

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

**Seventy-Seventh Session
May 3, 2013**

The Senate Committee on Commerce, Labor and Energy was called to order by Vice Chair Moises (Mo) Denis at 12:14 p.m. on Friday, May 3, 2013, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Moises (Mo) Denis, Vice Chair
Senator Justin C. Jones
Senator Joyce Woodhouse
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Mark Hutchison

COMMITTEE MEMBERS ABSENT:

Senator Kelvin Atkinson, Chair (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Irene Bustamante Adams, Assembly District No. 42
Assemblyman Richard "Skip" Daly, Assembly District No. 31
Assemblyman James Oscarson, Assembly District No. 36

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Policy Analyst
Dan Yu, Counsel
Wynona Majied-Martinez, Committee Secretary

OTHERS PRESENT:

Judy Osgood, Senior Policy Analyst, Office of the Governor

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Keith Lee, Board of Medical Examiners; State Contractors' Board
Helen Foley, Nevada Association for Marriage and Family Therapy; Nevada
Funeral Home Coalition
Warren B. Hardy II, La Paloma Funeral Services
Robert List, Palm Mortuary
Yolanda King, Clark County
Paul McKenzie, Building and Construction Trades Council of Northern Nevada
Patrick Sanderson, Laborers Local 872
Margi A. Grein, Executive Officer, State Contractors' Board
Jack Mallory, Southern Nevada Building and Construction Trades Council
Denis Perea, Deputy Director, Department of Employment, Training and
Rehabilitation

Senator Denis:

We will begin with Assembly Bill (A.B.) 179, presented by
Assemblyman James Oscarson.

ASSEMBLY BILL 179 (1st Reprint): Revises provisions governing audits of
certain regulatory boards of this State. (BDR 17-770)

Assemblyman James Oscarson (Assembly District No. 36):

Regulatory boards or commissions that take in more than \$50,000 in annual
revenue are required to use an accountant or accounting firm to conduct an
annual or biennial audit. In the 2003 Session, the Legislature carved out an
exception to this rule for smaller boards, those receiving less than \$50,000 in
annual revenue, allowing them to submit a balance sheet in lieu of an audit.

The cost of hiring an accountant or accounting firm can be steep, up to
\$15,000 in some cases, so it is a hardship for smaller boards with less revenue.
The goal of this bill is to raise the threshold for requiring a formal audit for those
boards bringing in \$75,000 or more in annual revenue.

According to information provided by the Legislative Auditor, A.B. 179 will
exempt three or four regulatory boards from having to conduct audits and allow
them to submit balance sheets instead.

On the Assembly side, there was concern about some smaller boards that may
not be compliant with reporting and other requirements, so the bill was

amended to condition exemption from an audit on compliance with statutory reporting requirements.

Both the audit and balance sheets are submitted to the Legislative Auditor and the Director of the Budget Division in the Department of Administration. This bill will not change that requirement. The Legislative Commission can order a full audit at any time it decides the balance sheet is inadequate or raises red flags.

In summary, A.B. 179 makes a minor yet significant adjustment to the audit thresholds that will enable smaller boards to spend the money they save on more important things such as educating their members, educating the public and other tasks undertaken by a regulatory board.

Senator Hutchison:

How was the \$75,000 threshold for larger boards determined? Do you have a higher threshold that captures the boards you are targeting? Does it accomplish what you intended? Is there a higher threshold before you get any more significant boards?

Assemblyman Oscarson:

We looked at raising it to \$100,000 but felt that the \$75,000 amount was adequate for what we wanted to capture. I spoke with Paul Townsend, the Legislative Auditor. Together, we thought that was a good number with which to start while we see if the applicable boards take advantage of that.

Senator Denis:

We will close the hearing on A.B. 179 and hear A.B. 349.

ASSEMBLY BILL 349 (1st Reprint): Revises provisions governing professions.
(BDR 54-420)

Assemblywoman Irene Bustamante Adams (Assembly District No. 42):

During my freshman Session, I had the opportunity to work with the U.S. Department of Defense and to understand some of the challenges our military families were facing. I was able to work with others and pass legislation addressing child custody for deployed members. This Session, I reached out to them again to discover some of their continuing challenges. I chose to work on removing licensure impediments.

Many occupations require a State license, often with State-specific conditions and processes, which can cause lengthy reemployment delays for military family members moving between states. Because of these delays and the expense involved in relicensing, many family members have decided not to practice in their professions. This is a difficult financial and career decision if the family desires to stay in the military. It is not just a Nevada problem. It is a national problem. Governor Brian Sandoval took an active role in addressing this issue.

Judy Osgood (Senior Policy Analyst, Office of the Governor):

The Governor recognized the career portability issues faced by military spouses who move from state to state as they accompany their service member spouses on assignment around the Country. The frequent moves, combined with the fact that professional licenses do not always easily transfer from one state to another, result in high financial and administrative burdens for military families. To alleviate these burdens, Governor Sandoval signed an Executive Order on May 4, 2012, to provide reciprocity for military spouses seeking licensure in Nevada ([Exhibit C](#)).

Under the Executive Order, every professional licensing board or commission in Nevada is required to facilitate endorsement of a license from another state or provide for a temporary or provisional license that allows the practice and to expedite application procedures.

If statutory requirements were to prohibit any of the actions mandated in the Executive Order, the professional licensing board was to inform the Governor's Office by June 30, 2012, of suggested statutory changes that would have made reciprocity for military spouses' licensure a reality. A total of 31 boards or commissions provided information in response to the order. Of those, nine acknowledged statutory barriers to full license reciprocity. A chart drawn up by staff in the Governor's Office summarizes the responses received from the boards and commissions ([Exhibit D](#)).

Senator Settelmeyer:

What do you do in situations where we do not have a license requirement? We have had quite a few bills regarding nurse practitioners, advanced nurse practitioners, dental assistants and others. We are not looking to create or honor those requirements, are we? Is it correct that if we have a policy already, are we trying to find similarity?

Assemblywoman Bustamante Adams:

Yes. That is correct.

Assembly Bill 349, section 1, subsection 1 contains the permissive language, " ... a regulatory body may issue such a license by endorsement to an applicant if: ..."

Those are key words to keep in mind as the proposal outlines three provisions. Section 1, subsection 1, paragraph (a) requires the applicant to hold "a corresponding valid and unrestricted license to practice in his or her respective profession ... " Paragraph (b) provides that the applicant be an active service member or veteran, the spouse of an active member, or surviving spouse of a veteran. Paragraph (c) requires the regulatory body to determine " ... that the provisions of law in the state or territory in which the applicant holds a license as described in paragraph (a) are substantially equivalent to the applicable provisions of law in this State."

Subsection 2, establishes what the applicant must do to be considered. As part of the application, the applicant must verify that he or she satisfies the requirements in subsection 1, be a United States citizen and not have been disciplined or investigated by the corresponding regulatory authority of the state or territory in which the applicant holds a license to practice.

There was a concern on the Assembly side that I had not addressed a detail. I committed to address it here in the Senate. In section 1, subsection 2, paragraph (a), subparagraph (3) where it says, "regulatory authority of the state," there was a request by my colleague Assemblyman Andy Eisen that we change "the" to "any." I propose that it would read, "Has not been disciplined or investigated by the corresponding regulatory authority of any state or territory in which the applicant holds a license."

Then, in subsection 2, paragraph (a), subparagraph (4), "If applicable to the profession, has not been held civilly or criminally liable for malpractice"; and subparagraph (5), "If applicable to the profession, is certified by a specialty board of the American Board of Medical Specialties." This was submitted to the Assembly by the Board of Medical Examiners. My colleague, Assemblyman Eisen, recommended I add the American Osteopathic Association because they also certify doctors. I will provide a written amendment to staff for those two changes, which I consider to be friendly amendments.

Section 1, subsection 2, paragraph (c) of A.B. 349 is key, specifying the regulatory body has the authority to require any other information it may need to consider the application. It is key to make the language permissive.

In section 1, subsection 3, the barrier of not getting a decision from the regulatory body was addressed because when the service member is reassigned, sometimes the reassignment may be for just a year. Therefore, it is important that the regulatory body make timely decisions. It is proposed the regulatory body must notify the applicant not later than 15 business days after receiving the application if any additional information is needed. In the past, the body sometimes failed to respond in a timely manner. In section 1, subsection 3, we also propose a provision that the regulatory body shall approve or deny the application no longer than 45 days after receiving it. This would help make sure the applicant is not left hanging.

Section 1, subsection 4, would provide that the license by endorsement may be issued at a meeting of the regulatory body or between meetings by the chief executive officer. Subsection 5 proposes that at any time before making a final decision on an application for a license by endorsement, a regulatory body may grant a provisional license authorizing the applicant to practice in his or her respective profession in accordance with the regulation adopted by that body.

Senator Hutchison:

The subject in section 1, subsection 2, paragraph (a), subparagraph (3), surfaces out of my own practice with professionals and regulatory boards. Sometimes they do not know they are subject to investigation. Sometimes that knowledge does not become publicly available unless a board actually conducts an investigation. Where it says, "has not been disciplined or investigated by the corresponding regulatory" board, you may want to consider adding "to the applicant's knowledge."

Section 1, subsection 3 talks about response being given not be later than 15 days after receipt of the application. It says the regulatory body may ask for more information. Then a 45-day time period ensues within which time a decision to grant or deny must be made. I assume that if the regulatory body asks for information and has not received it within 45 days, it would have a basis upon which to deny the application.

Assemblywoman Bustamante Adams:

That is correct.

Senator Hardy:

To clarify, the regulatory body will get everything; then, no later than 15 days after receiving a by-endorsement application, the regulatory body shall provide written notice if the members need anything else. Does the 45 days apply to the total amount of time it takes to receive everything? Should I read the intent to be 45 days after everything is in or 45 days after they receive the incomplete application?

Assemblywoman Bustamante Adams:

The intent is 45 days after everything, the completed application, is in.

Finally, a letter of support was submitted for your information from the Nevada Enlisted Association of the National Guard, United States ([Exhibit E](#)).

Keith Lee (Board of Medical Examiners):

We worked with Assemblywoman Bustamante Adams on A.B. 349, and we support it.

Senator Denis:

Assemblywoman Bustamante Adams, you referred to a letter from the Nevada Enlisted Association of the National Guard, United States, and their request for an amendment. Would you clarify that?

Assemblywoman Bustamante Adams:

There was an amendment submitted on the Assembly side, which I addressed and included in the bill.

Senator Denis:

Is it that they used this letter in the Assembly and did not update it when they sent it to this Committee?

Assemblywoman Bustamante Adams:

Yes.

Helen Foley (Nevada Association for Marriage and Family Therapy):

We support the legislation and encourage you to adopt it with the caveat that the 45 days allowed for approval or denial refers to the completed application. Otherwise, the language would be too confusing. If the time period were to be from receipt of the application, it would only be 30 days after that initial application came in.

Senator Denis:

I will close the hearing on A.B. 349 and open the hearing on A.B. 494.

ASSEMBLY BILL 494 (1st Reprint): Revises provisions governing the Nevada State Funeral Board. (BDR 54-573)

Assemblywoman Irene Bustamante Adams (Assembly District No. 42):

During the interim, I had the opportunity to serve as chair for the Sunset Subcommittee of the Legislative Commission, established during the last Session. Our role was to review boards and commissions. It would take us about 10 years to review all 170, so we requested certain boards to come before us. The Nevada State Funeral Board was among those. We prepared a summary report of this review ([Exhibit F](#)).

We looked at past audits, minutes, financial statements and other documents. This was a board for which we recommended change, proposing to transfer its duties to another entity. The proposal was presented in the Assembly. The Funeral Board worked with former Governor Robert "Bob" List to see if this board could be resurrected.

Board members had been aware for several years they were not serving the needs of Nevadans, and radical change needed to take place. They presented some amendments to that effect, which we heard in the Assembly. The vote there was split. We had a heated late-night discussion in which several members disapproved of trying to resurrect this board. Instead, they wanted to transfer the board's duties to the Department of Health and Human Services (DHHS). The amendment came out of Committee on a split decision. The changes brought forth are noted here.

The changes outlined in A.B. 494 still comprise a sensitive topic. Several senior members have tried to achieve consensus to no avail. I am optimistic, however.

I think they see that to continue servicing Nevadans, radical change is needed. Making change was the purpose of that interim group.

Section 1, subsection 1, proposes to change the name to Nevada Funeral and Cemetery Services Board. Subsection 2 would change the Board's composition. Instead of five members, it calls for appointing seven members. We ask that two members appointed by the Governor be actively engaged as either funeral directors or embalmers. We also ask that one member be actively engaged as a cemetery operator and that another appointee represent the general public. I proposed an amendment that would get more diversity onto the Board, with the Majority Leader of the Senate and the Speaker of the Assembly appointing members of the general public. I will take that out and restore the provision to its original form, whereby the Governor appoints three public members.

In section 2, the Board would meet quarterly instead of yearly. In section 3, subsections 1 and 2, ask for administrative changes to include a principal office and employment of an executive director and inspectors. Subsection 3 calls for maintaining records for all financial transactions, licenses, certificates and permits. Failure to keep complete records was a major issue among those we encountered in our review.

Section 3, subsection 4 would require establishment of qualifications required of the executive director and other staff members. Section 3, subsection 5 mandates a Website with information posted regularly so it is accessible to the public. Another key point was that communication with the public was severely outdated and the public had no access. Section 4 calls for holding inspections at least once every 2 years and provides that they shall not be done by a member of the Board.

Lastly, a proposed change appears in line 25, page 4, requesting a regulatory fee for each funeral conducted in this State. That is an issue that Chair Kelvin Atkinson brought up. It still needs to be fleshed out. He asked that Helen Foley, who also is helping the group to work with the Clark County Coroner, be charged with making sure the verbiage used in that section is appropriate. We also had a serious concern about the current executive director. There was general agreement that she would be replaced.

If A.B. 494 becomes law, section 7 requires that progress reports would be submitted to the Sunset Subcommittee of the Legislative Commission every 6 months until the next Legislative Session.

Senator Settlemeyer:

Having served on the Sunset Subcommittee, I can say this is one of the few boards whose issues we did not resolve. During the Assembly debates, did anything come out about why the Board was late responding to our requests? Tardiness was a primary factor in how we dealt with the members. Did it have anything to do with the executive director? Why was the decision made to find a replacement? Why would we now counter that idea?

Assemblywoman Bustamante Adams:

The executive director controlled communication for the rest of the Board. Some members did not even know the Board was being reviewed. That was the main reason for recommending the replacement.

Senator Hutchison:

If it was so dysfunctional and the group was not working as it should and there did not seem to be a need for the Board, why are you bringing it back to life? What do you hope to accomplish?

Assemblywoman Bustamante Adams:

When we made the recommendation, it was to transfer the duties to DHHS. We knew the Board's mission was important, but the way it functioned was not serving Nevadans. We were afraid, though, that the Board's operations might get lost in the complex arena of DHHS. Our choices were limited.

The Sunset Subcommittee members had their eyes open. They realized it was a serious move for a legislative group to say a board was not serving Nevadans. I think it was a wake-up call, however, for the Board. They were able to regroup and seek the help of former Governor List, Ms. Foley and others to address the needed changes for which we asked.

Senator Hutchison:

I see that Helen Foley has submitted an amendment to include a fee not only for funerals but other death care services. Any idea how much money will be raised from that \$10 fee?

Assemblywoman Bustamante Adams:

I do not have that number, but I believe Ms. Foley or former Governor List may have it.

Senator Settelmeyer:

I also served on the Sunset Subcommittee. I recall there was a fair amount of discussion, looking nationally, regarding the different problems that have occurred with funeral boards and crematoria. There was the Morning Glory Funeral Home in Florida in 1988. We felt it would be a good idea for someone to examine regulatory authorities. We were worried about that and thought the body in charge was not doing a good job. Ultimately, we agreed somebody needed to provide the oversight just to ensure nothing problematic would occur in the future. We did not want to have a Nevada scandal where out in the desert, somebody was doing bad things. I still completely agree that we need a Board. If the members are willing to shape up, I am willing to give them a second chance.

Senator Hardy:

I understand that DHHS officials did not think funerals would pertain to them. They did not have a real desire to take the project under their wing. The industry wanted it, and the Board felt expenses would be covered under a fee-based system. For the three employees, the budget would be about \$232,000 a year. It seemed although the operation was fee-based, the State could have everything it needed.

Assemblywoman Bustamante Adams:

Yes. You are correct. The DHHS was concerned that we were transferring all those duties to them. Former State Senator Warren Hardy made the suggestion, and we acted on it.

Warren B. Hardy II (La Paloma Funeral Services):

Some Legislators were aware La Paloma Funeral Services had been active in the legislative process and had an interest in this project. La Paloma was contacted by some members of the Sunset Subcommittee to participate in the Funeral Board review and was asked to comment. We were pleased to do that. The Subcommittee recognized the challenges with the Funeral Board from the time they were asked to bring financial records and statements and did not show up. That is when someone suggested rolling the Board into DHHS. We thought that

was significantly better than the process we had at that time, so we fully supported the suggestion.

We spoke with several members of the Funeral Board who endorsed that plan as preferable to the way things were going. They were not being kept in the loop. I am aware of complaints members of the public filed that are now 2 years old and still have not been reviewed. My client has been in business for 5 years. They have been inspected once. The job simply is not being done, and we saw the changes as a viable option.

As we moved further down the road, DHHS officials were wonderful, willing to do whatever was necessary, as is always the case for Mike Willden's shop. However, they expressed concerns about whether that transfer could take place smoothly and how it might affect the industry. The functions relative to funerals are important for the industry and for members of the public.

I lost my father a year ago in January, so I have firsthand experience with this. Fortunately, all of our arrangements went through the Coroner's Office so everything went smoothly, but those functions are critical to the public. We always took the position that we would support reforming the Board to make sure those functions were handled properly. When former Governor List, his client and former Ms. Foley came forward and suggested we reform the Board, we were all in favor.

We think the bill before you today, A.B. 494, makes the operation more effective. I prepared and submitted an amendment ([Exhibit G](#)) to address a suggestion from Assemblywoman Bustamante Adams that all appointments go back to the Governor. We are in 100 percent support of this legislation.

Senator Denis:

In the paperwork, you said the amendment brings A.B. 494 into alignment with other statutory provisions regarding Executive Branch board appointments. Is this 100 percent? We do this all the time.

Mr. Hardy:

My understanding was that for most Executive Branch boards, the Governor makes the appointments. The Legislature makes appointments on legislative committees. I could be completely wrong.

I know the Governor has some concerns with this. It is important this bill not fail and we have to go back to status quo. That was our only concern. We wanted to make sure the Governor is 100 percent comfortable with this and willing to sign it.

Helen Foley (Nevada Funeral Home Coalition):

We submitted an amendment proposing a regulatory fee ([Exhibit H](#)). The intent is to raise \$10 for each deceased person that is handled by a crematorium or funeral home. When it came out from the Legislative Counsel Bureau and said "per funeral conducted in the state," we saw that as not inclusive enough. There are many times when funeral homes will embalm and ship to another state or receive individuals here but conduct no funeral. We felt we would miss many people who should be included. We are submitting a friendly clarifying amendment, [Exhibit H](#). We also spoke to Clark County Coroner Michael Murphy, who does double duty here. If we said "death care in the State," it would affect Clark County, too, and those in the south also would be responsible for paying the fee. We believe the new language, "death care conducted by a funeral home or crematory in this State" hits the target, and we encourage you to support that.

Senator Hardy:

How many death care procedures by funeral homes or crematories do we have in the State?

Ms. Foley:

Mr. Murphy thought this would raise somewhere between \$150,000 and \$175,000.

Senator Hutchison:

Are funeral homes and crematories the only facilities that can handle death care services in the State? Are we capturing everybody here when we say "funeral homes and crematories"?

Ms. Foley:

Yes.

Robert List (Palm Mortuaries):

My clients in this matter are the Palm Mortuaries and their affiliates. They came to me to express their concerns, matters you have heard about in these

hearings. The problem has not been the individual members of the Board. It has been lack of a budget. They only take in around \$60,000 per year. It simply is not enough to open an office and run the kind of operation that is needed.

There are about 150 licensees in the State, and when you have 15,000 to 20,000 deaths a year, it is a massive amount of activity and a big industry, but there is virtually no budget to take care of the responsibility the law requires. Also, there being no budget for an inspector; the individual board members had to do inspections themselves. Often, they conducted inspections of their competitors. That is not highly desirable. There also has been dysfunction caused by the executive director moving out of the State to California. It was difficult to operate the Board with those handicaps.

Finally, consensus was reached throughout the industry to the extent that the expertise to self-regulate was present among the members. It is just that they need money to open an office, hire a professional executive director, hire inspectors and maintain a Website. The most recent minutes on the Website are from 2002. It is a pretty sorry situation.

Assembly Bill 494 represents a lot of work and a lot of input from throughout the State. The suggested amendments defining imposition of the fee, when it should be applied, and the task of redefining the appointment authority led to Assemblywoman Bustamante Adams' involvement. To answer Senator Hutchison's question of why not the DHHS, it was felt they have a tremendous workload already and do not possess the expertise to do the work required in this rather specialized business.

Senator Hutchison:

What is your justification and response to people who ask why you are raising fees now on yet one more service?

Mr. List:

The amount of money that is coming in, the \$60,000, does not assure the public of the kind of protection needed in the death care industry. There simply is not enough money to do what needs to be done. Inspections, licensing investigations and other services have been neglected. We have been lucky in this State that we have not had the kind of scandal that took place in Florida. This will give the Board a budget of somewhere between \$200,000 and

\$250,000 per year, which is still a relatively modest budget for an industry of this size.

It is expensive to have a funeral or even to do a cremation. Increasingly, there are more cremations and fewer funerals. That seems to be the direction in which the industry is going. In the end, with the provisions we propose, this can be a self-supporting board. The amendment will assure us the industry is being run in a professional, safe and secure manner.

Senator Denis:

I will close the hearing on A.B. 494 and open the hearing on A.B. 86.

ASSEMBLY BILL 86 (1st Reprint): Requires the State Contractors' Board to suspend or revoke the license of a contractor for failure to comply with certain provisions governing unemployment compensation, industrial insurance and insurance for occupational diseases. (BDR 54-276)

Assemblyman Richard "Skip" Daly (Assembly District No. 31)

Assembly Bill 86 is before you, along with a friendly amendment submitted by the Department of Employment, Training and Rehabilitation (DETR) ([Exhibit I](#)). We worked on it with DETR. The bill does not contain everything we desired, but it moves us toward a solution to the problem whereby contractors are not current and fall out of compliance with their workers' compensation or unemployment contributions. In addition, there is no strong procedure in place for reporting noncompliance to the State Contractors' Board. Contractors are required to have their contributions current in order to maintain their licenses.

The first draft of the bill called for the Contractors' Board to develop a procedure for getting information and facilitating disciplinary action. We did not prefer that method. Rather, we wanted a system that was similar to the operation at the Department of Motor Vehicles (DMV) in which people who already have the information do the reporting. If consumers do not keep up their insurance, the insurance company notifies the DMV, and the DMV suspends the license. That is the direction we want to go.

We were working with the Contractors' Board, whose members also are not totally happy, but we could get it worked out. Under *Nevada Revised Statute* (NRS) 616B.630, the Division of Industrial Relations (DIR), Department of Business and Industry, is required to notify the Contractors' Board when

contractors are in violation. When the Board gets this information, it will put the provisions in this bill into play.

While working on the Assembly side, we could not identify the process whereby DETR was required to notify anyone if somebody was delinquent in unemployment contributions, so we added that. It triggered a fiscal note, which is why we took responsibility for writing an amendment to correct the problem. We think we have a process that is better.

Once DIR or DETR notifies the Contractors' Board, we give the contractor a 30-day notice to cure. The penalty for failure to answer the notice or to comply is a suspended license. As soon as the cure is in place, the license is reinstated

Among those concerns was whether workers will be able to continue on the job. The answer is yes. We do not entirely like that part, but it is part of the compromise. The contractor can finish the jobs that are already under contract, which is why the contractor is required to provide a letter accounting for those jobs. If you catch the contractor working on a job that was not under contract, other disciplinary action will be taken and the license will be revoked.

If the violation continues, the Board can take other disciplinary action under NRS 624.300. We will continue to come after the contractor to make sure the payments become current, but the contractor will not be able to bid on new projects or take on new jobs.

That was a point of contention among some of my colleagues on the Assembly Committee on Commerce and Labor. We do not want people working on jobs where there is no workers' compensation coverage. At least we can issue a notice to cure, and we can suspend licenses.

I have spoken with DETR, which makes insurance and unemployment compensation payments. The DETR has a slightly different process. Staff tries to work with someone who is behind. It is possible to set up payment plans. We could not get to a deal on enforcement in the Assembly, but once violators get to a judgment, the Contractors' Board will be notified. That is the justification for the proposed clarifying language in sections 8 and 8.5.

Senator Hardy:

Assembly Bill 86, line 34 on page 3 says “within 30 days,” and line 40, which says “immediately notify.” It seems counterintuitive that you have 30 days in which to “immediately notify.” Is that the intent?

Assemblyman Daly:

It is intended that the Board shall have 30 days in which to notify the noncompliant contractor. That letter tells the contractor that he or she has 30 days from receipt of the notice to prove compliance or come into compliance. If the contractor does not respond or does not comply, the risk is license suspension without further notice. I am perfectly willing to look at it to ensure it reads correctly.

Senator Hutchison:

I cannot believe contractors take on jobs without workers’ compensation coverage or unemployment compensation and there were no repercussions. Was this addressed in regulation or anywhere else before your bill?

Assemblyman Daly:

It is the law already. Upon first applying, a contractor must submit an affidavit or letter that affirms he or she has workers’ compensation insurance.

There is another bill, A.B. 139, which has to do with the business portal. Our concern was how to substantiate compliance with the workers’ compensation statute. There is a letter that says, “I promise, I have it,” but there was no mechanism similar to the DMV where there is notification with automatic impacts on the driver’s license.

[Assembly Bill 139 \(1st Reprint\)](#): Revises provisions relating to the state business portal. (BDR 7-127)

The people at DIR say a process is in place, it is accurate, and they are in contact with the Contractors’ Board and other agencies. Assembly Bill 86 takes a process that was already in law and gives it more structure. It sets out a course of remedies, including what and when something is to be done, and who is supposed to do it.

Senator Hutchison:

It seems the requirement was there, but you put in place a process to ensure the requirement is adhered to by contractors and those who will be working on construction jobs.

Senator Settlemeyer:

On page 4, lines 26 and 27 of A.B. 86, where it says, "The Office of the Labor Commissioner, which shall, immediately upon receipt of the notice ... " then lines 30 and 31 say, "The State Public Works Board, which shall immediately upon receipt of the notice" What has happened that requires stating that something must be done immediately? I am not accustomed to seeing that. Usually it says, "you shall do it as soon as practicable," or something of that nature. Why is that word utilized?

Assemblyman Daly:

We are trying to ensure when under license suspension, the person is not allowed to bid any more, especially on public works projects. On private jobs, we have a different process. We could say "as soon as practicable," or "the next business day," if that language gives everyone comfort.

We want to tell the Labor Commissioner about the problem as quickly as possible so the contractor can be taken off the list of those prequalified to bid. We also wanted to say the violation should be cured and the suspension lifted as quickly as possible. We did not want the situation to last any longer than necessary, but we wanted to give the violator incentive to cure.

Senator Hutchison:

Taking out the word, immediately, would imply under statutory construction that it means in a reasonable length of time.

Keith Lee (State Contractors' Board):

We are here to support A.B. 86, the first reprint, and the proposed amendment. In answer to Senator Hutchison's question, the Contractors' Board has had the ability to discipline. This bill mandates that information is to come to us. The cure period is important, and we give contractors the opportunity to show either they have paid or they did not know they were in violation. They have 30 days to cure the violation and if they do not, certain repercussions are set. This is important as a safety factor for workers—employees of the licensed

contractors. It also is important that contractors can complete their jobs and not put people out of work.

This is a good piece of legislation, and we support it.

Senator Hutchison:

How do you feel about use of the word, immediately, and the discussion we had about it? Is that an issue for the Board?

Mr. Lee:

I understand what Senator Settlemeyer said and the need for urgency. We would apply the rule of reason. If we got the information at 4:59 p.m., we would beg forgiveness if we did not send the notice out until the next morning.

Yolanda King (Clark County):

We support A.B. 86. I also want to thank Assemblyman Daly for clarifying that if a contractor is working on a project, having to satisfy the mandates would not stop the project. It would only affect future bids.

Paul McKenzie (Building and Construction Trades Council of Northern Nevada):

I sit on the DIR advisory council, one function of which is to process citations, penalties and assessments issued against businesses that fail to pay their citations. One area where we excuse that debt is in the uninsured workers' fund. It immediately came to mind when we had a debt for an employer that did not have workers' compensation insurance. He was working on a Nevada Department of Transportation project. We excused the debt for one of his workers who was injured. The other employers in the State had to pay for that employee's care.

That contractor continued to bid. I voted three times on the DIR advisory council against forgiving that debt because the employer was cited repeatedly for having no workers' compensation coverage. That employer still has a contractor's license. He still is bidding for public works projects. He continues to work on public works projects, many times without workers' compensation insurance. This was the reason for our coming to Assemblyman Daly and asking whether there was a solution.

Our initial solution was to be like the DMV. If your vehicle insurance is suspended, you should not have a license. You should not be driving that car.

That is the way it should be with the contractor or any other employer in this State. If you do not have workers' compensation insurance, you should not be doing business in the State because if one of your workers is injured, the other employers carry the burden of that worker's injury.

We are in favor of this legislation because we understand we need to move forward in small steps. We hope A.B. 86 will alleviate the problem. I will be happy to report at the next Session if we continue to have a problem; if we continue to see repeaters, if we on the DIR keep excusing debts or if I keep driving by unlicensed contractors working on projects.

Regarding the term, immediately, it is understood we do not want to keep a worker beyond the close of business, and I do not want to incur overtime to get the notice out. On the other hand, if you get the letter in the morning and there is a bid open in the afternoon, if it is not sent out immediately, that contractor might be on another project without workers' compensation insurance before that notice goes out. That is why we feel the word, immediately, is important.

Senator Settelmeyer:

I appreciate your concern about immediately. Perhaps, you could use "as soon as practicable." You would hate to get this at 5 p.m. and have someone stay beyond the stated time. I appreciate the idea that if we do not get this legislation right, we can come back and correct it.

Patrick Sanderson (Laborers Local 872):

This is for the working men and women. There is nothing worse than coming to the end of a job and finding that the employer has not paid into the unemployment fund. There is nothing worse than going to workers' compensation and finding that your contractor has not paid into the insurance fund. It delays the action more than it already is delayed, trying to work through the system. We are not completely happy, but I hope you will not get rid of the word, immediately, without switching to something that makes contractors act as soon as possible. You need something to push these people and make it work.

Margi A. Grein (Executive Officer, State Contractors' Board):

We have reviewed the proposed amendment to A.B. 86 provided by DETR. As Mr. Lee indicated, the State Contractors' Board supports this bill as amended.

Jack Mallory (Southern Nevada Building and Construction Trades Council):

There is a fair competition issue that goes along with this discussion. Some of the crafts in the construction industries have high costs for workers' compensation insurance. An example would be costs for an ironworker or a worker at a steel erection company. Their workers' compensation costs are approximately 50 cents on the dollar of payroll. It is expensive, and if you have a contractor who is knowingly performing work without having that coverage, he or she is competing with a significant advantage over the competition. We support this legislation, and we urge you to move it forward.

Dennis Perea (Deputy Director, Department of Employment, Training and Rehabilitation):

The DETR does not foresee a significant business impact or fiscal impact with the amendment. We would remove the fiscal note.

Assemblyman Daly:

After consultation with Mr. Lee, we decided that we probably will use "not later than the next business day," instead of "immediately." Senator Hardy, regarding the 30 days, our intent is to have the process begin as soon as the Contractors' Board gets the notice. We want the notice to be sent no later than the next business day. The date on that letter is the start of the 30 days to cure.

Senator Settelmeyer:

Are these lists on the Internet, or does the county or municipality contact these entities to get the list? Right before they put out a bid, do they call to get the most recent list?

Assemblyman Daly:

The DIR group notifies the State Contractors' Board through the regular process. I think it is electronically. When the Contractors' Board is notified, a letter will be drafted and sent out giving the contractor 30 days to cure. Once the license is suspended, the State Public Works Division, Department of Administration, and the Office of Labor Commissioner, Department of Business and Industry, will be notified. We want those offices to take it from there. They are supposed to put violating contractors on a list indicating they are not prequalified and not eligible to bid. If the contractor is on the list and bids anyway, the name will come up during subsequent reviews and will be eliminated.

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Senator Settlemeyer:

Is that list on the Website?

Assemblyman Daly:

The Labor Commissioner's list is on the Website. The Contractors' Board does the prequalification. People are checking. Competitors are checking. There will be people watching.

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Senator Denis:

We will close the hearing on A.B. 86. We are adjourned at 1:39 p.m.

RESPECTFULLY SUBMITTED:

Wynona Majied-Martinez,
Committee Secretary

APPROVED BY:

Senator Mo Denis, Vice Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	3		Attendance Roster
A.B. 349	C	2	Judy Osgood	Executive Order 2012-11
A.B. 349	D	1	Judy Osgood	Chart—Military Spouses Reciprocity Order
A.B. 349	E	1	Assemblywoman Irene Bustamante Adams	Letter—J. Escobar, Nevada Enlisted Association of the National Guard regarding Proposed Amendment
A.B. 494	F	48	Assemblywoman Irene Bustamante Adams	Report—Sunset Subcommittee of the Legislative Commission
A.B. 494	G	1	Warren B. Hardy II	Proposed Amendment
A.B. 494	H	1	Helen Foley	Proposed Amendment
A.B. 86	I	2	Assemblyman Richard “Skip” Daly	R. Olson, Proposed Amendment, DETR