

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

**Seventy-Eighth Session  
March 11, 2015**

The Committee on Government Affairs was called to order by Chairman John Ellison at 8:40 a.m. on Wednesday, March 11, 2015, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/App/NELIS/REL/78th2015](http://www.leg.state.nv.us/App/NELIS/REL/78th2015). In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman John Ellison, Chairman  
Assemblyman John Moore, Vice Chairman  
Assemblyman Richard Carrillo  
Assemblywoman Victoria A. Dooling  
Assemblyman Edgar Flores  
Assemblywoman Amber Joiner  
Assemblyman Harvey J. Munford  
Assemblywoman Dina Neal  
Assemblywoman Shelly M. Shelton  
Assemblyman Stephen H. Silberkraus  
Assemblywoman Ellen B. Spiegel  
Assemblyman Lynn D. Stewart  
Assemblyman Glenn E. Trowbridge  
Assemblywoman Melissa Woodbury

**COMMITTEE MEMBERS ABSENT:**

None



**GUEST LEGISLATORS PRESENT:**

Assemblyman Randy Kirner, Assembly District No. 26

**STAFF MEMBERS PRESENT:**

Jered McDonald, Committee Policy Analyst  
Eileen O'Grady, Committee Counsel  
Aubrie Bates, Committee Secretary  
Cheryl Williams, Committee Assistant

**OTHERS PRESENT:**

Tina M. Leiss, Executive Officer, Nevada Public Employees' Retirement System  
Warren B. Hardy, II, representing Nevada Chapter, Associated Builders and Contractors, Inc.  
Mac Bybee, President and CEO, Nevada Chapter, Associated Builders and Contractors, Inc.  
Tray Abney, Director of Government Relations, The Chamber of Commerce of Reno, Sparks, and Northern Nevada  
Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce  
Victor Joecks, Executive Vice President, Nevada Policy Research Institute  
John Madole, Executive Director, Nevada Chapter, Associated General Contractors of America  
Dale Lowery, Private Citizen, Sparks, Nevada  
Dru Wells, Private Citizen, Clark County, Nevada  
Ed Uehling, Private Citizen, Las Vegas, Nevada  
Dave Bold, Private Citizen, Las Vegas, Nevada  
Andrew M. Belanger, Director of Public Services, Southern Nevada Water Authority  
Nathan Ring, representing Laborers International Union, Local 872, and Bricklayers Labor Management Cooperation Committee  
Edward Seward, Private Citizen, Las Vegas, Nevada  
Diana Warby, Private Citizen, Las Vegas, Nevada  
Ray Koltas, Private Citizen, Las Vegas, Nevada  
Vic Poma, Private Citizen, Las Vegas, Nevada  
Jack Mallory, representing Southern Nevada Building and Construction Trades Council  
Randall Walker, Private Citizen, Las Vegas, Nevada

**Chairman Ellison:**

Today we will begin with the work session on Assembly Bill 53.

**Assembly Bill 53:** Revises provisions relating to administrative procedure.  
(BDR 18-160)

**Jered McDonald, Committee Policy Analyst:**

Assembly Bill 53 revises provisions related to administrative procedure. It was sponsored on behalf of the Office of the Attorney General and was heard in this Committee on February 13, 2015. [Mr. McDonald continued to read from work session document ([Exhibit C](#)).] Assembly Bill 53 makes certain changes to the Nevada Administrative Procedure Act. In lieu of reviewing all of the terms of the bill, I will jump to the amendments, which make some significant changes.

An amendment was proposed by the Office of the Attorney General, and it can be found in the Work Session Document ([Exhibit C](#)). The amendment deletes sections 3 and 12, which prohibit the awarding of costs in any proceeding commenced by the filing of a petition for judicial review, ensures that voluntary surrender of a license in a contested case constitutes a disciplinary action against the licensee, deletes proposed language in section 5, subsection 5, regarding informal dispositions of contested cases, reinstates the term "substantial" in section 11 with respect to the standard of review in a contested case, and provides a definition in section 11 for substantial evidence to maintain consistency with existing case law.

**Chairman Ellison:**

Are there any comments from the Committee?

**Assemblyman Carrillo:**

I will be voting yes to get the bill out of Committee; however, I will reserve my right to change my vote on the floor.

**Chairman Ellison:**

I also have a few questions. There are a few uncertainties about the bill that make me uncomfortable. I will be voting yes to get it out of Committee; however, I will reserve my right to change my vote on the floor.

**Assemblywoman Neal:**

I will reserve my right to change my vote on the floor.

**Assemblywoman Joiner:**

Likewise.

**Assemblyman Flores:**

Ditto.

**Assemblywoman Spiegel:**

Ditto.

**Chairman Ellison:**

Would anyone like to make a motion?

ASSEMBLYMAN MOORE MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 53.

ASSEMBLYMAN TROWBRIDGE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

**Chairman Ellison:**

Assemblyman Moore, will you please take the floor statement?

**Assemblyman Moore:**

Yes, I will.

**Chairman Ellison:**

We will now open the work session for Assembly Bill 190.

**Assembly Bill 190:** Revises provisions governing public employees' retirement.  
(BDR 23-184)

**Jered McDonald:**

Assembly Bill 190 revises provisions governing the Public Employees' Retirement System (PERS). This was sponsored by Assemblymen Kirner, Wheeler, Hickey, Jones, and others and was heard in this Committee on March 3, 2015. Assembly Bill 190 provides for the establishment of a hybrid retirement program for new employees who become members of PERS on or after July 1, 2016. The retirement program must include a defined benefit plan and a defined contribution plan and must be part of the PERS system. [Referred to work session document ([Exhibit D](#)).]

**Chairman Ellison:**

Are there any comments from the Committee?

**Assemblyman Stewart:**

I would like to hear more from the Executive Director of PERS. I do not believe she had enough time during the hearing to discuss all of her concerns.

**Chairman Ellison:**

We will not be opening a full hearing for A. B. 190; we would just like to ask some clarifying questions.

**Assemblyman Stewart:**

When you made your presentation during the last hearing, I did not feel that you had the opportunity to completely state all of the things you would like to discuss. Will you please go over some of the issues you feel were not covered?

**Tina M. Leiss, Executive Officer, Nevada Public Employees' Retirement System:**

The PERS Board has not had the opportunity to take a position; however, staff recommends that they stand in opposition for a number of reasons, including some funding issues, legal issues, considerations as to whether or not this benefit is consistent with the system's current mission, which remains unchanged, as well as some constitutional issues. We also have some administrative and implementation issues. Would you like me to explain all of those or would you like me to explain a specific issue?

**Assemblyman Stewart:**

Please just briefly review some of the issues you feel you were unable to explain previously.

**Tina Leiss:**

First, the bill would establish a hybrid program for new hires as of July 1, 2016. The details of the hybrid program are pretty much left open in the bill such that the system would be required to design the hybrid program and fill in all of the details that are left out of the bill. That leaves us with a lot of questions as to what we would be required to put into the hybrid plan and what is intended to be in the hybrid plan. It also says in section 2, subsection 3, that "Any provision of this chapter that is inconsistent with the provisions of the hybrid retirement program does not apply to the program to the extent of the inconsistency." I have some concerns as to whether that is truly the intent, the idea that what the Board designs would control over provisions of current law.

That being said, the hybrid plan has a defined benefit side and a defined contribution side. The details that are left out are what is included within that program. Are survivor benefits intended to be included? Would we be writing survivor benefits in similar fashion to the current plan, or is this plan not

intended to have survivor benefits because they are not specifically provided? Is this intended to have disability benefits or post-retirement increases as the current plan does? Is this intended to allow for early retirement, as the current plan provides? These are the questions that I am not entirely sure the Board should be providing the answers for because I believe that would be a policy issue for the Legislature to decide. If survivor benefits and disability benefits are not intended to be included, then there needs to be some discussion as to whether or not, given our lack of social security in this state for public employees, this retirement plan would provide a reasonable base income in retirement, which is the mission of the system. The law does provide that the system is to provide a reasonable base income to attract and retain employees. Therefore, the question for this Committee is whether or not this plan would do that if it does not include disability or survivor benefits.

The next issue is that the bill provides for the hybrid plan to be designed so that the employees of Nevada are not mandated into social security. To make sure employees are not mandated into social security, they must have a plan that is accredited as a safe-harbor plan or a social security equivalent type plan. For a defined benefit plan to be a social security equivalent, it has to have a 1.5 percent multiplier. The proposed plan has a 1 percent multiplier. The question would be: Does the defined benefit plan combined with the defined contribution plan provide a plan that would keep our employees out of social security? I believe that is what we want, given that the bill does say, "to keep employees out of social security." I do not know that we can design this in a way that would keep our employees out of social security. That would be something that would have to go through the Internal Revenue Service (IRS) and legal opinion. It is possible it can be done. However, it is still a big question as to implementation at this point. If we were to implement the program and find that we are mandated into social security, that would be a significant cost; 6.2 percent to the employer and 6.2 percent to the employee.

The next issue is that this bill provides for a transfer for current employees. However, it does not say what will transfer. It says that current employees would be provided an opportunity to transfer into the hybrid plan. Do they transfer with their accrued service or accrued liability? Do assets transfer with them, or do they freeze their benefit in the old plan and go into the new plan like new employees? These are all questions that would have to be answered. The bigger issue with the transfer provision is that right now it does not look like it complies with federal law. The IRS will not allow a qualified plan to have a transfer provision that has a lower contribution plan, so we would have to get a private letter ruling to see if we could even implement the transfer provision of this plan. That could take a significant amount of time. There is one county in California that has tried to implement a transfer provision like this, and they

have been waiting about four years for the IRS to rule on whether or not that complies with federal law.

The next issue with implementation is that there would be a cap on annual benefits that must not exceed 133 percent of the average social security wage base during the member's 36 consecutive months of highest compensation. This could require the system to calculate different caps for members depending on when they have their highest 36 consecutive months of compensation. For instance, depending on your timing, different members are going to have different caps. I want to make sure that the intent is to have different caps based on their timing. The issue would be if post-retirement increases apply, do we apply the cap every year the member is receiving a benefit, or is the cap a onetime calculation upon retirement?

Under section 3, subsection 1(d), of the bill, the contribution rate for the defined benefit portion of the hybrid plan is capped at 6 percent for employers and requires the employee to pay the difference in the actuarially determined rate. That is moving away from our 50/50 split between employers and employees. It is unclear at this point how much of the benefit the 6 percent would support given that we do not know the benefit design regarding survivor and disability benefits. At this point, we do not know what the employee would be contributing—what the deduction would be from a paycheck. This may have some retention issues and some pay issues for the employees.

Section 3, subsection 1(f), describes the minimum age to receive a non-reduced benefit, which is equal to the full retirement age for social security for regular members. For police and fire members, it is 10 percent less than the full retirement age. It is unclear to me whether that is according to how the Social Security Act is currently written, or if this is intended to move with future changes to social security. That is something else we would need to consider, if it would be static or if it is going to move.

Section 4 sets forth the defined contribution portion of the hybrid plan. It would require the board to hire a third party administrator for the defined contribution portion. Generally, costs and fees for a third party administrator are going to be higher than the investment costs and fees that the system pays. I had a question as to the intent behind requiring the system to go outside for the investment of the defined contribution plan versus internal management. If this were to be adopted, consideration should really be given into allowing the retirement board to run the defined contribution portion internally.

Under section 6, the bill does require an additional payment for each public employer that is a local government of 6 percent for each of its employees who

are a participant of the hybrid program. This would create an 18 percent contribution rate for local governments, and a 12 percent contribution rate for the state or the regular fund. In the current plan, we are cost sharing, so all employers pay the same rate. There are a number of issues in this provision. The language only seems to require payment for the unfunded liabilities for the obligations of persons who are members of the system on June 30, 2016. Membership of this system terminates upon the drawing of benefits—that is, retired employees are not technically members of the system. I am not sure if this is a drafting issue with the language. However, this language would say that the extra payment for the unfunded liability only goes for the liabilities associated with members, not associated with retirees.

**Chairman Ellison:**

We have Assemblyman Kirner here to answer some of those questions. We want to get this bill to the Assembly Committee on Ways and Means because we are not the money committee. You will be able to nitpick this bill to death when it gets there. Will your experts come in to speak about the costs of this bill and whether or not it will hurt our retirees? Do you think that is not the best thing to do? Given that the fiscal note on this bill is massive, should this bill not have a full hearing on just the fiscal component?

**Tina Leiss:**

I would certainly leave that decision as to the best way to proceed up to this Committee. I would not presume to know what that would be. My only issue with determining cost and all of the numbers is that we would need to know what the plan is intended to provide. If that is something that can be fully discussed in the Committee on Ways and Means, I would leave that decision up to the wisdom of this Committee.

**Chairman Ellison:**

I think it is very important to get this bill to that committee because the fate of this bill is going to come down to the dollars and cents. We want to make sure that the financial aspects of this plan are sound, but we do not have that information here. We are a policy committee while Ways and Means is a money committee. I hope you will have all of your experts there for the hearing in Ways and Means, if the bill passes out of this Committee.

**Tina Leiss:**

I am happy to answer any more questions or review more issues.



**Assemblyman Stewart:**

How many more concerns do you have there—several pages? I think it is safe to say that you have many serious concerns on the policy of this bill. Is that correct?

**Tina Leiss:**

I have some serious concerns about being able to implement this plan in accordance with federal law and *The Constitution of the State of Nevada*, as well as some funding issues. There are a lot of issues of concern. My written testimony ([Exhibit E](#)) has been submitted. I do think there are provisions in this bill that impact two provisions of the *Nevada Constitution*, which may or may not be able to be resolved through changes. That would be section 10 of this bill about the advisory and section 6 regarding the local governments contributing more than the state. I will leave it at that at this point.

**Assemblyman Stewart:**

Maybe you could put your recommendations into book form.

**Tina Leiss:**

I would be happy to write you a book.

**Chairman Ellison:**

I want to keep questions short so we can vote on this bill and hear the next bill.

**Assemblywoman Joiner:**

Thank you so much for being here; I think the more information I get about this bill, the more concerns I have. In order to make this policy decision, I do need to know information about whether the end goal will be achieved. Regarding the unfunded liability portion of the bill, there was a big claim made during the presentation of the bill that current employees would not be impacted at all. However, the more I delve into the math behind this plan, the more I see that may not be the case. If one of the end goals is to spend down the unfunded liability—and we heard from our expert that it not only does not do that, but it makes it worse—is it not the case that current employees will have to contribute a higher rate to reduce the unfunded liability? These numbers are available to the public now; they were in the newspapers today. The numbers I have seen say that it may be as much as doubling what current employees pay to reduce the unfunded liability. If that is the case, then it is a huge concern and it does affect current employees. Would you please address that?

**Tina Leiss:**

The new employees will be participating in a hybrid plan, and they have a set contribution rate. They have a new benefits structure and a new

contribution rate. They have the extra 6 percent contribution from local governments. That means that the contribution rate mechanism for current employees remains unchanged by this bill. That contribution rate mechanism states that the rate will change based on what is actuarially required to fund their plan. The unfunded liability is for benefits for current employees. It does not go away or get reduced when the plan is changed; it has to be paid. We are currently paying it off over a 22-year period with contributions from all members of the system. Granted, there will be gains and losses in the future. However, it is on track to be paid in 22 years. Now, the new members' contribution is limited, so when the actuaries determine what the determined rate for the current employees is, they have to assume that instead of new members coming into the same benefit structure, the \$12 million on which we are paying principal and interest is going to have to be paid assuming a different payroll going forward. This is because it will be paid off with people who are having increasingly shorter active lives. Pretty soon, it will only be retirees contributing, and they have to make sure that they will have the last dollar when the last retiree dies. In order to do that, the actuary would have to recalculate how the rate has been calculated under the current mechanism, which remains unchanged. Instead of assuming a payroll growth of about 5 or 6 percent, the actuary will have to assume a negative payroll growth. Now, there is a set dollar figure that is going to have to be paid as a percentage of payroll over what is going to be a declining payroll. That new assumption would require the rate to go up by about 15 percent on July 1, 2016, and the employees pay half of that. The employees' and employers' contribution would increase to ensure we are funding on an actuarially reserved basis, which is required by statute. The PERS Board is required to adopt the actuarial assumptions based on the recommendations of the independent actuary. By constitution and current law, that is what would happen.

**Assemblywoman Spiegel:**

Thank you. Your explanations are helpful from a policy standpoint. If this bill were to pass and be implemented, would a very high percentage of people retire early and leave the system because of the increased contribution that employees would have to make? Was that addressed in the fiscal note, or is it a separate policy discussion about the impact that could have on the state and the ability of the state to deliver services it needs to in order to be functioning?

**Tina Leiss:**

In the fiscal note, the actuary does make certain assumptions about the payroll growth based on the average service-life of the people in the plan right now. It is possible that more people will now retire early because the increased contribution rate has lowered their salaries enough to make it more profitable for them to retire rather than continuing to work. If more people than we assumed

do that, then it will affect the cost going forward. In the two-year cycle in 2017, that would be taken into account when the contribution rates are recalculated.

**Assemblywoman Spiegel:**

If the retirees do not help pay for the unfunded liability, only current employees do, and there are increasingly more retirees, then contributions by current employees would increase. Is that correct?

**Tina Leiss:**

That is correct. There will be fewer and fewer employees among whom to spread the cost, keeping in mind that those retirees did contribute to the unfunded liability; however, once they retire, they are no longer contributing.

**Chairman Ellison:**

Please clarify that again.

**Tina Leiss:**

Once employees retire, they are no longer contributing to the system and neither are their employers contributing on their behalf.

**Assemblywoman Neal:**

You said that section 10 may violate the *Nevada Constitution*. What particular provisions of the *Nevada Constitution* do you believe it violates? I hope that Assemblyman Kirner would be able to respond as to whether or not the section does violate the *Nevada Constitution*.

**Tina Leiss:**

I have had conversations with the sponsor of this bill regarding this provision, and I believe that we may have some room to work with it and potentially remove it. Article 9, section 2, subsection 4, of the *Nevada Constitution* provides that, "The board shall employ an executive officer...In addition to any other employees authorized by the board, the board shall employ an independent actuary. The board shall adopt actuarial assumptions based upon the recommendations made by the independent actuary it employs." This went through the Legislature during the 67th and 68th Sessions and was brought to the voters as Question 1 in 1996. Part of the literature behind the amendment to the *Nevada Constitution* was to make sure there were no changes made to the actuarial assumptions that were not necessarily in the best interest of the system, but were made for political reasons. There were examples from other states where actuarial assumptions had been changed for reasons other than the best interest of the system. This was added to make sure that it was the Board adopting the recommendations of the independent actuary it employs.

Section 10 of the bill provides for appointment by the Board of an advisory committee who are actuaries or people with actuarial experience to make recommendations to the Interim Benefits and Retirement Committee of the Legislature. If the intent is to have separate actuaries making recommendations to the Legislature versus the actuary making recommendations to the Board, I believe that creates quite an issue with the provisions of Article 9 of the *Nevada Constitution*.

**Chairman Ellison:**

Assemblyman Kirner, please answer that question.

**Assemblyman Randy Kirner, Assembly District No. 26:**

Section 10 will be withdrawn in an amendment. It was a holdover from the previous draft that should not have been there.

**Assemblyman Carrillo:**

During the first hearing for this bill, I had asked about the Judicial Retirement System, and we were told that it was separate. I would like to propose an amendment that the provisions of this bill also apply to the Judicial and Legislative pension plans.

**Chairman Ellison:**

We would like to send everything to Ways and Means without recommendation so that they can dissect and scrutinize this bill. We can add that amendment when it goes to Ways and Means if you wish, or if and when it goes to the floor.

**Assemblyman Carrillo:**

I would at least like to get it on record that I am making this proposal for this amendment.

**Chairman Ellison:**

I appreciate that. Assemblyman Kirner, would you like to address that?

**Assemblyman Kirner:**

No, sir, I would not.

**Assemblyman Silberkraus:**

There has been a lot of discussion about the contribution rates increasing under the new plan. Have the contribution rates ever gone down?

**Tina Leiss:**

The last time rates went down in the regular fund was in 2005, I believe. The rates for the Judicial Retirement System are scheduled to go down this year. The police/fire rate for the current plan would have gone down under the prior contribution rate mechanism, but in 2009, the Legislature made a change that provides that the contribution will only go down if the actuarial rate is more than 2 percent lower than the statutory rate. It used to be half of a percent lower, so under the pre-2009 law, the police/fire rate would have been going down this year. It is not going down, because of that 2 percent threshold.

**Chairman Ellison:**

Thank you. We have a lot of people concerned on both sides. I think we would like to get the financial questions answered in the Ways and Means hearing.

**Assemblyman Kirner:**

Obviously, we have a difference of opinion with Ms. Leiss on many fronts. I have met with her, and I will be meeting with the PERS actuary on March 19, 2015.

We are certainly not trying to violate the *Nevada Constitution*. We respect the *Nevada Constitution*. We have a difference of opinion as to whether or not social security is an issue. I have consulted with actuaries. Our intent is to clarify some of the questions through amendments with regard to cost-of-living increases and survivor and disability benefits. We will have that ready before the hearing with Ways and Means. The representatives of PERS have added a large fiscal note, so we will want to consider that in Ways and Means. It really boils down more to money than it does policy, but they are so intertwined you cannot separate the two.

**Chairman Ellison:**

We want to send this bill to Ways and Means because of the fiscal note. What is the value of the fiscal note?

**Assemblyman Kirner:**

Their fiscal note is about \$800 million per year, every year, forever. That is a number they came up with that we challenge. It is a matter to be addressed.

**Chairman Ellison:**

That is one thing we cannot do; we cannot make decisions about the money aspect. The bill will have to go to Ways and Means so they can digest the financial issues. I will now ask for a motion to refer the bill to Ways and Means without recommendation.

ASSEMBLYMAN MOORE MOVED TO REFER ASSEMBLY BILL 190  
TO WAYS AND MEANS WITHOUT RECOMMENDATION.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

**Chairman Ellison:**

Is there any discussion?

**Assemblyman Trowbridge:**

I will support the motion to refer the bill to Ways and Means without a recommendation; however, I will reserve my right to vote in opposition unless certain things are addressed.

First of all, this proposal is supposed to be designed to address the unfunded liability problem, which no one denies exists. The size of the problem and how to address it remain the issues. This proposal is based upon retiring a \$13 billion debt. I have also read many times in many places that the debt is \$40 billion. That is a significant difference. I think we need to have the opportunity for PERS to review the PowerPoint presentation that provided the justification and the numbers as to how this 6 percent was going to retire the \$13 billion and make comment as to the actual size of the debt. Without that opportunity, PERS is operating blind, and we are dealing with a multibillion dollar problem and the future employment of thousands of unknown people at this point. The bill is changing the total concept of public employment. Regarding this change, governmental agencies need the opportunity to comment on the impact the changes to PERS would have on recruitment and training of future employees. I read the fiscal analysis from the last time this bill was presented. An agency commented that it could not determine from the bill how much it was going to cost and referred it to PERS to make the actuarial determination.

In terms of the particular approach used, there are a lot of different ways to reduce the expenses. They can range from having no retirement plan to setting the retirement benefits based on the five highest years. The retirement plan can be based on base pay only. Any purchase of air time or unused work time could be made an actuarially determined rate, so the employee or purchaser receives no windfall benefit, and PERS suffers no undue expense. The PERS retirement age could be set so that it corresponds and floats with the social security benefits such that employees who decide to retire early receive a reduced amount for each year they did not work. That is currently in place in PERS as a 4 percent decrease for each year an employee retires early. There are some other options that came to me that sounded pretty good. A retiring employee could select a lump sum payoff, and not receive a PERS check and be

completely out of the system. That allows retirees to draw the social security benefits they are eligible for without being reduced. That is a clever idea; I like that one. It would affect me to the tune of about \$1,000 per month. There is another idea that would allow the retirees to determine survivor's benefits at the time of retirement. They would select to receive reduced benefits so that their survivors could receive a determined amount as a lump sum benefit. My mother-in-law was making more money while she was working by virtue of her husband's social security. When she retired and started to draw her PERS check, her husband's social security benefit was cut off. Had she been able to get a lump sum payoff, she would have been better off.

In summation, there are many unresolved issues and many alternate ways to address the unfunded liability problem. I would suggest Ways and Means will accept that there are a lot of unsolved issues and hold action to refer the bill to a committee to address the proposal and evaluate alternative approaches. There is too much money involved and too many employees who could be negatively affected.

**Assemblyman Flores:**

I understand that because of the magnitude of the fiscal note on the bill that at some point it would be necessary to send it to Ways and Means. However, my concern is that if we have not resolved all of the policy issues of this bill that have been brought forth as of now—and it seems that a vast majority of the Committee members agree that there are policy issues—how can we think that the appropriate action is to refer this to Ways and Means. We are setting a precedent that every time we are presented with very complex questions this Committee will choose to place the magnitude of the responsibility of answering those questions on someone else.

**Chairman Ellison:**

I disagree with that statement, Assemblyman Flores. This Committee is trying to do everything it can to get the questions regarding this bill answered when we do not have the time or the jurisdiction over financial issues. Policy will be addressed there. These questions have to be answered. If these questions are not answered, I will not support this bill on the floor. You are going to have the chance to do that. I am going to be involved in that process as it goes forward. We are not giving up our rights or responsibilities. We will answer these policy questions all the way through.

I have a lot of friends in PERS; my wife and family are in PERS. I want to make sure this is done right for the citizens of this state. I am not going to do anything that is going to negatively impact them.

**Assemblyman Flores:**

Thank you for acknowledging my comment, Chairman Ellison.

**Assemblyman Carrillo:**

Anyone in this room who is in PERS, please raise your hand. I just want to know the reason you are all here. That says a lot as to how important this bill is and why these policies need to be vetted. I understand the concerns of getting it to Ways and Means, but we have to address the financial impact of the policy. Chairman, I appreciate the time you have given us.

**Assemblyman Stewart:**

I will be voting to refer the bill to Ways and Means without recommendation, but that does not mean that I support the bill as it is now.

**Assemblywoman Spiegel:**

I think the policy considerations that have been presented before this Committee are strong enough to not move this bill forward with or without a recommendation. Therefore, I will be voting no.

**Assemblyman Silberkraus:**

I agree with your comments, Chairman. I have family in PERS as well. I have a lot of questions and concerns as the bill stands. As the bill stands, I would be voting no on the floor, but I will vote to refer it to Ways and Means for further review.

**Chairman Ellison:**

Assemblyman Flores, I do share your concerns. I care about the people in the state of Nevada, and we will support the people of Nevada, no matter what. I guarantee you that we are not going to let our people go unprotected. We have a motion to refer the bill to Ways and Means without recommendation by Assemblyman Moore and a second by Assemblyman Stewart. We will now take a vote.

THE MOTION PASSED. (ASSEMBLYMEN CARRILLO, FLORES,  
JOINER, NEAL, AND SPIEGEL VOTED NO.)

**Chairman Ellison:**

This bill will be referred to the floor without recommendation, then it will be sent to Ways and Means without recommendation. We will now recess the meeting [at 9:25 a.m.].

We will now reconvene the meeting [at 9:33 a.m.]. We will open the hearing on Assembly Bill 159.



**Assembly Bill 159: Makes various changes to provisions governing public works. (BDR 28-936)**

**Warren B. Hardy, II, representing Nevada Chapter, Associated Builders and Contractors, Inc.:**

We appreciate the Committee hearing this simple housecleaning bill. Okay, it is not quite that simple.

**Chairman Ellison:**

That was the kiss of death.

**Warren Hardy:**

We believe that Assembly Bill 159 will create some equity and fairness in the process with regard to public construction. I have with me Mr. Mac Bybee, who is the President of Associated Builders and Contractors, Inc., Nevada Chapter (ABC). I would like to ask him to present the bill for the Committee. I will remain to answer any questions alongside him.

**Mac Bybee, President and CEO, Nevada Chapter, Associated Builders and Contractors, Inc.:**

Associated Builders and Contractors, Inc. is a trade association made up primarily of commercial contractors and subcontractors that support the merit shop philosophy. We believe in an environment where all qualified contractors can bid on all jobs and contracts are awarded based solely on merit, regardless of labor affiliation. For this reason, I am pleased to be here in support of A. B. 159, which promotes equity in the construction industry.

Nevada is a right-to-work state, and more than 85 percent of Nevada's construction workers exercise that right and choose to work nonunion or open shop. Assembly Bill 159 protects the right of those construction workers and the companies they work for so they can compete for all public work construction projects that are funded by taxpayer dollars.

Why is this legislation necessary? Through the years, various so-called pre-hire agreements have found their way into public construction. These agreements are controversial and many have been the subject of legal action. Some have been found to be technically legal by the courts while others have not. However, regardless of their legal status, most of these agreements are created in a way that prevents merit contractors from being able to bid on the projects. They have been drafted this way by design in order to create a disincentive for open shop contractors. For example, some agreements require open shop contractors to work specifically by union work rules found in collective bargaining agreements—rules they had no part in negotiating.

They are required to sign a legally binding contract they had no input in developing. Some agreements prohibit open shop contractors from using all of their own workers and instead require them to hire much of their workforce from the union halls, while their own employees are forced to stay home. These agreements specifically put Nevada workers out of work based solely on labor affiliation, not because of their capability to do the job.

Other agreements require open shop contractors to pay into the union trust funds for benefits even though their employees are highly unlikely to vest in those programs during the course of the project. This means open shop employers and their employees will pay into a benefit plan from which they will never benefit. What is the value of a benefit plan that does not benefit the worker?

This legislation addresses the inequities in our public procurement law. Specifically, A.B. 159 prohibits a public body from requiring a bidder for a public project to become a member of a labor organization in order to be eligible to be awarded a contract, and does not allow discrimination against the bidder based on labor affiliation. However, it is important to note that this bill does make an exemption for special circumstances should a public body need to take emergency action to avoid an imminent threat to public health or safety.

If passed, this measure will ensure fair and open competition in the bidding process for public projects and create a more economical, nondiscriminatory, neutral, and efficient process for awarding contracts. This process will increase taxpayer value, is pro-worker, pro-contractor, and will ensure equality for all eligible visitors. It will increase competition and provide taxpayers with greater value.

**Assemblywoman Neal:**

Section 3, subsection 1(a) states, "Require or prohibit an eligible bidder...." When I read the language, I understood that we are trying to level the playing field. Then I read *Citizen Outreach, Inc. v. Clark County* No. 59166 (Nev. filed Sept. 6, 2011).

**Mac Bybee:**

That is the case regarding the detention center. Is that correct?

**Assemblywoman Neal:**

Yes, it is. What is your intent behind the language of section 3, subsection 1(a)? What I understood to be the situation in the case was that one of the provisions regarding the Project Labor Agreement (PLA) said there

was only one unfair portion found in the PLA. Are we trying to address the case with the language in section 3, subsection 1(a)?

**Mac Bybee:**

Not all PLAs are drafted the same way. Litigation is a symptom of the process not working correctly. You could go through the various litigations and pick out various rulings. However, the purpose of this bill is to ensure equity in the process and to avoid litigation in the future.

**Warren Hardy:**

Part of that litigation is a result of litigation that occurred in the mid-1980s between Associated Builders and Contractors (ABC) and the Southern Nevada Water Authority (SNWA). Associated Builders and Contractors lost that case, but in the course of deciding that case at the Supreme Court, the court decided that you have to be able to develop specific findings with regard to a PLA before it is legal. One of those findings is that it promotes fairness and equity. That is under that provision of law that the district court decided had failed.

We have attempted to address this in a very narrow way. You will hear from local governments who would like to continue to use certain pre-hire agreements and put provisions in their bid documents. We do not want to impact that. Everything the local governments speak to that they feel is a benefit, we hope to allow them to continue to do. That court case did find that the detention center PLA violated the fairness provision. This bill is intended to eliminate any ability by local government to require nonunion contractors to be party to an agreement that was struck between the building trades and the local government. We do not have any part in negotiating those agreements. Mr. Bybee is correct that these pre-hire agreements vary. However, for the most part the PLA portion of it is a very specific application. It is a boilerplate application that they ask contractors to sign. Our members do not have any input into it. We find it extremely problematic that there is a government-sanctioned agreement that we are required to sign that will limit us in using all of our own employees. It is inequitable for our members to have to go back to their employees and say, "The good news is we just got this public construction project. The bad news is only half of you get to work on it." That provision is inherently unfair and should be stricken. That is what this legislation tries to do.

**Assemblywoman Neal:**

You are saying there was a finding in that case which said that the seven-employee limit provides favoritism to union workers over nonunion workers, and that this bill is trying to address that issue. Is that correct?

**Warren Hardy:**

Yes, that is correct.

**Assemblywoman Neal:**

Section 3, subsection 2 states, "...any construction, improvement, maintenance or renovation to real property that is the subject of a grant, tax abatement, tax credit or tax exemption." What is the intent behind that language? Are you saying that taxpayer dollars are being used unfairly?

**Warren Hardy:**

Our underlying philosophy is that public construction is different than private construction. In public construction we have an obligation to ensure that the procurement process is structured in a way that every Nevada taxpayer has an equal opportunity to compete for those public contracts. That specific language deals with a loophole where someone could say that because there is a tax credit or exemption, they could now allow those provisions. It is to make sure there are no loopholes in this and that every single public construction project in this state is fair and equitable and does not require us as nonunion contractors in a right-to-work state to essentially become signatory to the union for the duration of the project. That is the net effect that PLAs have as they are currently drafted. They do not require us to join the union, but they require us to become signatory to the union for the duration of that project. We think that is unfair, especially when there is a provision that will not allow us to use our own workers. Should we have a public policy in this state that puts people out of work because they choose to work nonunion? We would submit that is not fair.

**Assemblywoman Neal:**

Regarding that particular point, I can understand your point about fairness. I had to look at the right-to-work statutes and whether or not it gave language which promotes fairness and the freedom of association. I saw that there is validity and that there is a point to that. However, I am trying to figure out where the middle ground is. I do not hate the bill, but I hated the fact that it came on the heels of Senate Bill 119, which eliminated prevailing wage on school projects. That made it a big brouhaha. This battle has been going on for a while. How can we get to the middle ground between union and nonunion so they can live happily ever after? If we do not set a standard for fairness in the law, we will continue to have problems because the Nevada Supreme Court is going to keep citing statutory law. The bill is extensive and covers a lot of issues. The signatory issue is the educational piece of this bill. I do not know if everyone is aware of why a signatory agreement exists. I am trying to figure out how we can have the nonunion workers happy and the union workers happy when issues arise. Is there a middle ground?

**Mac Bybee:**

We are trying to get to the middle ground. Let the contractors compete for the bid based on merit and let the most responsible bidder receive the contract. Union or nonunion, it does not matter. It should be a level playing field for everyone to have an opportunity at the bid without favoritism in the bid process.

**Warren Hardy:**

I think it is important to point out that we have gone to great lengths in this legislation to make sure it is very clear that nothing in the bill interferes with the process the labor unions utilize, or could ever be interpreted to say they cannot be a party to a union agreement for a public works job. We have tried to strike the middle ground. There are a lot of issues on both sides of this. We believe this is a very measured approach that simply prohibits the government from saying an independent contractor must be a party to a signatory agreement, a union agreement, in order to compete for public works.

I want to be clear that we can bid. There is nothing in the law or PLAs that says independent contractors cannot bid for the jobs. However, we cannot bid fairly because of these requirements. The opponents will say that we are perfectly free and able and nonunion contractors do bid for these jobs. That is absolutely true, but it does not change the fact that many choose not to because of the inequity. There is no public policy reason to have the award of a public contract be subject to those requirements.

**Assemblywoman Neal:**

I agree with you. I believe in fair and equal play. There should be an equal playing field so that everyone can compete. However, I also believe it is important that the unions have the ability to collectively bargain and gain advantages through the group. There is a structure in place that allows them to function as well. I did like section 3, subsection 1(a), because I thought that it offered an equal playing field. I want to make sure this bill does not violate the law and that you are not acting preemptively because each case allows for the state to regulate in this area. This was not actually a prohibitive area that would be preemptive. The ABC case did say that it is unfair to have the seven-employee limit; it is favoritism. That is not a debatable issue; it is what the court determined. I want to make sure that we are trying to go forward so both sides can coexist happily, but I do not know if that will ever happen.

**Warren Hardy:**

You made an important distinction in terms of local government or a governmental entity having the ability to develop uniform work rules and start time. Nothing in this law prohibits them from doing that. Nothing in the

law stops that. It simply prevents the ability to say that nonunion contractors must work in accordance with the provisions of that collective bargaining agreement or that they must sign the PLA that has been negotiated without them. If the government wants to put provisions in the law dealing with whatever, they can so long as it does not require us to be party to a union agreement that we had no role in negotiating.

**Assemblywoman Spiegel:**

If this bill were to pass, how would we ensure that Nevadans would get to work on our public works projects?

**Mac Bybee:**

This bill would have no impact on whether or not you ensure in-state workers are getting the jobs, just as the current system does not. For example, if you look at the pre-hire agreement for the Aces Ballpark, there is language in the contract that says union first. When there was a labor shortage, they brought in laborers from California for the trades for which they did not have enough workers. This has no effect on that whatsoever.

**Assemblywoman Shelton:**

Have you ever been able to negotiate a contract as to how many nonunion employees you are able to use?

**Warren Hardy:**

That is something we have attempted to do through the years. We have presented and proposed many years ago, and have continued to express willingness to participate in, the development of a fair PLA where we are party to the discussions and negotiations to come up with an agreement that is fair and does not disadvantage our workers. Our objection is not to pre-hire agreements or to PLAs. We understand that there is a value to the agency because they can control work rules, safety, and other things that are very important. That is not our issue. However, we have flatly been denied the ability. We have been told consistently, "It is not your issue. This is an agreement between the governmental entity and the building trades, so you do not have any role in the negotiations." Yet, our members are required to obligate themselves to those negotiations if they want to bid on the contracts. How many of you would sign an agreement that neither you nor your lawyers had an input in developing? It is the same dilemma that open shop contractors have in this case. The direct answer to your question is that we have proposed and suggested that many times, and we have been told that it is not our issue, that it is an agreement between the governmental entity and the labor unions, and that we have no role in the negotiations. We have not been able to do that.

It is often the case that the governmental entities are also told that they have no role in the negotiation; they are just told to sign the agreements. If you look at the application of PLAs in the state, you will see very little difference between the agreements. Of late, there are some alterations and changes specific to the governmental entities, but for many years they were not able to change the PLA. It was just given to them. That was the agreement and they were going to sign it. We have certainly not been afforded any opportunity to negotiate those agreements.

**Assemblywoman Shelton:**

Do the PLAs cost more than a non-PLA contract?

**Warren Hardy:**

I could bring you ten studies that show you they do, and my friends in the union could bring you ten studies that show you they do not. It is one of those things and that is why we do not really focus on it. We focus on how equitable and fair it is to have a government sanctioned contract that does not allow us to use our own workers, to tell them they get to stay home today because someone at the union hall is going to take their job. We have no objection to hiring additional employees from the union halls if we have already used all of our certified core employees. We have offered that as part of a fair PLA. I am here after 20 years of trying to find a resolution to this and being turned back. People keep asking me why I am bringing this to the Legislature. I am bringing this to the Legislature because I cannot get resolution anywhere else. I have tried every fair and equitable thing I can think of to get our members represented, and I have been met with a stone wall. We have no option but to bring it to the Legislature. In addition, many times I have heard folks in the judicial system say, "Why do you not go get the Legislature to straighten this out?" That is why we are here.

**Assemblyman Carrillo:**

Do contractors not have the option to only bid on contracts they are comfortable with?

**Mac Bybee:**

Contractors do have that ability; however, providing a disincentive in the bid process for a public works contract is what we are arguing is unfair.

**Assemblyman Carrillo:**

Are open shop contractors required under law to bid on PLA contracts?

**Warren Hardy:**

No, they are not, and they are free to choose not bid on them. Many of them do choose not to bid on them because they believe they are unfair and it puts them at a disadvantage. They would rather pursue a job that all of their employees can work on. Many choose not to. It is not mandated. Certainly, the PLAs out there allow nonunion contractors to bid, but with all due respect, the issue is fairness. The issue is equity. Why should they be forced to make that decision when union contractors are not faced with that decision? If you are a nonunion contractor and you are providing benefits to your employees, under the current application of a PLA, that does not matter. You are still required under the terms of that contract to submit the full benefit contract to the union trust fund, into which your employees will not likely vest. There may be some projects that are long enough, but I am not aware of any. They are not going to be vested. As an employer, you are paying your employees' benefits to the union trust fund. They are not going to get the benefit of it because they are not vesting. Now, as a nonunion contractor your choice is to say you are going to discontinue the benefits you provide to your employees that they are depending on because you have to pay into the union trust fund. The second decision is to double-pay benefits: pay into the union trust fund and continue providing benefits. I would submit that is not fair. That is one of the reasons nonunion contractors select not to bid for PLA projects. They are faced with that conundrum that is not fair to their employees and it is not fair to them. What is the public policy reason for that? If we are really trying as a state Legislature to encourage employers to cover their employees with good benefits—which we work hard at—why would we have a disincentive to that?

**Assemblyman Carrillo:**

You gave an example where a contractor may have some employees who qualify or do not qualify. What do you mean by that? How is it determined whether or not an individual can work on a PLA?

**Warren Hardy:**

I did not mean to indicate that they are not allowed to work on the project. The workers will not vest in the benefits, because of the union trust vesting rules. They will not be on the job long enough to receive the benefit. Through the years we have offered as part of a fair PLA that if we provide benefits to our employees, that should be counted toward the agreement. If our benefit package is \$8 per hour and the union trust requires \$10, then give us an \$8 per hour credit and we will put the \$2 into the union trust fund. Make it similar to the prevailing wage laws. If our members do not provide benefits, then make them pay the full amount into the trust fund. That has been rejected. To answer your question: There is nothing that would prohibit them from working under that provision. The core employee requirement is what



prevents them from working. If you are a nonunion contractor signatory to the union, you can use seven of your own core employees. You can identify them and you can put them to work on an alternating basis. You hire one from the union hall and one from your own employees, then another from the hall and another one of your employees. The only way you would use your full allotment of 7 is if at least 15 employees are required on a project. If there are only eight required, you can only use four of your own employees. After the core of seven is met, you as a nonunion contractor are required to pull the rest of your employees from the union hall. That is where they are disenfranchised from being able to work.

**Assemblyman Carrillo:**

Is anyone required to join the union under these agreements? Are all workers not covered under the same terms and conditions as the administrative procedure to settle disputes, all of which benefit the owner?

**Warren Hardy:**

No, that would not be allowed by the right-to-work statutes. Are we required to essentially join the union? That is the net effect. We must essentially join the union for the duration of the project. Some courts around the country have ruled that is not a violation of the right-to-work law. We disagree.

**Chairman Ellison:**

If a union was awarded the contract over a nonunion contractor, would they be required to hire a certain ratio of nonunion workers as well?

**Mac Bybee:**

No. However, a lot of that is dictated by the provisions within the pre-hire agreement.

**Assemblyman Munford:**

I find this to be a very good bill. In my district, which is old west Las Vegas, many of the contractors are nonunion contractors. This bill gives them the opportunity to bid on public works contracts. I think this is a fair, just, and equitable bill. I wish our largest nonunion contractor, Frank Hawkins, would have the opportunity to speak on this bill. I do not see him here, but I wish he was. This is something to which he would be able to provide some depth, knowledge, and understanding of the nonunion contractor. Many of them are minorities. This gives them the opportunity to bid on jobs. I think this is a good bill, so I thank you.

**Assemblyman Stewart:**

If a nonunion company wins a bid that requires 20 people to complete the job, the company can only hire 7 of their own employees. Is that right?

**Warren Hardy:**

Yes, that is correct.

**Assemblyman Stewart:**

The other 13 workers would be from the union hall. Would the company be able to choose which of the people in the union hall are hired?

**Warren Hardy:**

No. As I understand there are other rules in the union as to who goes out first. I want to make sure that it is clear that this is only under provisions of the PLA. We are not required to sign the PLA, but if we are going to bid the project, we are required to sign. Our top choice is to walk away from the project. Everything you just articulated is correct for the current application of PLAs in Nevada. This bill could change that, but that is the way it is now.

**Assemblyman Stewart:**

With a crew of 20, the company has 7 of its own employees and 13 employees it has no choice in selecting. Then the employer has to pay the benefits of all 20 employees into the union, but the 7 employees of the nonunion contractor would not actually have access to those benefits. Is that correct?

**Warren Hardy:**

Under the provisions of many of the union agreements, there is a vesting period that is required. Many of these projects are between three and six months long. It is not a long enough time for them to vest in the union program, so they will not receive the benefit of the program. If they do not vest, the money stays in the trust and is not refunded to them. The issue for us is the fairness and equity to make the difficult decision of double-paying benefits or discontinuing the benefits we currently provide for our employees. Many years ago, the nonunion shops did not do a great job of providing benefits. That has changed. When the construction boom occurred, it became very difficult to get employees, so we had to provide good benefits. Most of our good, strong members do provide good, competitive benefits to their employees. They will not benefit unless we are willing to pay double benefits. They will lose their benefits all together.

**Mac Bybee:**

It also depends on the language in the pre-hire agreement. I will use the Aces Ballpark again as an example. The only nonunion workers that were

allowed were the certain halls that did not sign on to the labor agreement itself. I believe it was windows and solars. There was not a signatory on that, so they were nonunion. However, the language of that pre-hire agreement said that it would include calls to local unions in other areas when the referral list had been exhausted. They did, in fact, bring in labor from California and other states.

**Assemblyman Trowbridge:**

I have a basic philosophy that less government is better government. What government we have to have is best handled at the local level. With the words "shall not" included in a couple of places throughout this document, it seems to tie the hands and limit the discretion of the local agencies to decide whether or not to enter into a PLA. There are some situations where it is beneficial and some where it is not. However, to have the words "shall not" scattered throughout the bill takes away that discretion and causes me concern. Another issue of concern to me is the double payment of health benefits because, as we know, any reasonable bidder would just add that cost to the bid. That does not do anyone any good, especially not the taxpayers.

**Warren Hardy:**

It absolutely ties their hands with adopting a PLA that requires nonunion contractors to become signatory to that collective bargaining agreement for the duration of the project. However, what benefits the entity the most are uniform work and safety rules. They are still free to adopt those things and require those as a condition for winning the bid. We do not have objection to that. We object to the requirement that we are responsible to the union agreements for the duration of the project. It does tie their hands in that regard. I share your philosophy with regard to limited government intervention. That is part of our argument here that we should just allow the current laws with regard to public procurement to prevail as this Legislature has designed them and not add the submission provision.

**Mac Bybee:**

Some of this leeway is what has led to litigation. I would argue that litigation is also not good for the taxpayers, nor is it good for the construction industry. We need more clarity in the process.

**Assemblywoman Shelton:**

The way it stands right now, when the benefits are paid out by the nonunion employer into the union trust fund, the nonunion employees are unable to benefit from that money. Is that correct?

**Warren Hardy:**

The answers to these questions are based on the current application of PLAs as they are used historically in Nevada. The answer to your question is yes. Immediately when they begin the contract, the contractors are required to pay the benefits into the union trust fund for that employee. If the employee never vests, they will never realize the benefit. The money just stays in the union trust fund.

**Assemblywoman Shelton:**

Most workers would not vest because the projects are not long enough for that to occur. Is that correct?

**Warren Hardy:**

That is correct.

**Assemblywoman Shelton:**

Do you know how many people that would potentially affect?

**Warren Hardy:**

I do not have specifics on that. I can endeavor to get that. It is more with the philosophy that we are having this difficulty.

**Assemblywoman Neal:**

If you were to add a paragraph to section 2 that stated, "hire an equal amount of employees from both union and core employees as available," would that not address your issues? Section 2, subsection 1(a), states, "More economical, nondiscriminatory, neutral and efficient contracts...." Subsection 1(b) states, "Fair and open competition in awarding contracts, grants, tax abatements, tax credits and tax exemptions." Those two provisions fit in line with the SNWA case and the *Citizen's Outreach* case. They fit in with NRS. Not only are you setting a standard that the measurement of the PLA that a governmental agency creates fits open and fair competition but also that it does not discriminate and that it is neutral and efficient. Because we are concerned about taxpayer dollars, we want to make sure that everyone gets a chance to work. We know that there are more union laborers than nonunion laborers. Union laborers may outnumber nonunion laborers in certain situations. You did say that each PLA is different. Therefore, if each PLA is different, then why not add a paragraph if you are trying to create fairness—maybe even another paragraph to cover the provision of benefits? Maybe that would be the middle ground. We need to follow what the Nevada Supreme Court vetted, which said everything was fair except for the core employee requirement. That leaves it up to the Legislature to decide what is the standard and what is the policy. We do not make policy based on momentary circumstances. We make

policy that is supposed to stand for several decades and be applied for issues that come up. Why can we not make some additions to section 2 to fit those needs and delete the rest?

**Warren Hardy:**

In the first part of your comment, you indicated that there is a majority of union workers. That is not accurate; 85 percent of construction workers choose to work nonunion.

**Assemblywoman Neal:**

I will take that one back.

**Warren Hardy:**

If you go back to the first bill draft in 1993 or 1995, ABC had provisions that specifically address those issues. That may have been as recent as two sessions ago. Why can we not just say that it must be a 50/50 split of hiring union and nonunion workers? We do not want to put those restrictions on nonunion contractors. If union contractors win the job fair and square, the union contractors should be able to use whoever they want on those jobs. They should be open and unfettered to use every one of their union employees. That is how it was bid and contemplated; they should have the freedom to do that. We do not want to interfere with that. Currently, the unions are not restricted; they can use all of their own laborers. We are simply saying we want to be afforded the same equity and ability to use all of our own employees that the union contractor has under the current system.

**Assemblywoman Neal:**

If you are saying you want an unfettered ability to use all of your employees, and unions are saying the same thing, where is the middle ground? In the circumstance of this state, can we find that middle ground? I do not see that happening, not without a fight in the street.

**Warren Hardy:**

I would submit that is exactly what this bill does. When Mr. Bybee said that this is middle ground, we believe that it is. It does not have any negative impact on union contractors. It allows them to continue to operate exactly the way they currently do under PLAs. It allows government entities, to the extent that they choose, to adopt provisions they feel strongly about in PLAs to adopt those as part of the bid documents. It just affords us equal opportunity. I promised to come into this process with a fair and equitable bill and to not waste your time. I could have put a lot of fluff in this bill; we did not. We cut to the chase immediately. I do not know how to find common ground. If there

is not support for us having the same rights and abilities regarding using our employees and paying benefits that everyone else has, I cannot fix that.

**Mac Bybee:**

Some of our members use both union and nonunion labor on private sector projects. They do that because they decide based on each project what makes sense to them regarding which workforce and which employees they are going to use. We are asking for that to be the standard on public projects. Let the contractors decide which workforce they need to utilize to best complete the project. That is what we are addressing with this legislation.

**Assemblyman Moore:**

Project Labor Agreements have been used ever since the construction of the Hoover Dam. Is that correct?

**Warren Hardy:**

I do not know the answer to that question. I do not know when the first PLA was adopted.

**Assemblyman Moore:**

Do you save money on your payroll taxes under a PLA?

**Warren Hardy:**

As Mr. Bybee testified, this does not have any impact on the procurement laws and other requirements with regard to that at all. This is simply an issue of equity and fairness.

**Assemblyman Moore:**

Is it your contention that it costs you more to bid under a PLA?

**Warren Hardy:**

We believe that in the long run PLAs do increase the cost of a project because they have a disincentive for competition in the bidding process. However, these jobs all pay prevailing wage. The bill specifically indicates that this is not intended to have any impact on the payment of prevailing wage. The wage laws remain whole. It does not change that at all. We have cut this back as far as we can to address the specific issues we are trying to address.

**Assemblyman Moore:**

To the best of your knowledge, there has not been any labor unrest because of PLAs in the construction process. Is that correct?

**Warren Hardy:**

I am not aware of any labor unrest on projects in Nevada. I think there has been labor unrest on projects with PLAs in other states, but I think many of those were wildcats. Again, the project labor agreement says that it will prevent that, but it did not in those cases. That is very rare. I am not here to tell you that the unions do not abide by the project labor agreements; they do. I am not here to tell you I do not understand the benefit some of these provisions have or are perceived to have for the public entity. I am here to tell you that they can adopt those things. There is nothing that stops them from adopting those provisions without putting us at a competitive disadvantage. If we can have all of those benefits, why would the public policy put us at a disadvantage? I would respectfully submit that the answer is to provide disincentive for us to compete, and that works.

**Chairman Ellison:**

We are going to start moving back and forth between testifiers here in Carson City and those in Las Vegas, regardless of whether they are here in support or opposition so that we can get as many people on the record as possible. Those wishing to testify in favor of Assembly Bill 159 here in Carson City, please come up to the table.

**Tray Abney, Director of Government Relations, The Chamber of Commerce of Reno, Sparks, and Northern Nevada:**

We support this bill. We think it is fair to all contractors and all of our chamber members, provides true competition, and allows every contractor employee to be eligible to work. It does not prohibit or require any new contracts. I would be opposed to this bill if it required any company to use nonunion labor. We just want companies to be able to use their own employees the way they see fit, to allow each business owner to determine their own labor needs. We think this is a very reasonable and fair approach. We urge your support of this bill.

**Paul J. Moradkhan, Vice President, Government Affairs, Las Vegas Metro Chamber of Commerce:**

The Las Vegas Metro Chamber of Commerce would like to offer its support for the concepts associated with the bill as it relates to increasing openness, competitiveness, and efficiencies of public work projects as it relates to PLAs. We do believe that some changes need to occur in the current process associated with PLAs in Nevada. The bill serves as an opportunity for discussions regarding how these processes can be improved as they relate to hiring and working practices. We do believe there has been good dialogue on this bill today, and we appreciate the Committee's consideration.

**Victor Joecks, Executive Vice President, Nevada Policy Research Institute:**

We are in support of A. B. 159 because it allows bidders to compete on a level playing field. Governments should not favor union or nonunion shops, as was referenced earlier. This bill ensures that.

**John Madole, Executive Director, Nevada Chapter, Associated General Contractors of America:**

Our association supports the bill.

**Chairman Ellison:**

Are there questions from the Committee for any of these individuals? [There were none.]

**Dale Lowery, Private Citizen, Sparks, Nevada:**

I have a company called D&D Plumbing in Sparks, Nevada. We have been in business since 1978. We have about 55 employees, and of those about 40 are qualified plumbers. We were excluded from bidding on the Aces Ballpark. At least, I thought we were. I did not know I could have supplied maybe seven people, one at a time, with one union and one nonunion. My philosophy has never been union versus nonunion. It has always been that a job should be awarded to the lowest responsible bidder no matter what their affiliation. It has always been that way. I hire union subcontractors in the field on the mechanical side. We work well together. I do not have any problems. I do not think that is an issue here. I only want to have a fair shake when it comes to public money being put out for a public contract and being able to bid on it equally. We were talking about benefits earlier. I probably pay my people a lot of benefits that the unions may not. We have a 401(k) program. I contribute 50 cents to the dollar for every dollar they put in. If I were to go to one of these PLAs and start supplying my people, I could not pay into their 401(k) program at that point because I would have to pay into that collective bargaining agreement. My people would not be able to pay that portion into that 401(k), and that money would be set aside, and they would probably never see it. There are inequities in PLAs. I do not think they are equitable at all. They are discriminatory. I would like to see this bill go forward.

**Dru Wells, Private Citizen, Clark County, Nevada:**

I am the Director of Human Resources for Helix Electric Nevada, headquartered here in Clark County. We are one of the largest electrical contractors in Nevada. We have about 850 employees currently. We build a lot of large public works projects for the state. We are in support of this bill because we do not think that any one of those 850 employees should have to sit home because we have to hire someone from the union hall.



**Ed Uehling, Private Citizen, Las Vegas, Nevada:**

In a previous hearing the fear was expressed that monkey business by politicians might interfere or control a particular policy. That is certainly the case in the way PLAs are conducted today. There is a lot of monkey business by politicians. The basic question is: Does government exist to serve itself and its hangers-on, including the employees, or does government exist to serve the public? The very logical presentation by the presenters of the bill shows that yes, this will serve the people, the employees. It will cease creating classes of employees, and the favored classes through the monkey business by politicians who set up these things. I am definitely in favor of this law.

**Dave Bold, Private Citizen, Las Vegas, Nevada:**

I own Done Right Plumbing, Inc. and am the past president of the Plumbing-Heating-Cooling Contractors Association. I am here to say we are in support of this bill. I own a plumbing company. How can I possibly do a job when I have two plumbers on my job who have never worked for my company and be profitable? To me, this is very commonsense.

**Andrew M. Belanger, Director of Public Services, Southern Nevada Water Authority:**

I am here today to testify in opposition to A. B. 159. The Southern Nevada Water Authority (SNWA) has utilized PLAs covering all projects and all contracts contained within capital improvement plans since 1996. While the SNWA has not used PLAs on all of its projects, we believe the option to use them when appropriate should be preserved. I looked at some of the history.

In January 1996, the SNWA Board approved the negotiations of our first PLA. I thought it would be important to underscore some of the components of the original document that outlined why we were asking to use a PLA. For context, at that point in 1996, the valley was booming. We knew we were running out of Colorado River water and the ability to access that water, and we needed to ensure we could construct necessary in-valley facilities as quickly as we could without work stoppages and problems, with rules understood by everyone. That was the main reason we entered into a PLA in March 1996.

Some of the guiding documents, the provisions to be installed in a PLA, included a comprehensive no-strike clause with expedited enforcement machinery to prohibit work stoppages or disruptions for any reason and to bring about a prompt and effective termination of any disruptions that could have occurred in violation of the contract commitment; provisions ensuring an adequate supply of craft workers possessing the requisite training and skills to perform the work, provisions to maximize utilization of the existing local labor pool to the extent practical; provisions ensuring open access to project work and contract bidding

opportunities for all contractors both union and nonunion alike, without the necessity for any contractor to sign or become bound to any collective bargaining agreement other than the PLA; standardized working conditions including uniform holidays designed to meet the operational needs of this project; and to harmonize any conflicting work provisions or practices contained in or followed under individual craft local collective bargaining agreements that would otherwise be applicable in the geographical area of the project. These provisions go on and on. The last provision provides that "union hiring halls be open without bias to workers who are not union members." In practice, our PLA achieves the requirements that passed Nevada Supreme Court muster. The Nevada Supreme Court heard a case related to our PLA and found that the agreement complied with the state law. Provisions in that court ruling indicate that "given the PLA does not mandate union membership as a condition for employment on the project and that nonunion members may be hired to work on the project, we hold that the PLA does not violate Nevada's right-to-work statute. In conclusion, we hold that PLAs do not violate Nevada's competitive bidding, right-to-work, and freedom-of-association statutes. However, PLAs must be adopted in conformity with our statutes and the policies behind them. We hold that the PLA at issue in this case was adopted in conformity with our statutes and accordingly affirmed the judgment of the district court."

**Assemblyman Flores:**

As this bill stands, will it mean that jobs will go to people from other states? If the answer to that is yes, why?

**Andrew Belanger:**

I would note that the provisions of this bill limit the SNWA's ability to use PLAs on projects. The projects we have worked on in the past had out-of-state and foreign companies that have bid on them. Impregilio, out of Italy, is the contractor who constructed the third intake. That project is working currently, and they are completing the work so it will be operational, hopefully this summer. Because that project is subject to a PLA, the provisions in that agreement govern how employees are hired. The contractor can bring in the core workers for that project and the other workers have to be hired through the union hall, just like any other bid. That ensures that workers for that project have to be hired locally.

Mr. Chairman, I do have additional testimony that I wish to give. Would you like to go through that or answer questions?

**Chairman Ellison:**

We have more questions and there are still more people wishing to speak. I want to be able to get everyone on the record. We will continue the meeting on another day if necessary.

**Assemblywoman Neal:**

I would like to address the testimony from ABC because everything you have said about SNWA is completely accurate. There is concern about your claim that the court case spoke to Nevada's right to work as long as it meets the lawful objective. Then the *Citizens* case came after in 2011, which agreed with the SNWA case except the new issue that came up with the limited number of core employees. Will you please speak to that provision and that issue? Do you think it is a lawful objective to limit core employees to seven? Ultimately, that is one of the main issues. The issue is not that a PLA is bad. Mr. Hardy never said that it was unfair or that it did not create a legitimate structure. We know federal law has already established that PLAs are good for large projects. They prevent work stoppages and all of these other wonderful things. However, that is not the issue. The issue is the seven core employee limitation.

**Andrew Belanger:**

From the perspective of the Water Authority, our PLA has gone through the review of the Nevada Supreme Court. In our review, the seven core employee issue was discussed and it was blessed. I understand that there was another court ruling, but our PLAs have not been negotiated since the 2011 case. Our last PLA extension was in 2007. I am not prepared to talk about that issue in detail, but it is something we will look at and consider. From our perspective, the issue that Mr. Hardy raised related to union and nonunion work on projects. We have found that over the course of the 20 years that we have had a PLA in place, approximately 30 to 40 percent of the work conducted on our PLA has been conducted by nonunion contractors. We have seen in practice that projects can be completed using a PLA that provides work for both union and nonunion work. I can tell you that the overriding reason we use PLAs—and we do not use them on every project, we use them for time sensitive, critical completion projects like the in-valley system built in the 1990s and the third intake—is because they have to be completed without work stoppages and with rules that apply evenly to everyone. We have found that PLAs are an effective way for our community to build its regional water system.

Conversely, we do not use PLAs at the water district where the work is more of a rehabilitation in nature—water mains and streams, reservoirs, those types of things. We want to ensure that we have the ability to use PLAs on projects where it makes sense to use them, but not on every project. We want to make

sure that the criteria for using a PLA is governed by local elected officials who can be close to the issue and make decisions based upon local conditions.

**Assemblyman Carrillo:**

How many different contracts were awarded for the water intake project for Lake Mead?

**Andrew Belanger:**

The contract for the third intake was a number of projects. I have our Director of Engineering, Mark Jensen, in Las Vegas, who can answer specific questions as they relate to the third intake project. The third intake project has taken a number of years to design and construct. For much of the time we were building the project, we were racing against an ever-decreasing water supply in southern Nevada. That project tunneled 600 feet down into the earth and then 3 miles into the lake. That project was terribly complex. It required waivers on hydrostatic pressures from the state of Nevada. It required a very complex, dangerous work environment. Skilled workers were absolutely critical to that project. This PLA helped to ensure that project could be built on time and in time for when the community needed it.

**Assemblyman Carrillo:**

How many of the contractors were union or nonunion?

**Andrew Belanger:**

I do not know if Mr. Jensen is there in Las Vegas, but he would be the best person to answer that question. My understanding is that there were three contracts issued for the third intake and that two of them were awarded to nonunion contractors.

**Assemblyman Carrillo:**

Union companies are receiving the contracts. That is all I needed to know.

**Chairman Ellison:**

Are all of the contractors from Nevada?

**Andrew Belanger:**

The provisions of the PLA do not have anything to do with whether or not the contractor is from Nevada. It does allow that the workers are hired locally from union halls. That ensures that Nevadan workers will work on the projects.

**Chairman Ellison:**

You are stating for the record that all of the workers are Nevada employees. Is that correct?

**Andrew Belanger:**

I am stating that they were hired locally in Nevada union halls.

**Chairman Ellison:**

I would like to know more about that. I do not believe that is quite true, but we will discuss that later. For now, we will try to get as many people on the record as we can. We will continue the meeting another day to make sure everyone is able to speak.

**Nathan Ring, representing Laborers International Union, Local 872, and Bricklayers Labor Management Cooperation Committee:**

In addition to being here on behalf of my clients, I am also an attorney who practices exclusively in areas of labor law and employee benefits. As I look at this bill, it is very familiar because in a number of other states very similar bills have come up. Whether that is by coincidence or on purpose, it is not clear. However, there are several legal issues rife in this bill. A very similar bill passed in Idaho about three or four years ago, and it has been hung up in a court battle ever since. The U.S. District Court in Idaho said that the bill was preempted by federal law. There are two types of preemption under the National Labor Relations Act (NLRA): machinist preemption and garment preemption. Essentially, they both state that states are not permitted to regulate in areas that are either regulated by the NLRA or could possibly be regulated by the NLRA. Sections 8(e) and 8(f) of the NLRA permit pre-hire agreements. The NLRA also puts the National Labor Relations Board (NLRB) in charge of interpreting that act in case law that arises under it. In NLRB precedent, construction is the one industry where you can have subcontractor clauses or contractors can sign an agreement with a labor union that requires them to use all union subcontractors.

As this bill is written, if someone is awarded a contract and there is a union subcontractor clause in the collective bargaining agreement, the union subcontractors must still be used. As written, this law violates the NLRB precedent because it is saying that the state is not allowed to require you to use anyone who requires you or does not require you to be a union contractor. However, you already have collective bargaining agreement language and existing NLRB precedent that allows these contractors to enter into these contracts. Secondly, there is a local government control issue here. This was also raised by a question from Assemblyman Trowbridge. The adage that all politics is local also applies in this circumstance. All government, at a certain point, becomes local. The local government bodies are probably at a better position to legislate this as they know what the people need. The SNWA just mentioned that they would like to be free to enter into or not enter into PLAs. What we have here is a bill that is going to tell these local agencies that

represent the people in their areas that they are not able to enter into PLAs when they have the learned experience to know what they need and what their issues are.

**Chairman Ellison:**

I would like to hear from a few people from Las Vegas. I know that I can have a lot of you here come back tomorrow.

**Edward Seward, Private Citizen, Las Vegas, Nevada:**

I work for Helix Electric. I am a field superintendent. I am speaking for a lot of field workers. We are in favor of Assembly Bill 159. Just to give an example, Helix Electric is a large electrical contractor that bids for PLA work. Some of the contracts we do get have PLAs, and they do not enable us to use our own workers. We have to go to the union hall to get union workers. I think it is unfair that a large contractor like Helix Electric that has hundreds of workers working in the state of Nevada would have to outsource to the union halls when we have the same qualified workers that could do the job. Once again, I am for this bill.

**Diana Warby, Private Citizen, Las Vegas, Nevada:**

I am a landscape contractor. I do not think it is fair for the unions not to have to use nonunion workers, but nonunion contractors are forced to use union labor. Only the owners of the businesses know what is best for their situations. I think it is important to level the playing field. As a female business owner and a minority business owner, I am here to tell you that if I ever get to the point where I can bid on these jobs, I would never bid on them with these provisions intact. It is not fair. It is not right. All of Nevada needs to work. We need to look out for the taxpayers, and we need to bring some of that cost down. You cannot do that when you are stipulating all of these costs in the current structure. I am in favor of this bill.

**Ray Koltas, Private Citizen, Las Vegas, Nevada:**

I am with Helix Electric in southern Nevada. I have been with Helix Electric for 16 years. I went through the apprenticeship program. I am ex-military. I have seen the pros and cons from the union and nonunion sides. I am testifying in favor of this bill. I think it needs to be fair.

**Vic Poma, Private Citizen, Las Vegas, Nevada:**

I am a 25-year employee of Universal Plumbing. We have worked on Clark County School District Projects, completing over 100 elementary schools. We are presently working on the VA Hospital here. We do several federal government work jobs. I am in support of the bill so we do not have to use union employees and can use our own employees. If the union employees

choose to come work for us, we have no problem with that. However, the employees who work for Universal Plumbing work for Universal Plumbing; they do not work for any local union. We are in support of the bill.

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

There are a few things I would like to make clear before I really get into the meat of my testimony. I have heard stated in this Legislature several times that union construction workers only make up 14 percent of the workforce. That is a national number and does not represent the actual workforce in the state of Nevada. The Bureau of Labor publishes that data. The state of Nevada, including residential construction, has 30 percent of its construction workforce represented by a union, predominantly working in the commercial construction industry. In this case, the vast majority, well over 60 percent, of the workers in the commercial construction industry are in fact represented by a union. Whether they choose to belong to a union is subject to NRS Chapter 613.

There are other issues at hand. Assemblywoman Neal has brought up the *Citizens Outreach* case. There are a couple issues with that case that I think should be made clear. Initially, when an injunction was sought by the Associated Builders and Contractors, it was denied. Associated Builders and Contractors appealed to the Nevada Supreme Court, and it was referred back to district court where the judge reversed his own decision and added additional provisions to his decision which included the question about the fairness doctrine. That case was appealed to the Nevada Supreme Court and by the end of the case the project was nearly completed, and the Supreme Court refused to hear the case and offer an opinion.

There was a brief mention of preemption and how legislation similar to this has been introduced in numerous states and litigation regarding this type of legislation. There was a bill almost identical to this introduced in the state of Michigan. The Michigan Building and Construction Trades Department challenged the law, sued the state, and received an adverse decision from the Sixth Circuit Court of Appeals. It was a 2-to-1 decision from a very small panel of three members of the Sixth Circuit, which has 23 members. In the dissent on that decision, it was stated that the decision contradicted previous decisions of the Second, Third, Fifth, Seventh, and Ninth circuits, two panels of the District of Columbia Circuit, a previous decision of the Sixth Circuit, as well as the U.S. Supreme Court. They went out on a limb and created new case law in making that decision.

The reason I believe this bill has been brought up is that it is part of a larger national agenda by the National Associated Builders and Contractors combined

with frustration because of a decision that was issued by a separate district court hearing here in Nevada. That decision, issued by Judge Hargan, was related to the question of standing and found that the association lacked sufficient standing to intervene in cases where project labor agreements were being implemented and assigned to projects.

**Chairman Ellison:**

We are running out of time and will need to reschedule this hearing for tomorrow. Will all of those here in favor of the bill please raise your hands? I want to make sure we have a fair hearing for everyone and not cut anyone off. We will reschedule this meeting for tomorrow, March 12, 2014, at 8:30 a.m. so we can make sure we will get all of the testimony on the record.

**Randall Walker, Private Citizen, Las Vegas, Nevada:**

Mr. Chairman, I will not be able to make it back tomorrow. May I briefly provide my input?

**Chairman Ellison:**

Sir, if you can make it quick, we will get your testimony on the record.

**Randall Walker:**

I am against the bill as written. I was formerly the Director of Aviation for McCarran Airport in Las Vegas for a little over 16 years, and I was the Deputy Director for over 5 years. I have handled the responsibility of managing hundreds of projects in excess of \$4 billion. Some of the projects were covered by PLAs, but not the majority of the projects. I will tell you that it is an invaluable tool when the tool is appropriate for the job. Those are the jobs that are most complex and have significant timing elements. Just like the Water Authority, though the Airport does not have water delivery issues like they do, we have timing issues that are very important in terms of funding and cash flow since we do not receive any local or state tax money.

I am a practical guy. I understand the arguments. I have talked to Warren Hardy so many times I could probably make his arguments for him. There are a couple of issues I have. We looked into the competition issues, and we found that there was more competition for projects that were covered by PLAs than projects that were not. It seems a little counterintuitive, but those were the facts. Practically, if this bill passes, I think we will not have PLAs anymore. It would be a tool we do not have. Based on my experience, both positive and negative, both for the Airport and at the Regional Justice Center, I can predict to you that the projects we manage will be much more difficult so far as being successful, on time, and on budget. That is my 25 years of experience handling hundreds of projects worth over \$4 billion.



**Chairman Ellison:**

I apologize for running out of time, but we will reschedule this hearing for 8:30 a.m. tomorrow morning. Is anyone here for public comment? [There was no one.] This meeting of the Assembly Committee on Government Affairs is adjourned [at 11:03 a.m.].

[A position statement ([Exhibit F](#)) regarding Assembly Bill 190 was submitted on behalf of the City of Reno by Mr. Scott F. Gilles but was not mentioned.]

RESPECTFULLY SUBMITTED:

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Aubrie Bates  
Committee Secretary

APPROVED BY:

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Assemblyman John Ellison, Chairman

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** March 11, 2015

**Time of Meeting:** 8:40 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 53	C	Jered McDonald, Policy Analyst	Work Session Document
A.B. 190	D	Jered McDonald, Policy Analyst	Work Session Document
A.B. 190	E	Tina Leiss, Public Employees' Retirement System	Written Testimony
A.B. 190	F	Scott F. Gilles, City of Reno	Position Statement