:

I am not sure about that question. Maybe somebody that follows up behind me could answer that. I think the issue is that "bona fide fringe benefit" is not actually defined. It has been left up to, in several cases, the Nevada State Labor Commissioner to make a determination of what "bona fide fringe benefit" is, and that has led to some of the ludicrous grey area.

Chairwoman Benitez-Thompson:

As I look through the language, I do not see anything that looks like an obligation for fringe benefits to revert back to the employee. That is one of the questions that I have for my room full of experts out there.

Assemblywoman Bustamante Adams:

Going back to section 1, subsection 2, I hear what you are saying, but that is not how I read the bill. It does not guarantee that the trust fund or this independent third party is legitimate. I do not know if I am missing something. I hear what you are saying, that the money will be able to be accessed by the individuals. I am not sure if that is really a solution. I know that is the solution you are trying to get to, but that is not how I read it.

Todd Koch:

I think it does because it talks about an independent third party, and when you say independent you are saying it is not a party of the employer or a party of

the employee. It is an independent third party. An independent third party would be one that is disassociated except for in the terms of this being a third party of these funds. It is not part of the employer. It is not guided by the employee. It is a third party, and that is where employees would go to collect their benefits.

Assemblywoman Bustamante Adams:

However, it would not guarantee that they will not run into the same problem that they are running into now, right? The independent third party could not take their calls or maybe take the money. That is what I am trying to say. I am not sure if this independent third party would actually solve that problem, but I might have a misunderstanding.

Chairwoman Benitez-Thompson:

I think what you maybe want to do, Mr. Koch, because we can work on the language, is just make sure we have the legislative intent clear. I think your intent is to have a third party operator of funds or benefits. I think that is what you are trying to get at, but you can correct the record on that.

Todd Koch:

To your question, Chairwoman Benitez-Thompson, you asked me where it says that the money goes toward the benefit of the worker. It was in the beginning of my presentation. If you look at NRS 338.010, it clearly defines wages as "a basic hourly rate of pay; and the amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training or other similar programs or other bona fide fringe benefits which are a benefit to the worker." I think that clearly defines that it is solely for the benefit of the worker. The issue in the past has been about how we determine if it is being used for the benefit of the worker.

Assemblyman Ellison:

Under benefits in the private sector on public work projects, where is the private sector going to come in here? Most of the private sectors on benefits just roll that in and show that as a line item and pay that individual. You have a lot of private sectors out there bidding on public/private work projects. Where are they going to fall in on this?

Todd Koch:

I am still not quite understanding your question, but when you say private sector, are you referring to the contractors that are working on the public works?

Assemblyman Ellison:

That is correct, the contractors that are nonunion.

Todd Koch:

Where are they going to fall into this bill?

Assemblyman Ellison:

Right. You are still going to collect the benefits. Private sectors just roll benefits over into the salary, and they will break it down instead of it going to a third party.

Todd Koch:

We are not trying to control in any way, shape, or form how benefits are paid or how much is paid on private work. We are just trying to tackle the issue of benefits that are paid for workers on public works.

Assemblyman Ellison:

That is correct. You still have to collect the benefits on public works projects if you are in the private sector. You are a nonunion representative contractor. You are a private sector. You have to collect those funds. At the end of the day, you will have a line item on each one of the salaries, benefits, et cetera, and you will total them up. They do not go to a third party. They go back to that worker. I could probably get this answer from the other testifiers. The problem is that I do not want to see "private sector" thrown into this. They are paying the benefits. They should not have a third party involvement in there. Maybe I will get an answer to that when I hear the other testimony.

Todd Koch:

Yes, maybe somebody else has an answer. Again, we are not trying to control what is happening on private projects.

Assemblyman Ellison:

This is not a private project. This is a private sector bidding on public works projects. I mean, you have two individuals that are out there. You have private sector doing public works projects, the same as union employees, but they still have to pay the benefits. At the end of the day, the benefits are just rolled over and put into one lump sum and paid to that employee, where you guys are putting them into a third party benefit. Do you understand what I am saying?

Todd Koch:

I think I do now, Assemblyman Ellison. I guess an example I could give on a contractor working on public works would be, if that contractor is making a contribution towards that employee's health insurance and is making that

payment to somebody, he is not providing the health insurance himself. He is sending it off to a third party so that they can provide the health insurance. I think that would comply with what the intent of the law is. That employee would, therefore, know that when he needs to make a health insurance claim he goes to that third party, if that is the insurance company. Did that answer your question?

Assemblyman Ellison:

Yes and no. I am trying to break this down in my mind. I did talk to several different people on both sides in trying to understand this bill. Maybe I will get this later.

Assemblyman Daly:

I have a series of questions. Hopefully, it will try to explain some of the questions that have been asked. Mr. Koch, the Labor Commissioner does a survey annually to establish the prevailing wage, right? Is that how it works?

Todd Koch:

Yes. The Labor Commissioner does a survey annually to establish prevailing wage in different counties.

Assemblyman Daly:

Nevada Revised Statutes 338.010 defines wages as the hourly wage rate and the amount of any benefits that you may be paying, and it uses the term "bona fide" but it is not defined. This bill defines bona fide.

Todd Koch:

Yes.

Assemblyman Daly:

With the obligation to discharge prevailing wage under NRS 338.035, which is in the bill, if they are going to pay benefits, they could pay any amount of the prevailing wage as long as the hourly rate does not go below minimum wage. They can have whatever benefit package that a person without a collective bargaining agreement wants to establish. All this bill says is, if you establish that, that has to be the rate you pay on all hours that employee works.

Todd Koch:

Currently, the law allows for that, and this bill would not change that.

Assemblyman Daly:

If you are under the terms of a collective bargaining agreement, the amount that is paid in for every hour that is worked is spelled out in the terms and conditions

of the agreement that have been negotiated between labor and management and requires that to be paid into a trust fund that labor and management trustees jointly manage. How the employee gains that benefit, the pension plan, the health and welfare plan, or the vacation, is spelled out in the trust fund document. Is that correct?

Todd Koch:

That is correct.

Assemblyman Daly:

Within that trust fund document, there are provisions that none of the money that is paid into that trust fund can ever revert back to the sponsoring employer, the employer agency, or to the union. The money is never paid to the union, cannot revert back to the union, and cannot revert back to the employer. It stays in the trust fund for the benefit of the participant, for the person whose money was paid in on his behalf.

Todd Koch:

Correct. It can never revert back to the employer for his benefit. It can only be used for the benefit of the employees.

Assemblyman Daly:

When we talk about a bona fide fund, plan, or program, we would have to have this similar language; paid monthly into the benefit of the employee and can never revert back to the employer or the sponsor of the plan that paid the money. Those would be the parameters of what constitutes a bona fide plan. In the language of that fund, plan, or program, even though it is not a union agreement, it would spell out how the employee accesses or gets his benefit, whether he can withdraw a 401(k) early, what penalties there are, when you can get it, what the health insurance is, et cetera. All of that would be in the trust fund document of a bona fide fund, plan, or program, union or nonunion.

Todd Koch:

Exactly. That is exactly the way that works pursuant to a collective bargaining agreement. That is why we put that language into this bill, and we have included collective bargaining agreements in the definition of bona fide plans just for that reason because they have all of those in place.

Assemblyman Daly:

It would be the same in a nonbargain, nonunion fund, plan, or program. We would have to have the same type of language in that plan or program in order to be bona fide, even if it was not under collective bargaining agreement. The benefits go into that fund, plan, or program, are there for the benefit of the

participant, whether it is bargained or not, and cannot revert back to the employer that paid it in or the sponsoring program. That is the intent, and that is the way that those plans work.

Todd Koch:

That is the issue that I think I was hearing from Assemblywoman Bustamante Adams. That would address that issue. That is what we are trying to do. We are trying to see that the money is being paid in monthly and is going to a third party who is administrating this fund or this benefit. When the employee wants to collect on that benefit, he does not go to the employer, his union, or any other representative as an employee. The employee simply goes to the administrator of that benefit.

Assemblyman Daly:

In several of the examples that you gave, none of that can be verified. There is no plan that is identified. The workers often do not know who to contact, how to identify bona fide plans recognized by the federal government, add duties to notify people, send out mailings, et cetera. When you have a contribution that goes to "other," there is no way to know if it is not reverting back to the employer, which is why you are trying to put some definitions around this.

Todd Koch:

That is exactly why we have put that language in there. It is so that it will be very clear that they are bona fide benefits, and it will be very clear for an employee to be able to figure out how to collect those benefits.

Assemblyman Daly:

If I understand your testimony correctly, the annualization portion of it is designed to prevent a higher contribution rate on the public job from being subsidized, reverted, or taken away from this fund and credited in another fashion on another job. Once it gets into that plan, it will not work that way. Paying on an annualized basis does not force anyone to change what they are paying if that is what they want to pay. If they are going to get credit for it on a public works job, they have to pay it on every hour so there cannot be any of the shenanigans that have been pointed out.

Todd Koch:

That is exactly why we put that language in there. We are trying to annualize it. In the example I gave you in my second exhibit (Exhibit D), you can see the employer was paying no benefits on any of his private work, but on the public works he was paying a very large amount of benefits. What he has put in writing under penalty of perjury is that he is taking the public's money in those benefits and he is buying the benefits for those employees all year round,

whether they are working on private jobs or they are working on public works. That is the public policy we are trying to get to here.

Chairwoman Benitez-Thompson:

Are there additional questions from Committee members? Seeing none, we are going to go ahead and open up for testimony in support. Let us start in Las Vegas.

Bill Brooks, representing Sheet Metal Workers International Association, Local 88:

The use of defined contribution plans in the western United States has increased substantially for both union and nonunion contractors. However, in the recent months in the Las Vegas area, there have been defined contribution plans mandated by some employers for employees on prevailing wage projects which required a mandatory contribution into a defined contribution plan in the sum of \$16.43 an hour. You can do the math. When you have 90 employees on a prevailing wage job and \$16.43 is being withheld from their paycheck, how much does that add up in a weekly time frame? Given the fact that the moneys are not remitted timely, that is another problem. They should be remitted in the 30-day time frame. In some cases, employers are utilizing the defined contribution plan to front-load the cost of construction on prevailing wage jobs off the back of labor on those projects.

A recent case that is still in litigation, I am not going to go in too much detail on it, involves one contractor with about \$1.3 million in contributions that were not paid timely; and by timely I mean six to seven months before they remitted. During the enrollment process to the plan, the employees on this project were required to participate. The employer failed to make the contributions timely, but when the employees started asking about their defined contribution plan and their 401(k) plan, they were not given any information from the employer. Written requests were made of the employer to provide formal trust documents, which the employer could not provide. However, the employer did remit the employee's name and Social Security number to the third party administrator and to the money manager. Therefore, without addresses the investment people could not notify the participants of any funds that were deposited and how much funds were deposited.

In this one particular case, it was six months before the first remittance check was submitted to the plan on behalf of about 90 employees, which was substantial. The employer said he did not know he had to remit timely. The employees did not have any information as to how much was being withheld other than what was on their check stub. In addition, the employees were cheated out of interest income or money that would have been generated

in their stock portfolio, whichever method they chose to invest their moneys. For example, they do not have \$5,000 in contributions in this plan and are told they are no longer a participant and must take your money out of the plan. This is where it gets sticky. Now the employee thinks he has got a retirement plan, but he is being penalized by both the taxes that are due at the time of withdrawal plus a penalty for early withdrawal. This is a recurring problem that is growing rampant in the western United States.

Chairwoman Benitez-Thompson:

Are there any questions from Committee members? I see none. We will move up to testimony in support in Carson City. Feel free to come forward and take a spot at the witness table.

Paul McKenzie, representing Building and Construction Trades Council of Northern Nevada:

We are in support of this legislation. We feel that it addresses many issues that we have encountered over the last several years in relation to public works. Before I get into addressing our support, I would like to take a shot at answering the question Assemblyman Ellison posed to Mr. Koch. I believe that Assemblyman Ellison has been working mostly with federal Davis-Bacon jobs, and under the Davis-Bacon Act there is a breakdown of the fringe benefits and the wages under that federal statute. There is a tracking on that as to how much benefit you can pay an employee, and we do not have that provision under our State law. That is why Mr. Koch was confused. The amount that is allowed to be paid on benefit can be anywhere from zero or down to minimum wages, as Assemblyman Daly outlined. That is not restrictive under our State statute, and there is not a requirement if you do not pay the benefit to the employee. If you are paying it all in a check, there is not a requirement to track a benefit amount on reporting for prevailing wage. I hope that answers your question, Assemblyman Ellison.

Over my years working as a union representative, I have spent a lot of time investigating prevailing wage issues and pursuing violations of prevailing wage from misclassification to mispayment of wages. This has been an issue that has been a thorn in our sides for years as we have employers reporting fringe benefits that the employee does not even recognize he is paying. We have got employees who are having deductions from their checks, and they have no idea where the deductions go. This leads to concern that there has been an abuse of the benefit portion of the prevailing wage.

Public entities are usually pretty good at investigating claims, but they seem to get bogged down when it comes to investigating what are legitimate benefits because they do not have a definition of what is legitimate and what is not.

If the employer claims it is a benefit to the employees, that is what they have to accept because the law does not outline a requirement for any further justification for those fringe benefits.

In recent years, we saw an influx of what is called Davis-Bacon plans, first with a lot of out-of-state contractors coming to the state and now more and more with our local contractors. If you go to the Internet and look up Davis-Bacon benefit plans, you will come up with a whole list of these different plans. Their big claim to fame is that you could save roll-up costs and labor costs on the project by contributing your benefits to these Davis-Bacon plans when you are working on public works. Some of them have different provisions. The one plan that we looked at had a provision about health and welfare where you could bank your public works health and welfare dollars to pay health and welfare on your employees' private works. This is actually a provision of this plan. You pay a high rate on public works in order to bank it across to your private work. You estimate the value of the amount of private work you need to do in comparison to the amount of public work, and that is how you set the rate for your health and welfare plan.

Like I said, these plans are becoming more and more prevalent in this area. We first saw them with an out-of-state contractor out of Texas, and now we see them almost daily as we look at certified payrolls amongst contractors who are based here in Nevada.

One of the issues that I know we are going to hear from people who are in opposition to this legislation is in regard to employers having legitimate benefit plans for their employees. This legislation is not aimed to punish the guy that has legitimate benefit plans for his employees. One of the other arguments that those in opposition will present is the fact that, on private work they pay 25 cents an hour for a 401(k) plan for their employees, and this bill will prevent them from paying \$8 an hour on a public works project into that same 401(k) plan. That is exactly what we are trying to address: the fact that they pay 25 cents an hour for somebody for a benefit on private work and think it is appropriate to take \$8 an hour out of that employee's check on public works just because there is more money there to use. That is exactly what we are trying to address.

There are other examples where people who do not have any benefits for employees on private work claim benefits for them on public work. The attitude we are trying to prevent is the policy of subsidizing somebody's benefit plan on private work with public dollars in order to save money.

Last session of the Legislature, we were sitting in a Senate Committee. Senator Kihuen was the chairman of the Committee, and we were discussing prevailing wage on jobs and benefits, and there was an individual from southern Nevada who testified in that Committee hearing. He made a statement that was kind of amazing to me. He was complaining that the level of wages for labor on a prevailing wage project in southern Nevada was extremely high. It was too high for him to compete in the business. He went on to say he would rather pay \$78 an hour to a labor-ready company to provide him a laborer on a project than pay \$45 to one of his own employees, because he does not want the employee to get used to having those high wage checks coming in. That attitude may be more prevalent than we think, and that is why we have these people taking these huge deductions for benefits: to keep the wages that go to the employee low.

One of the benefits that I spoke of many times in many committees on prevailing wage is regarding the dollars that go into the workers' pockets. The disposable income that an employee has is what lets him buy a new car. That is what he uses to get new clothes for his kids, a lunch box, a backpack, new things for their schoolwork, paper, pencils, et cetera. Without that disposable income, if he is working at that low wage and all he has is enough money to pay for food, rent, and gas for the car to get back and forth from work, our economy will never recover. If the employers are taking that disposable income and placing it in an account that we cannot track, that the employee cannot find when he retires or that he forfeits his right to because he leaves that employer and does not have any way to contact the place where that money is held, then that disposable income becomes part of the Wall Street richness that is going on in this country today. It is taken away from the economy that needs to be recovered.

One other issue that I would like to bring up is the classification of "other" that people are utilizing on these certified payrolls, which Mr. Koch mentioned. I personally have investigated several of these, and I have had public entities and the Labor Commissioner tell me that they consider these all fringe benefits. I am going to tell you a couple of things I have heard them talk about and you can determine whether or not it is a fringe benefit. One of them is a gym membership. The other one is an employee savings plan. The third one is a profit sharing plan. If it is an employee savings plan, then that should be paid on the employee's check. It should be taken out and go into a savings account. He should pay taxes on it going into a savings account because if it is not a retirement account, he is going to have to pay taxes on it anyway. It should be subject to the payment of overtime. I am not sure how anyone considers a profit sharing account a fringe benefit. That is invested in the employee's

money and the profitability of the company, which may not be something the employee chooses to do. That is not a fringe benefit.

I was asked yesterday what the immediate benefit of this bill would be. We have a major change in the way health and welfare is going to be provided in this country that is going to come into effect in the near future. One of the immediate effects of this will be that either the employees will get this money on their check to pay for the health and welfare that this law is going to require they buy, or the employer is going to provide them benefits and they are not going to have to purchase health and welfare.

If we continue going down the path we are on, these employees are going to have to be subsidized at a huge amount by the federal government to buy health and welfare, and they are going to have a huge savings account that they may or may not be able to access that should have been going to them to buy health and welfare insurance.

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

I am not going to repeat some of the things that have already been stated. However, I would like to point out some of the things that are contained in both the first exhibit (Exhibit C) and the second exhibit (Exhibit D). If you look at page 24 of the first exhibit (Exhibit C), this is a fringe benefit statement that was submitted by A.J. Kirkwood for the Cabela's project in Reno. If you look at "Other" on each of those individuals that are listed on this fringe benefit statement, they have an employee stock option plan. That money is remitted to the A.J. Kirkwood and Associates benefit fund, and the problem with this is that under the Employee Retirement Income Security Act (ERISA), which governs these stock option plans, they are required by law to treat all employees substantially the same. In this case, you see different contribution rates for the plan, which effectively looks like, on its surface, that it is a voluntary participation rather than an employer contribution into a legitimate pension plan. The example shows Rick Deleon [(Exhibit C), page 24], who has \$1.98 an hour; Robert Wright, who has nothing; Mark Bonner, who has \$2.70; and Jonathan Cook [(Exhibit C), page 25], who has an alternate plan at \$12.03 an hour.

We support the concept of all employers providing a health care plan as well as a retirement plan for their employees, but it also has to fall within specific guidelines. An example with an employee stock option plan is that there are annual caps on how much money can be contributed to that plan on an annual basis, and that is based on 25 percent of the employee's annual income. There are similar provisions for 401(k) plans. The IRS establishes guidelines on how

much of an employee's wage can be contributed to a qualified 401(k) plan and avoid any potential tax complications. Based on what is contained in the second exhibit (Exhibit D), if you look at a company that is contributing \$12.70 in fringes on prevailing wage projects and nothing on private projects, theoretically, they could be avoiding those thresholds on an annual basis.

The biggest problem looking at the first exhibit (Exhibit C), when you talk about the "other" and you see all of these different amounts in "other," some of these companies call them contractor plans. Some of them call them other. If these are profit sharing or employee stock option plans, those contributions should be substantially similar so that the company is avoiding any potential problems with high-compensation employee provisions that are contained in statutes. Ultimately, on its surface it appears to be a manipulation. At the end of the day, we want folks to have those benefits and be able to retire with dignity. We are concerned that some of these things are being used in an effort to suppress wages for those employees while they are working on those prevailing wage projects, as was stated by Mr. McKenzie.

Danny Thompson, representing Nevada State American Federation of Labor and Congress of Industrial Organizations:

I cannot add anything to what has already been stated. I think it is pretty clear this is a matter of fairness and a definition of what a bona fide plan is, something that is needed in the law, and we wholeheartedly support the Building Trades' effort to make that happen.

James Halsey, representing International Brotherhood of Electric Workers Local 357:

We are in support of A.B. 218. I have talked to many electricians in Nevada working for companies that are both prevailing wage and nonprevailing wage projects. They have reported to me that on prevailing wage projects the contractor will deduct \$7 or more an hour from them for health care, but on nonprevailing wage projects they will have \$2 or so taken off their check. It is my understanding that the quality of those benefits do not change even though they are paying more for them. That is why we are in support of this bill, and we believe it will bring clarity to the benefits that are being paid to workers on prevailing wage projects.

Chairwoman Benitez-Thompson:

Thank you very much for your testimony. Is there any other testimony in support?

Jack Mallory:

Madam Chairwoman, could I add something to my testimony?

Chairwoman Benitez-Thompson:

Yes, briefly.

Jack Mallory:

As was stated before, there are multiple Taft-Hartley plans that are tied to collective bargaining agreements, but for the purpose of prevailing wage, not all of those plans qualify as an employee benefit plan. For example, with our collective bargaining agreements, we have what is called a joint committee, which is a contract administrative committee, and because the Labor Commissioner has determined that it is not a direct benefit to the employee, the amount that is contributed to that plan is not considered when calculating the prevailing wage. There are a few other programs that are like that.

Chairwoman Benitez-Thompson:

Any other testimony in support? I see none. We will move on to opposition.

Warren B. Hardy, representing Associated Builders and Contractors of Nevada:

I appreciate the opportunity to be here and testify on this bill. I would say from the outset that I am not and do not want to represent myself as an expert on fringe benefits. This is not an area I have dealt with a lot in the past, but I will do my best. What I say today will be accurate, but in terms of my ability to answer questions, I may need to get back to the Committee if there are questions I cannot answer.

This is a bill that attempts to address a problem that, in fact, does occur. There are contractors who try to cheat the system, but this might be a case of trying to kill a fly with a piece of plywood. I think it goes well beyond what is needed to address the problem. Speaking to Mr. Koch's testimony, he described a circumstance that is legal in Nevada under which a contractor on a public works job or a prevailing wage job can pay the full amount of the prevailing wage in the salary or on the check. That used to happen quite a bit and still does. For the 15 years I have been with the Associated Builders and Contractors, we have spent a lot of time and energy giving contractors options to do that. We do not like that option. We think that, as Mr. Mallory pointed out, everybody should have a benefit program associated with their employment. We believe that strongly and have done everything we can to try to help facilitate that.

I should indicate that about 85 percent of the construction industry is nonunion or open shop. As you can imagine, the collective bargaining agreements do very tightly control these programs, and that is a huge benefit in a lot of ways. In the private sector, however, on the nonunion side, these programs vary

dramatically. To the extent that there are people cheating the system, they should be penalized to the utmost extent of the law.

Again, we have encouraged our members for years, and I have had a great deal of success with that. I have heard a lot today from the proponents of the bill about the need for transparency. We 100 percent support anything that provides transparency. The employee ought to understand 100 percent what is coming out of their wages to go towards benefits. We have no quarrel with that whatsoever, and we will support legislation to achieve that as long as it applies to everybody. With respect to my good friends from labor who have pointed out the weaknesses on some of the nonunion side, there are also fringe benefits that are included in the collective bargaining agreements that I am not sure the employee understands where those benefits go or exactly how it benefits them directly. I am not making an allegation that they do not benefit them directly. I am just saying it is unclear. To the extent that transparency affects everybody who is involved in these programs, we would support that 100 percent.

We spend a lot of time talking about transparency, and then we talk about the public policy of annualization. Annualization is something that is being discussed nationally. Annualization is in the federal prevailing wage laws and is a public policy that merits discussion. I want to try to help you understand why it creates a little bit of a problem on the nonunion side. Again, the collective bargaining agreements control the agreements for the union contractors. In our cases, the contractor is a private employer who negotiates directly with their employees. That has resulted in a number of different types of programs that are included in the prevailing wage credit. That might not be the best word, but I am going to call it a credit.

Essentially, there are three types of programs. The health programs are generally annualized anyway. I have not been able to reach out or find anybody so far. I have only been working on this since we saw the bill on Thursday, but I have not found any of our members who do not have annualized health plans. The health plans are paid across the board, generally, regardless of whether it is a public works job or a private sector job. Annualization does not really have a huge impact on the health side. Where it does have an impact is on the retirement benefit side, the 401(k) programs. In fact, it is complex enough that there is a federal exemption for fully vested retirement programs in this regard. In other words, annualization exists at the federal level except for an exemption for retirement programs to address the concern I am about to articulate.

We have heard some extreme examples of what happens in the private sector to retirement on a prevailing wage job. They take \$8 out for retirement on a

private sector job. They take out 25 cents an hour. I do not know if that is an actual example or for illustration purposes, but you will see a difference sometimes. The private sector could have two retirement programs. They have one in which the employer pays into the program on a private sector job on behalf of the employee, and then they have the option of matching. Then they will have a second one that is related to the prevailing wage jobs where, in all cases that I am aware of, the employer pays 100 percent of that contribution on the prevailing wage jobs.

The concept of annualization needs to be very seriously considered in terms of how it would impact the private sector. Again, we have worked for 15 years to provide benefit programs for our members. I can tell you if this is enacted as is, the result will be scores of contractors going back to the old practice of just paying the full wage on the salary or on the check because this is too complicated. If they do keep their private sector wage or retirement program, they will be forced with the potential of having to pay double benefits for that. I am very concerned that the work we have done over the course of the last 15 years to try to get people to participate in these programs will be undone by this legislation, and that is disproportionately going to impact small contractors, which is the majority of our membership.

I think this marks my 23rd year of being in this building in one capacity or another, and I have got to tell you, Madam Chairwoman, I am astonished. The penalties that are proposed in this legislation are significant, and one could argue that they should be able to get at people who cheat the system. What astonishes me is section 4, subsection 5, which completely exempts collective bargaining programs from the penalties. What that tells me is that it is okay to cheat the system as long as you are involved in a collective bargaining agreement. I just cannot wrap my head around the fact that is included in this legislation or was brought forward as an honest suggestion; that somehow this ought to apply only to the nonunion sector of the industry and not to the unionized sector of the industry, too.

Again, Madam Chairwoman, we are in opposition to this bill. However, I would indicate that if it is the desire of the Committee to process the bill, give consideration to exempting fully vested retirement plans as is done in the federal law and in most of the states who have adopted annualization. With that, Madam Chairwoman, I will be happy to answer any questions.

Assemblyman Ellison:

A lot of the public sector does not bid on a lot of the public work projects. If they do bid on this with the public benefit package that we are talking about,

they would have to create a different part of reporting and then put it into a separate fund. Is that not correct?

Warren Hardy:

That is a good question. However, I think, in the case where they do not currently provide benefits, in all likelihood that contractor is just going to pay the full benefit amount in cash wages on the check. In the case that they do provide benefits, they will be able to receive that credit under current law. The basis of our objection here is that we are providing a disincentive over narrowing the scope of which programs can be included in that credit. I want to restate, to the extent that we are trying to provide transparency to help employees understand where their benefits are going, we have no objection to that. We would like to see that because there have been articulated questions in some cases from unscrupulous contractors about how that money is being spent, where it is going, and how it benefits the employee. However, I would indicate there are also questions in some of the collective bargaining deductions as to where that money goes and how it directly impacts the employee.

In the example you give, Assemblyman Ellison, you would in all likelihood just pay the wage, which is what we are trying to get away from. To that extent, we want to have bona fide, legitimate benefits. We want them to be able to be deducted against the prevailing wage as they are currently.

Assemblyman Ellison:

Also, did you hit on section 6, subsection 4 on page 8 of the bill?

Warren Hardy:

I did not touch on that in my testimony, and I am not sure what the intent of that is.

Chairwoman Benitez-Thompson:

I am looking at the examples that are on NELIS [(Exhibit C), page 2], and I want to talk a little bit more about the complications for small contractors and for your members with setting up a contribution plan. It is the column on hourly fringe benefit contributions. It talks about health and welfare, pension, vacation, and "other." When I think about my job in the private sector and my own paycheck, I can see penny for penny where things are going and being spent. There is not an "other" column in my paycheck at all. If money is going to a 401(k) plan or my health benefit, I will see that it is going there. Could you talk to me a little bit more about how this would be more burdensome on contractors than what is necessarily required in reporting for other private sector jobs?

Warren Hardy:

I think out of the proposal it would be necessary to explain to the Labor Commissioner exactly what those other benefits are, and then he can make a determination of whether they are bona fide. I think that is the intent of the legislation and probably a part of the legislation that we do not necessarily have a problem with.

Chairwoman Benitez-Thompson:

Spelling out the "other" column and defining what is an acceptable fringe benefit is something you folks are okay with. It is annualization you are considering.

Warren Hardy:

Yes. I need to talk to some of our other folks, but with those that I have been able to talk to, the annualization does not really impact them on the benefits side. It is primarily on the retirement benefits side. With the economy the way it is today and the way things are happening, we really think we ought to do everything we can to encourage retirement, but they should be bona fide programs that are not being cheated. We have no quarrel with that whatsoever. If they are, we should receive the benefit, and if there are questions about the collectively bargained agreements, they should be subject to the penalties just like we are.

Chairwoman Benitez-Thompson:

Talking about the annualization then, and once again I am looking at the example that is provided to us on NELIS (Exhibit D), could you speak a little bit more about the practice of subsidization in jobs using public dollars in prevailing wage versus those nonpublic works jobs?

Warren Hardy:

I think one of the things that might be causing some confusion here is that not all of these wage surveys are prevailing wage jobs. Some of them are private sector jobs where they report. In some cases, these companies do not provide benefits, which is exactly what we are trying to address. I am assuming the allegation is that they are pocketing the money as a company to help offset nonprevailing wage jobs. I am not aware of that practice. I represent the good actors, I think, and my friends in labor would agree. I am not familiar with that practice, but I am not saying it does not exist. It is very likely that it does, but I do not know how it works.

Chairwoman Benitez-Thompson:

I am just trying to get a handle on how prevalent this is. I do not know if this is common practice in the industry.

Warren Hardy:

I am with you 100 percent. People cheat in the industry, and they ought to be caught. The majority of my testimony today is designed to indicate that we can do that without having these other punitive things in the law that might ultimately require or force contractors to go back to paying the wage instead of the benefits.

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

I will make the same disclosure as Mr. Hardy. I am certainly not an expert in this area, but we did hold a special meeting of our Government Affairs Committee yesterday to discuss this legislation. I wanted to make you aware of some of their concerns. We are here today in opposition to this bill.

The thing that is most confusing or puzzling to us is that this has likely been an issue for an extended period of time. I am assuming this did not become an issue today or last Thursday. I can say that none of my members, being the largest construction association in the state of Nevada, were contacted to have any type of dialogue on this matter and to try to resolve things before we got here before your Committee today.

According to the Department of Employment, Training and Rehabilitation, construction employed 36,000 people in Las Vegas in December of 2012. By comparison, construction jobs employed 98,000 people in December of 2007 for a net loss of 62,000 jobs. The industry is having its challenges. The economy is down. The market is down. We are trying to get work. We are trying to employ people, and to see a little bit of a shot across the bow like this type of legislation was certainly surprising.

The bill, as you can see, is of a very punitive nature. I will point out some sections, if I may. Section 4, subsection 4 of this bill requires the Labor Commissioner in addition to any other remedy or penalty provided in this chapter to find a contract for \$2,500 to \$5,000 for a violation. I would like to point out that under NRS 338.015 within existing statute, there are broad powers to enforce by both the Labor Commissioner and the Attorney General, including the administrative penalties of \$5,000 and including the Labor Commissioner's ability by regulation to establish a sliding scale of penalty based on the severity of the violation. We believe that these penalty provisions are already addressed in current statute.

Under section 4, subsection 4, paragraph (d), it requires that any violation of this bill's provision be reported to the Attorney General and creates a new right of action for the Attorney General's Office to sue a contractor. Once again, that is already contained within NRS 338.015.

In section 4, subsection 4, paragraph (e), if you have not read the bill in detail, as there are so many you have to go through, there is a subtle reference there to NRS 338.017. This statute essentially provides notice to a contractor that they would be banned from bidding on a public works project for a period of three years for an initial violation and five years for a second. Again, that is an extremely severe penalty that is going to put somebody out of work entirely and inhibit their ability to employ folks on different jobs.

Now, you would assume that if my members are held up to the standards created within this legislation, all parties should be. As the previous speaker indicated, under section 4, subsection 5, collective bargaining agreements are excluded from this agreement. Meaning that they would not have to achieve these same standards.

Let me be very clear in saying that we want to ensure that workers are made whole, that people are following the law, abiding by all rules and not cheating any system or incorrectly reporting information. At the same time, we feel the punitive nature is excessive. If this bill passes, my members could be assessed additional fines on top of what already exists in NRS 338.015, lose their entire ability to bid on public works projects for a period of not less than three years, and have further ability to be sued by the Attorney General. It is not my belief that this is the policy direction that our state wants to head in to further penalize, criminalize, and take away the ability for contractors to work and create employment opportunities. We embrace the opportunity for an open dialogue on these issues in reporting, whether it be within collective bargaining agreements or otherwise, and at your direction, Madam Chairwoman, we would be more than happy to work with interested parties moving forward.

Chairwoman Benitez-Thompson:

For the folks that you represent, do you have an idea of how many of them have another category versus defined benefit plans?

Chris Ferrari:

I do not, but I will be happy to reach out to the membership and get an answer for you on that.

Chairwoman Benitez-Thompson:

Great. I look forward to future conversations on this because I know both you and Mr. Hardy represent contractors, and we will definitely want them at the table for these conversations.

John Madole, representing Associated General Contractors, Nevada Chapter:

It is always fun to show up 145 minutes into the testimony. If I could, I would like to crystalize what I think the problem is here. When I first heard about this bill, and I was told that the effort was simply to make sure that the fringe benefits that are paid are bona fide, I wondered what the problem was. If you look at section 1, subsection 2 on page 2, that takes care of the problem. I see two problems here. First, you want to be sure the fringes are bona fide and go to the worker, which I do not dispute. Second, monthly payments would make sure that somebody could not cash below the job, as was alleged earlier. If that was the bill, I think the entire testimony this morning would have taken about 15 minutes. We would have all been supporting it, and you would probably all be running to your constituents right now.

If I could, let me offer you an example of what is likely to happen. I am going to take a hypothetical plumbing company. Let us roll the clock back to 2005, and just to make it interesting, let us call this company Bona Fide Plumbing. They have 10 employees, and they have bona fide fringe benefits. They are paying each of these plumbers \$25 an hour, plus they pay \$3 into a legitimate health and welfare and \$2 into a legitimate 401(k) for each employee. Now, in 2005 this company did exactly half of their work as prevailing wage, public works, and they did half as private. What they did is they split the work between their employees so at the end of the year, every employee received \$2 an hour for 2,000 hours, which is \$4,000, and then they got 1,000 hours each on public works. Each of these plumbers got \$9,000 contributed to their retirement, which seems pretty reasonable. When you put "annualized" in here in 2013—and the public works budget in 2005 was about \$850 million, as those of you who are on the money committee know this year it is about \$58 million—there is very little public works to go to, and this guy has to go compete on private work. What is likely to happen if this bill passes is he will eliminate the \$2 an hour that he is paying currently. If you put "annualized" on him, he will add approximately 20 percent to the cost of what he is not having to pay right now. He is able to pay that additional \$5 into the fringe benefit, and he does not have all the payroll costs on there. You have added a cost to his doing business that he cannot sustain, so he sits down with all the employees and tells them that from this point forward, they will not have that \$2 an hour. When they go on a public works job, he will just pay them in cash. At the end of the year, these people wind up with \$0 in their 401(k) plan as a result of passing A.B. 218.

I would just ask you to seriously consider amending this bill substantially (Exhibit E). Just take the language on page 2 and get rid of the rest of it, such as the penalties and everything which do not need to be there. I think it is pretty easy to figure out what a bona fide fringe benefit is. As far as I am

concerned, the first hour a person works on a public works job, and he has one hour's contribution made to that benefit plan, he should own it. There should not be any investing. What is so complicated about that? If you make those changes, perhaps we could support this bill. Thank you for your time.

Assemblyman Daly:

My understanding is that you are a management trustee on several union administered Taft-Hartley trust funds.

John Madole:

Yes. That is affirmative.

Assemblyman Daly:

About how many? Fifteen? Twenty?

John Madole:

Probably fewer than that. Seven or eight.

Assemblyman Daly:

What if you count four plans in each organization you are in?

John Madole:

Okay. I will go with your number.

Assemblyman Daly:

Like Mr. Hardy was saying, people do not know where the benefits go. Has there ever been an employee on one of those funds, the 16 or so that you sit on, who did not get their benefit but in the end was made whole? In your experience, does that happen?

John Madole:

I am not aware of anyone that had a problem.

Chairwoman Benitez-Thompson:

Are there additional questions? [There were none.] Is there additional testimony in opposition? [There was none.] We will move on to neutral testimony. [There was none.]

In that case, I will close the hearing on A.B. 218, and we will have follow-up conversations and make sure everyone is sitting at the table for that.

At this time, I will open up the witness table for public comments. [There were none.]

Meeting is adjourned [at 10:56 a.m.].

RESPECTFULLY SUBMITTED:

Maysha Watson
Committee Secretary

APPROVED BY:

Assemblywoman Teresa Benitez-Thompson, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 12, 2013

Time of Meeting: 9:04 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 218	C	Todd Koch / Building and Construction Trades Council of Northern Nevada	Handout
A.B. 218	D	Todd Koch / Building and Construction Trades Council of Northern Nevada	Handout
A.B. 218	E	John Madole / AGC	Amendment handout