

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

**Seventy-Eighth Session  
March 12, 2015**

The Committee on Government Affairs was called to order by Chairman John Ellison at 8:37 a.m. on Thursday, March 12, 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: [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:**

None

**STAFF MEMBERS PRESENT:**

Jered McDonald, Committee Policy Analyst  
Jordan Neubauer, Committee Secretary  
Cheryl Williams, Committee Assistant

**OTHERS PRESENT:**

Warren B. Hardy II, representing Associated Builders and Contractors of Nevada  
Danny L. Thompson, representing Nevada State AFL-CIO  
Jack Mallory, representing Southern Nevada Building and Construction Trades Council  
Steven D. Ross, Ward 6 Councilman, City of Las Vegas  
William Stanley, Secretary-Treasurer, Southern Nevada Building and Construction Trades Council  
E. Lee Thomson, Chief Deputy District Attorney, Clark County District Attorney's Office  
Nathan R. Ring, representing Laborers' International Union Local 872  
Patrick T. Sanderson, representing Laborers' International Union Local 872  
Arthur White, Vice President, Plumbing-Heating-Cooling Contractors of Nevada

**Chairman Ellison:**

[Roll was called. Committee rules and protocol were explained.] I am going to open the hearing on Assembly Bill 159. Can the sponsor of the bill please give us a quick recap?

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

**Warren B. Hardy II, representing Associated Builders and Contractors of Nevada:** Assembly Bill 159 is a bill that is designed to create fairness and equity in the procurement process for public construction. It deals with certain pre-hire agreements that have come up through the years in response to the Nevada right-to-work laws. It basically compels open shop contractors or nonunion contractors to adhere to work rules to become a party to a union agreement. A union agreement is a collective bargaining agreement, and there are other

types of project labor agreements where these are used. This bill would prohibit local governments or any government agency in the state from being able to mandate as a condition for receiving any contract the requirement to sign one of these documents. It would not allow it to go the other way either and require that all workers on a project are nonunion. I know this bill is controversial, but it is very simple in its concept. We believe it creates equity and fairness.

**Chairman Ellison:**

If you would like to testify, please come to the table.

**Danny L. Thompson, representing Nevada State AFL-CIO:**

I have been working with the Southern Nevada Water Authority (SNWA) on their problems since its inception. I have served on every Integrated Resource Planning Advisory Committee they have had. I would like to give you an example of a Project Labor Agreement (PLA). About 90 percent of the water that is consumed in Clark County comes from Lake Mead. We started out with a single straw in the lake that took the water out. Should something have happened to that straw, to say that the county would have been in jeopardy of a catastrophic event would have been an understatement. They decided that they needed more reliability, and they started developing more ways to get the water out of the lake, so they put in another straw. They tunneled through the river mountains with a tunneling machine. They had deadlines and budget constraints that they had to meet. It was the largest public works project ever completed in Nevada. With this project, they decided to enter into a PLA because they wanted the project completed within the time constraints, budget constraints, and done right the first time. For example, if you want 500 nuclear-certified welders, I can get them for you tomorrow. Not everybody can do that, but I can do that, and the people I represent can do it too. The PLA went for a period of years, and on this project, the majority of the contractors who signed onto it were nonunion. It did not require them to join the union or become a signatory. Some contractors liked it because they had access to something they usually do not. If you do not have the ability to get 500 nuclear-certified welders and you are signed to a PLA, you can get them by bringing them through the hiring hall. You do not necessarily have to have them, and you can win the bid and do the job.

As the drought continued and the work was completed under the terms of the PLA, the lake level started to drop. I think you are all very familiar with that. As the second straw became in danger of coming out of the water, we had to extend it into the water deeper, and that was completed under the terms of another PLA because they needed it completed in a timely manner and it was very technical work. The drought continued and we had to come up with an absolute solution. If you have lived in Clark County, you used to be able to go

to Las Vegas Wash, but you cannot go there anymore because the boat dock is a mile out of the water.

The lake has shrunk and the way that you survive in Clark County is you take the water out, you use it in the sewer system, and then you put it back. For every gallon you put back, you get a return flow credit for the water. If you look at the allocation of water from Lake Mead that was determined in the 1930s, Clark County gets 299,000 acre-feet, Arizona gets about 2.1 million acre-feet, and California gets about 4 million acre-feet. Our allocation is very small. The only way we survive is to take the water out and put it back. The water was going in at the same place it was being taken out. The water that was being put back is not potable water; it is treated effluent that goes back into Las Vegas Wash. When Las Vegas Wash was two miles up the road, there was better quality water, but as it shrunk, the water that was being put in was the water you were taking out, which potentially needed much more treatment, and the cost to do that was astronomical.

Because of this, we decided to put in a third straw. It was a project that has never been done. The only thing comparable would be the Chunnel that connects France to England. We used the same machine. This was a PLA project. It was a highly technical, highly skilled, extremely dangerous project. We dug a shaft 600 feet deep and then drilled over 3 miles without a Global Positioning System (GPS) underwater and hit the spot within 2 centimeters and drilled into a stock valve that was put down in the water. They went under the river and determined where the Colorado River was before Lake Mead filled up. We had to give Occupational Safety and Health Administration (OSHA) variances on this project. I was involved with it and ultimately we said they could do this outside of the OSHA rules and someone was killed on this project. In the tunnel, you were 600 feet under water, and if there was a catastrophic event, we had two cave-ins on that job, they all would have died. There was an escape pod they could have gotten to, but the chances of going back in there was none. We agreed to that. It was all done under the terms of a PLA, and it was done that way for a reason.

If you pass this bill, you are taking away the ability for local governments to have an option. They do not use PLAs in all of their work. They used it on that specific project because they had to have it done. Let me tell you this, right now we are building the third pumping station that will pump the water out of that tunnel. We successfully built the tunnel to the valve where the water will come in out of the river. Because of the engineering on the other two straws, you cannot pump the water from that level, because we have lowered them too low. If the lake drops another 20 feet and we do not have the third straw, we cannot take our allocation of water out of the lake. So guess what happens to

Clark County and the state's income? Most of the state's income comes from the Las Vegas Strip; if we do not have water on the Las Vegas Strip, we have big problems. That is why they opted to use a PLA. In the agreement, there are penalties for us; for example, if there are any stoppages for any reason, we pay \$10,000 per shift on a standard agreement.

I want to give you another example of a PLA. Sheldon Adelson bought the Sands Hotel and Casino and imploded it. He then built The Venetian Resort Hotel Casino. The Venetian Resort Hotel Casino was built 100 percent with a PLA. A Project Labor Agreement is just a contract. You can have any number of employees you want as long as they match one for one, and it is whatever the parties agree to. After Mr. Adelson built The Venetian Resort Hotel Casino, he built The Palazzo, which he used a PLA to do. He wanted it completed on time and under budget. He wanted to know when he could open the doors and start making money. Project Labor Agreements are a good thing, and they are used for reasons.

Mr. Randall Walker testified yesterday and said that the longest runway they have at the McCarran International Airport is critical to the 40 million people that we have come to Las Vegas, and it has to be open and operable. They do not use PLAs for everything they do either.

While it may seem that this is preferential, the reality is a PLA is a tool that someone can use when they have a need for a project to be completed quickly or they have a need for 500 nuclear-certified welders and you cannot get them anywhere else. We sell qualified workers. Nevada has the best apprenticeship programs in the nation, and we have a lot of them. Electricians go through a five-year program and pipefitters and welders go through a four-year program. When they are finished, they have all of the proper certifications. You can call and ask for a nuclear-certified welder and rest assured that this person can weld to that quality.

**Chairman Ellison:**

Are there any questions from the Committee?

**Assemblywoman Spiegel:**

One of the things that has been an issue in the state for a while is employee misclassification. Can you speak to me about employee misclassification and what the impact is relative to PLAs?

**Danny Thompson:**

Under a PLA, our classifications are set in stone, and we monitor them. Everybody does what he or she is supposed to do. I would guess that

misclassifications would be reduced. We do not have any unequal pay issues because everybody makes the rate that they are supposed to.

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

Union collective bargaining agreements are self-policing, and the reason they are is because of audit provisions that go along with the trust funds and regular job site visitation by representatives of the labor organizations. Typically, you will find that there is virtually no evidence of employment category misclassification on those projects that are covered by a PLA.

**Assemblywoman Spiegel:**

When there is a PLA in place, the state is extremely likely to be collecting all of the payroll taxes, correct? It should be that all the workers' compensation premiums are being paid because there are checks and balances in place.

**Jack Mallory:**

That is correct, because there is a self-policing mechanism that is built in with the PLA, and those would be set at the proper rates.

**Assemblywoman Spiegel:**

There is also equal pay for women, correct?

**Danny Thompson:**

In our world, there is no unequal pay for women. Women make the same rate as a man on any job for any classification.

**Assemblywoman Spiegel:**

That does my heart good. Thank you.

**Assemblyman Trowbridge:**

Currently local government has the freedom to use a PLA or not, correct?

**Danny Thompson:**

Yes, that is correct.

**Assemblyman Trowbridge:**

This proposal would prohibit the use of a PLA, correct?

**Danny Thompson:**

Yes, that is correct.

**Assemblyman Trowbridge:**

Our track record so far has been that the local agencies use PLAs on the largest projects, correct?

**Danny Thompson:**

Largest and very complex projects, yes.

**Assemblyman Trowbridge:**

The current segment of the PLA agreement that includes the seven employees is negotiable, correct? Currently the term seven is per craft, so if you had seven laborers, seven carpenters, seven welders, seven electricians, it would be seven for each craft that could be brought on by the nonunion contractor, correct?

**Danny Thompson:**

The number seven was agreed to in a PLA. I do not remember which one it was, but it was one that stuck, but the idea was that you gave the person the opportunity to bring a mix of their core people to work with our core people. The number is negotiable in any PLA that an owner would enter into.

**Assemblyman Carrillo:**

As I read this bill, nothing will change in the fair employment practices, preferential treatment, et cetera, so I would assume that both sides are getting something they want or need. You mentioned SNWA, but what is the benefit that is derived from PLAs?

**Jack Mallory:**

I think that the advantage that the SNWA gains is the efficiency of scale, particularly on the most complex and largest projects. They also have the ability to choose whether they are going to apply a project under the terms of the PLA. It should be noted that they do not dictate the terms and conditions specifically of the PLA; they only specify that the PLA would apply to the project. What the SNWA PLA, the McCarran International Airport PLA, and other public PLAs have provided to the owners of those projects is an opportunity to not only obtain the best price from qualified bidders, whether they be union or nonunion, but to also exert the greatest possibility of control over those projects.

**Assemblyman Carrillo:**

What manner of control are you referring to?

**Jack Mallory:**

Ensuring the projects are completed in a timely manner and within budget is the goal of every agency. When they have the ability to tap into labor pools internationally and not just a local labor pool, I think they gain the advantage of scale.

**Assemblyman Carrillo:**

If this bill passes tomorrow, do you read this as all future PLAs would be null and void or just not entered into at all?

**Jack Mallory:**

I think this would potentially have a chilling effect on any future PLAs being negotiated. There are also potential preemption issues. At the same time, I would remind you of Mr. Randall Walker's testimony, the former administrator of the McCarran International Airport PLA. He stated that very thing. I think of anybody who has testified to this point on the issue of PLAs and their value to local government agencies, he is probably the one with the most experience as an administrator.

**Chairman Ellison:**

We will take testimony in Las Vegas right now.

**Steven D. Ross, Ward 6 Councilman, City of Las Vegas:**

This bill is not only bad for workers, it is bad for taxpayers. Taxpayers demand quality projects for the money they put into these projects. Project Labor Agreements ensure that every contractor has a quality, skilled workforce for each project; it is actually written into the agreement. There is little protection for workers or taxpayers in working with those who fail to sign a PLA. There is no requirement for a properly skilled workforce with a specific highly technical job classification within the modern building trades. I would argue that PLAs put the onus on labor unions to ensure the workforce is trained. They have programs that are up to date and are capable of supplying the personnel necessary to fill the jobs, as Mr. Danny Thompson pointed out.

As someone who has served in a building trades union, I was committed and required to send every worker to the job site and make sure they were qualified. If I had not done that, it would seriously jeopardize their positions and family incomes. While I am a strong advocate for business growth, particularly in the construction trades, I am first and foremost an advocate for taxpayers and working families who foot the bill for the public projects. There is a balance that can and must be developed to protect the interest of both, but not at the expense of one or the other.



Look at it this way: in a sector where margins are very fine, it is often not in the best interest of some contractors to spend the money on the most qualified workforce. Sadly, we certainly can find examples where subcontractors cut costs on materials and workers to make a bid work better for their profit margins. Whether we acknowledge it or not, it is the world we live in. Our best safeguard against such actions is to have a PLA put in place that ensures that taxpayers are getting the best value for their money. None of us want to tell our constituents if and when a project goes bad that we did not hire the best we could because we would have had to pay workers a little bit more because of a PLA.

While you hear the argument that PLAs might increase costs, what you cannot argue with is a building built poorly with unskilled laborers. We do not want to constantly ask our constituents for money to repair buildings that were built with substandard materials or substandard workers. If you have forgotten, taxpayers are voters as well. It is not a bad thing for the economy when workers make a few more dollars to spend a few more dollars. Every dollar they earn contributes to our economy in Nevada.

Those advocating against PLAs and in support of A.B. 159, are you saying that taxpayers should risk millions of their own dollars to get less than qualified products built by workers without the necessary training to do the job? In my opinion, this is just another example of racing to the bottom.

**Chairman Ellison:**

Are you saying that anyone that is not a union member is unqualified?

**Steven Ross:**

Absolutely not, I am not saying that. I am saying that PLAs ensure that the workers are trained and come from a highly skilled apprenticeship program.

**William Stanley, Secretary-Treasurer, Southern Nevada Building and Construction Trades Council:**

Chairman and Committee members, thank you for the opportunity to testify before you today on this very important and critical issue. I represent 19 building trade unions in southern Nevada. The Committee has heard testimony indicating that there are problems with PLAs. I would like to discuss what a PLA is. A PLA is a collectively bargained agreement, nothing more, nothing less. [Continued to read from prepared text ([Exhibit C](#)).]

**E. Lee Thomson, Chief Deputy District Attorney, Clark County District Attorney's Office:**

I am here on behalf of the Clark County Board of Commissioners and Department of Aviation. I will try to cut my prepared text ([Exhibit D](#)) short because what already has been testified to by the gentleman of the SNWA and by Mr. Randall Walker yesterday states much of it; however, I will reiterate a couple of points. Project Labor Agreements have been used by Clark County only for large complex projects at the Department of Aviation. Since 2002, out of approximately 110 projects, PLAs have been used on less than 20 projects. It has been our experience that PLAs have worked very well for us, and we like to use the tool when we are supplying things to something that needs to be done in a timely manner, for example, to deliver a new Terminal 3, the extensions to Satellite D, and currently we are completely rehabilitating our longest runway, tearing out all of the pavement and repaving it.

We believe PLAs are beneficial to projects because they provide for standardized site-specific work rules, uniform grievance and dispute resolution procedures, and a prohibition against strikes. Mr. Stanley just alluded to the matter with the concrete delivery at one time; something like that can be very critical to a large project. They also have provided for site-specific security rules, common drug testing requirements, and common rules on shifts, holidays, and overtime that apply regardless of contrary rules in collective bargaining agreements. Mr. Warren Hardy testified yesterday that we could impose these types of things unilaterally with or without a PLA; we can and we cannot. If you have a union rule that says that you have to have a callback notice of 48 hours or you will have to be paying overtime or double time, for instance, to have a concrete laying crew come back for extra work, the contractor is going to assess the public owner whatever he has to pay for the additional work. In our PLAs, we were able to negotiate callbacks; for instance, on concrete, it is important in southern Nevada because when it is 115 degrees outside during the day you cannot pour concrete. That work would have to be turned into a night shift. The ability to negotiate in the PLA to change work rules is a cost savings to the public owner.

Unions do have to give things up. This is not something where the public body is just rolling over to the union. The union gives up a number of things under collective bargaining rights and federal labor law including the right to strike, picket, and take economic sanctions against any contractors including the nonunion contractors on the site. They agree to be liable for liquidated damages in the event of a work stoppage. They agree to abide to the set processes for dealing with jurisdictional disputes, so they are not picketing things that occur between competing unions over who gets to do what particular work. They also agree to waive any wage increases which might be provided for in their

collective bargaining agreements. This provides stability and value to the project.

Unions are not the only ones that provide apprenticeship programs, but by and large, their apprenticeships go through broader trade categories and by having the availability of apprentices, you actually lower costs. It has been our experience that throughout all of this there has been quite a bit of participation by nonunion contractors. We had an issue last year when we analyzed a contract we had for putting in new explosive detection systems at the McCarran International Airport. It is under a construction management at-risk process and of the almost 100 subcontractors who were involved in the competition process to be selected, half of them were nonunion. I would also like to note that there was a study done by the SNWA in the 1990s where it was surprising how many nonunion contractors were able to compete and win bids themselves or compete as subcontractors.

One thing about the bill in particular that I want to call to your attention, in section 4 it says, "The amendatory provision of this act do not apply to any contract entered into before July 1, 2015, by: (a) A public body for a public work." We have a concern at the Department of Aviation because we are currently involved in a multiyear job on the runway at the McCarran International Airport, which I spoke about earlier. I think there is a chance that some subcontractor contract may have to be entered into because a subcontractor drops out or the primary contractor just decides that they need to have an additional contractor come and do some type of work. We do not support this bill, but if this bill were to go forward, we would like some clarification as to whether this section also applies to any subcontracts that will be entered into in the future that relate to a contract that has already been entered into by the public body.

**Assemblywoman Neal:**

I was reading the U.S. Supreme Court case *Building and Construction Trades Council of the Metropolitan District v. Associated Builders and Contractors of Massachusetts/Rhode Island*, 507 U.S. 218 (1993) and a question came up about preemption. When the county enters into a PLA, are they acting as a regulator or a private individual?

**E. Lee Thomson:**

They are a market participant. They are expending money to get a project done.

**Assemblywoman Neal:**

The *Building and Construction Trades Council* case said that the National Labor Relations Act (NLRA) preemption does not apply when states are acting and participating freely in the marketplace to promote legislative goals, is that true?

**E. Lee Thomson:**

In regard to this particular bill, I am not sure whether I would agree or disagree. The issue of preemption was raised by one of the union representatives' attorneys yesterday. I have not researched the issue of preemption; I would be happy to look into it and get back with you, but it is not something that I believe has an effect on the bill.

**Assemblywoman Neal:**

When I was looking at the provisions of the bill in section 3, subsection 1, paragraphs (a) and (b), I know I said yesterday that I support section 3, but when it says, "Require or prohibit" and "Discriminate," those words are automatic triggers to ask whether the use of this language creates a preemption question. I looked at the NLRA section 7 [§157] and section 8 [§158] and I was doing a comparison with it and the *Citizen Outreach, Incorporated v. Clark County* No. 58365 (Nev. Filed May 19, 2011), which says that there was favoritism in having the seven employees and asked whether or not there was an issue of unfair labor practice, where the NLRA would then have the direct control over the behavior because an unfair labor practice comes under their authority. Section 8 [§158], subsection (1) of the NLRA says, "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7." I want more discussion around if there is an act of restraining when a provision limits the number of employees and somehow the collective bargaining portion of this bill comes under the free market participant doctrine. I am trying to figure out the definition of "restrain," because you are restraining on one end, and this bill is attempting to restrain on another end. Are we under preemption if we are restraining the activity or the ability to negotiate?

**E. Lee Thomson:**

As I have read the cases across the country regarding PLAs and returning in particular to the cases that apply here in Nevada, for example, the *Associated Builders and Contractors, Incorporated v. Southern Nevada Water Authority* 115 Nev. 151, 979 P.2d 224 (1999), which is a decision by the Supreme Court of Nevada, we specifically held that the provision for a seven and seven type of agreement was not only legal, but the Supreme Court of Nevada interpreted that provision as being won, which maintains competition among the bidders and guards against favoritism. I do not think that it has been held anywhere that this is an illegal restraint. The Supreme Court of Nevada has addressed the issue of the seven employees and has held that it is legal.

The *Citizen Outreach* case that you referred to is a district court case; it was never ruled on by the Supreme Court of Nevada. They issued a decision that the matter was moot simply because the county decided it could not wait for them to issue an opinion and proceeded with the project.

**Assemblywoman Neal:**

Because it has not been litigated by the Supreme Court of Nevada and it is just a district court provision, the governing case would be the *Associated Builders and Contractors* case, which did not even address the issue that is being brought to this body on the limitation of employees. That would then leave it under the purview of the Legislature to make a decision about whether or not they want to follow a district court case on favoritism, correct?

**E. Lee Thomson:**

Actually, the *Associated Builders and Contractors* case says, "the PLA allows both union and nonunion contractors to bid on projects and allows a nonunion contractor to hire up to seven core employees. In addition, employees are not required to join the representative union under the PLA, therefore we conclude the PLA maintains competition among bidders and guards against favoritism." I would submit to you that the Supreme Court of Nevada has ruled on the seven core employees, and they said it was fine. It has always been the position of Clark County that Judge Wiese erred in his ruling about the seven core employees exhibiting favoritism. Just last year Judge Herndon ruled in a case involving a Department of Aviation PLA that under the SNWA provision for seven core employees was legal in the state of Nevada.

**Assemblywoman Neal:**

What is the name of that case?

**E. Lee Thomson:**

It is a district court case, and it is not published. I would be happy to provide it to you.

**Assemblywoman Shelton:**

Yesterday Assemblywoman Neal brought up the *Citizen Outreach* case, so I looked into it. I saw they had a line item for \$350,000 for a PLA compliance. Is that one person, a bunch of entities, or a fee? How do the PLAs work where you have a line item of \$350,000 just to be able to comply with a PLA?

**E. Lee Thomson:**

The people who were putting together the PLA for the downtown detention center rehabilitation center project determined that there was some related cost

to handle the administration, but I do not recall the other absolute specifics about it.

**Assemblywoman Shelton:**

I was just curious if that was something normal and usually included in PLAs or just this one instance.

**E. Lee Thomson:**

I cannot speak for all other PLAs, but there is a setup in a PLA where you have meetings, and the system is set up for jurisdictional disputes and things like that where you are involving peoples' time and there is a cost. I do not recall if there is a set number that is always used. I would have to research this. I would point out that \$350,000 is not chump change at all. I believe that would be a very reasonable cost for administration when you are talking about projects that are between \$50 million and \$100 million; or if you are talking about the Terminal 3 project at the McCarran International Airport, which is a \$1.2 billion project.

**Assemblywoman Shelton:**

The *Citizen Outreach* case was about the detention center, correct?

**E. Lee Thomson:**

Yes, it was.

**Jack Mallory:**

I want to further address the question asked by Assemblywoman Shelton regarding the line item on the *Citizen Outreach* case without speaking directly to the cost. Every public agency in the state of Nevada that engages in public works construction is charged under the law with policing the enforcement of public works law and the proper payment of prevailing wage regardless of the existence of a PLA. Each of them has to build a compliance section within their budget. I think it is something that needs to be considered.

I wanted to get back to the questions and the issue of preemption. A PLA is negotiated between a building trades council or a group of labor organizations and a construction manager or a representative of a public body. It is not actually negotiated by the public body itself. The public body's role is to determine whether they believe a PLA would be beneficial for them to use on specific projects. For example, the McCarran International Airport PLA was negotiated between Parsons Corporation and the Southern Nevada Building and Construction Trades Council years ago and same with the SNWA PLA. The role of the SNWA and the Airport Authority are to determine whether to specify in the bid document whether the PLA applies to the project. Ultimately, the

awarding body determines whether or not the terms and conditions of the PLA are appropriate and whether or not they are going to adopt them. The question always comes down to state and local government regulation, and it is specific to labor regulation, the restriction of the activities of labor by government, and it is the whole crux of this argument, whether or not this bill regulates labor and whether or not that is potentially a violation of the NLRA. It is for this Committee to decide if you believe that is the case or not. We believe it is.

This bill will potentially have a chilling effect on any future negotiations of PLAs, which is an unfair labor practice being committed by state or local government—in fact, by the state in this case if this bill passes. As I stated yesterday, the bill closely resembles legislation that was passed in the state of Michigan, which was tried by a three-member panel in the Sixth Circuit United States Court of Appeals. I do not believe it has been appealed to the Supreme Court of the United States, but in fact, the decision by the three-member panel flew in the face of previous decisions by the Second Circuit United States Court of Appeals, Third Circuit United States Court of Appeals, Fifth Circuit United States Court of Appeals, Seventh Circuit United States Court of Appeals, Ninth Circuit United States Court of Appeals, two panels of the Washington D.C. Circuit United States Court of Appeals, a previous decision of the Sixth Circuit United States Court of Appeals, as well as a decision by the Supreme Court of the United States.

Project Labor Agreements are inclusive of work rules and conditions that are to be observed on that project and when the agreements are negotiated, they are negotiated for the entire project. They are not negotiated for bits and pieces of the project. They are for a project that has not already gone out to bid, or they are for a potential project that an awarding body may undertake. There is no way to understand what parts of the project may be awarded to a nonunion contractor and what parts may be awarded to a union contractor. It is very difficult to consider negotiating a PLA without having that advanced knowledge, creating a potential problem with preemption.

One thing I want to put on the record, at the risk of inflaming some of my counterparts, is some discussion we had prior to the hearing with Mr. Hardy about the possibility of coming to some sort of resolution on this issue that avoids potential preemption issues that could be harmful to the state or to local governments. We also addressed some of the concerns that he raised in his presentation on the bill, and it is related specifically to what he claims to be economic disadvantages that are created by PLAs. In my experience working as a labor representative with my organization, District Council 15 Painters Local Union 159, on occasion, I have granted waivers, whether it is on ratio or on trust fund contributions, where there has been demonstration of valid

benefits provided to the nonunion employees and there are various reasons for doing that. On the benefits issue specifically, I am not in the business to hurt workers. I think there is an opportunity to explore that further as a potential way to resolve this issue absent passing a bill of this magnitude that could potentially result in harmful litigation.

**Nathan R. Ring, representing Laborers' International Union Local 872:**

I have new information regarding the NLRA preemption and the market participant exception. The market participant exception is a limited exception to the NLRA preemption and without getting into too much case law, the state of Idaho passed a very similar law regarding PLAs. They tried to argue that it was acting as a market participant, but the district court, in a published decision said they were not acting as a market participant because a market participant exception applies on a case-by-case basis. The local government or the body has to look at it and see if they are going to act as a market participant, but when the state passes a law that bans something, it is general regulation, not market participant exception. The market participant exception would not apply to this law, just as it did not in the Idaho case, which is still on appeal right now to the Ninth Circuit United States Court of Appeals, which is also the United States Court of Appeals of which Nevada sits.

**Assemblywoman Neal:**

You are saying that if we statutorily say that every PLA or the county in every instance will act as a market participant, we are not giving any flexibility for them to act as a government regulator? They can have two roles, is that correct?

**Nathan Ring:**

Yes, when the state passes a law like this, telling the local government that they cannot act, they are not going to be acting as a market participant whereas what we have today, they are acting as a market participant when they decide if they want to enter into a PLA or not. Testimony has said that PLAs are not used on every project; it is not a blanket rule. Local governments choose what projects they want to use them on.

**Assemblywoman Neal:**

Can we say, if you are creating a PLA at the county level where you are acting as a market participant, then the market participant rules apply to those PLAs where you are going to engage in that activity? Then it gives flexibility. I am trying to figure out how to get fairness.



**Nathan Ring:**

We can talk about this later. When a local government or a state acts as a market participant, they are making economically feasible decisions. If they are looking at certain conditions to be placed in as to what a market participant does or what needs to be decided by a local government, that may not be a preemption issue because then they would still have the choice of whether or not, and they would be able to consider the economic feasibility for the local government agency.

**Patrick T. Sanderson, representing Laborers' International Union Local 872:**

I have worked construction over 40 years. Every project is completely different; you do not know what you are going to come up against, and the public bodies that enter into a PLA do. The Project Labor Agreements are there to protect them and to make things better. I do not believe there is a single person on this Committee that has any idea of what type of projects are going to be coming up in the future and to get rid of the PLA—which is a great tool—does not make any common sense at all, especially if it helps save time, money, and lives in the field of construction. I hope that you take this into consideration. Look at the overall tool. Do not pass the bill the way it is, saying there will never ever be another PLA, because for the working men and women, these are good things and for the public body, these are wonderful things because they can figure their budget out, their timing, et cetera. I hope you look at these things and work on it. Get the people together and come up with something everyone likes.

**Chairman Ellison:**

Is there anyone else in Las Vegas that would like to testify?

**Arthur White, Vice President, Plumbing-Heating-Cooling Contractors of Nevada:**

I represent 72 member contractors and an accredited apprenticeship plumbing training program. We are here to approve A.B. 159. I want to point out and be very clear that being signatory does not equal quality. We have an accredited training program, and there are other accredited merit shop training programs. With the electronic age, I have the ability to come up with the same 500 nuclear-certified welders as anybody else. History does not equal fairness. Non-signatory companies bring projects in on time every day just as any other signatory or non-signatory companies.

I have been sitting here all morning, and I continue to hear that with PLAs there is a cost savings on the job, but I have not yet heard how. I would urge the Committee to ask those questions if this were to go to work session and try to find out exactly how a PLA would save the taxpayers, owners in Clark County, and whoever else, money.

As far as quality is concerned, we have inspection officials that are trained to come out and inspect not only workers, but workmanship. Whether they are signatory or non-signatory companies, employees, craftsmen, however you want to put it, our work is looked at by professionals, whether it be Las Vegas, North Las Vegas, City of Henderson, whatever municipality it may be. The school district has their own inspection officials that look at the work. The quality is there whether it is a union or nonunion project.

If a signatory company is awarded a job and the job is a PLA and they hire a nonunion employee, that employee is paying into the benefits package, and it takes quite some time for that employee to be able to redeem the benefits; it could take years. If the particular project that this nonunion employee is working on does not run its course, then that nonunion employee that worked on the PLA project does not receive those benefits. It would be like paying for a benefit and knowing you probably would not get the benefit. Would you encourage someone you know to do that?

**Assemblywoman Spiegel:**

I was wondering if you have ever bid on a PLA and if you could talk to us about your experience with it?

**Arthur White:**

No, I have not bid on a PLA. Until recently, I did not understand how a PLA worked, but when this bill came up the Plumbing-Heating-Cooling Contractors (PHCC) did some research and gained some knowledge in the last couple of weeks, and I now understand how a PLA works.

**Assemblywoman Spiegel:**

Can you tell me what the PHCC is?

**Arthur White:**

It is an organization that was organized in 1883. It is nationwide and each state, if they wish, can have local chapters. Our Southern Nevada Chapter is for merit shops.

**Assemblyman Carrillo:**

You mentioned that this is more for unions, but the statement that SNWA made yesterday was that two out of the three contractors that they had on the third straw project on Lake Mead were nonunion. It is not so much that it is just union contractors that are running these jobs. I am confused about your statement as to what you are referring to. I am trying to figure out who is correct.

**Arthur White:**

I was not present yesterday. Unless I misunderstood, today I heard the Lake Mead water extraction program being touted as signatory only.

**Assemblyman Carrillo:**

I believe SNWA stated on the record yesterday that two out of the three contractors that they had were nonunion. It is not about a nonunion or union contracting issue. Something that concerns me is you talk about the quality of people and there are different facets to complicated jobs. Clark County said that they only use PLAs for jobs that are really critical, and they do not use them for every job. I am trying to understand where you are coming from regarding the qualifications of a lot of the people. I know PHCC involves nonunion merit open shops where they go through an apprenticeship program. You are comparing union and nonunion, and I do not think that is the issue. We are trying to make sure that we have people on our jobs who are qualified to make sure they are doing the job properly and in a safe manner to where we do not have any type of fatalities; in fact, someone else testified that there was a fatal incident on the third straw project on Lake Mead. I just want to make sure that this Committee understands that this is not union versus nonunion.

**Chairman Ellison:**

Everyone has testified. Mr. Warren Hardy, do you have any closing comments?

**Warren Hardy:**

I do. There has been a lot of testimony about whether PLAs are legal or not. There have been court cases that have gone both ways, and some are still being decided in the courts. This bill is based on national legislation. It has withstood challenge. Do we really need a court to tell us what is fair and what is unfair?

I want to talk about the fact that nonunion contractors get to work on these projects. They get to bid and work, that is true, and they have the opportunity. Many choose not to bid. The Southern Nevada Water Authority testified that two out of three on the third straw project on Lake Mead were nonunion, which is great news for the owner of the company. He got the job, but I would submit to you that it is not such great news for his employees, other than the seven employees who are going to get to work on it. We are talking about Nevada workers who live here and pay taxes and should have an opportunity to bid and work on projects that their taxpayer dollars are funding.

Mr. Danny Thompson brought up a very valid point about the complexity of the third straw project on Lake Mead, but it is part of the bid process; PLAs do not impact it. If a nonunion contractor cannot bring to the table the personnel and

the equipment necessary to complete the job, he will not get the job, but if they do, they should be allowed to use all of their employees.

Mr. Steven Ross spoke a lot about the wage issue, but that is not an issue because these are prevailing wage jobs. Wages are out of it. Everybody pays the same wage on the projects. Frankly, the argument he clearly made, that nonunion work is not as good as union work, is offensive and inaccurate. Are we to believe that about 85 percent of the construction work that is done in the United States of America is flawed and unsafe?

I would submit that this bill has little to do with the testimony the opposition has brought up. They have done a great job of talking about various issues that, in my opinion, have nothing to do with PLAs. What we are talking about here is the public policy of the state of Nevada when it comes to employment on public work construction jobs. Where is the public policy value in having a law that permits Nevada workers to be put out of work because of their union or nonunion affiliation? Where is the public policy value in allowing contracts in this state that have the net effect of causing Nevada workers and Nevada taxpayers to lose their benefits? Nobody talked about that, nobody brought forth the policy value in those two provisions and incidentally, those who testified for local government are not telling you the primary reason they like PLAs. They like them because they guarantee labor peace. Labor unrest is not only a tool of the unions; it is a creation of the unions. That is the primary benefit that brings the job in on time. Nobody testified to that, but I think under questioning they would admit that.

This bill is important to the open shop members of the associated builders and contractors who do the majority of construction work in Nevada. Focus on the policy: should we allow workers to essentially lose their jobs because their employer got a contract with the government, and should they be allowed to lose their benefits? That is the issue; the rest of this is all misdirection.

**Assemblywoman Neal:**

I respect you and I support the unions, but in my opinion, this was probably one of the hardest hearings that I have had because it placed me in the middle of my constituents, who are union and nonunion, and this was a prime opportunity to bring a piece of legislation that probably would not have even gotten a hearing if the Democrats were in charge. I do not want this session to be an opportunity for other people to take unions to the woodshed. Do not abuse what looks like a free-for-all to slam-dunk them on every turn. This is difficult for me because I am a policy person, and I want to deal with the issues. For my sanity, please, hopefully you can work out an amendment and meet in the middle. This is a 20-year fight, so maybe we can find the middle ground and figure out how you

can get what you need, and they can get what they need, and we can stop tussling over this. This is a problem.

**Warren Hardy:**

This is an issue that I have dealt with personally since 1993. Many sessions we have had legislation on this and have not been successful, so we are not bringing this because of the makeup of the Legislature. In addition, it is an issue I bring forward every time a PLA comes up in front of the local body to try to get some resolution. As a policy maker, I think Mr. Jack Mallory's testimony that this is not a contract or an agreement that the governing body is even a participant in, respectfully ought to give you pause as a policy maker. This is not about piling on the unions. As we testified to yesterday, under your questioning, we believe this is the middle ground. It is trying to get to the bare minimum of what our concerns are: the two issues that are problematic. I appreciate your observation. I am not antiunion: I can promise you that. I would oppose any legislation that sought to eliminate unions. I am pro open competition and right to work. It does not have anything to do with the unions.

**Assemblyman Carrillo:**

What percentage is open shop in Nevada?

**Warren Hardy:**

It fluctuates nationally between 85 percent to 88 percent and dips sometimes. I do not have the exact number.

**Assemblyman Carrillo:**

What about here in Nevada?

**Warren Hardy:**

I do not know. I will take Mr. Jack Mallory's testimony. I have never known him to lie, let us say it is 30 percent. With all due respect, I think it is beside the point.

**Assemblyman Carrillo:**

That is when we talk about union open shop and closed shop?

**Warren Hardy:**

I believe Mr. Jack Mallory, 70 percent nonunion and 30 percent union.

**Assemblyman Carrillo:**

This hits really close to home. I know many people who are out of work and working out of state. They have not seen their families in months; they come home when they can. I get the whole scenario and I understand what

Assemblywoman Neal said about taking the unions to the woodshed. When you tell me it is 70 percent versus 30 percent, I feel like we are going to make that number bigger. It is going to go to 75 percent, maybe 80 percent, until we get to 100 percent. I am wondering when it is going to stop, or is it ever going to stop?

I am a taxpayer, everybody in this room is a taxpayer, but ultimately we have to look at the bigger picture. How are we going to affect the lives of the middle class and how are we going to affect a lot of people who are trying to survive? Not every project is a PLA project. Not every project is a prevailing wage project. As for myself, I do not get the big projects all the time. I have to make whatever I can. I have worked union and nonunion. I have been on both sides of the fence and the thing is, when it comes down to it, all we are trying to do is provide for our families and trying to keep our families together instead of splitting them apart. I could go on forever. I respect the Chairman for giving us the time to indulge in this, and I respect you. You have been a friend and I appreciate that. I have a lot of friends and brothers and sisters in this room as well, and they are probably listening somewhere on the Internet too. I just want to say thank you very much and to everyone that is in here, I appreciate your time as well.

**Warren Hardy:**

I have a great deal of respect for you, Chairman Ellison, and your service to the state and the working men and women of Nevada. You are a valiant soldier in this fight and I appreciate that. We are on the same page. We want those who are out of state working to come back into Nevada to work, but we want them to be able to work on projects that their employers win. I will tell you when the journey ends for me personally: when the playing field is level and you are not forced to not take a job or lose benefits because you are a member of a nonunion firm. It is about equity and fairness. I just wonder, rhetorically, how long my friends in the unions would stand for a policy that had a reverse impact, which would allow them to use only seven of their own workers from the union hall and force them to hire seven members from the nonunion sector. I am wondering how long that policy would stand in this state. I would submit, not long.

**Chairman Ellison:**

One thing I would like to see is the Commerce Clause changed. I do not believe in unfair business practice, and we have people from out of state bidding on our projects. I would rather see the Commerce Clause changed and take the 5 percent up to 10 percent to keep our Nevada workers who are paying for our roads and buildings. I have been trying to find a way to work this into a bill. We need to do that to protect the workers in Nevada.

**Warren Hardy:**

You might have to take that one to Congress.

**Assemblyman Trowbridge:**

I agree with the 10 percent for local bidders, and I agree with you, Mr. Hardy. This is a public policy issue we are debating. Yesterday you agreed with me when I commented that less government is better government and what government we do have is best at the local level. Across the state we have public bodies, county commissions, city councils, authority boards, water districts, et cetera, that have been elected to represent the interests of the people. By taking action on A.B. 159, as the state Legislature, we would be telling those bodies that we do not believe they know what is best for them. We would be taking away their ability to conduct business as the way they see fit. It limits the ability of political subdivisions to enter into contracts that are in the best interests of their citizens, residents, and taxpayers. I just do not think it is right that we overrule them.

**Warren Hardy:**

I served several sessions on the Senate Committee on Government Affairs, and I would submit that the statutes are full of provisions that direct local government. Local governments that are permitting these kinds of PLAs are permitting workers to be unemployed, taken off their jobs, and they are permitting them to lose their benefits. That is a global policy decision that the state Legislature should address. I have tried for 20 years to get the local governments to be fair and equitable in this without success. After that, I came here to try to do it as a policy of the state. I respect what you have to say and I agree, I do not think there is anyone more supportive of home rule than I was when I was the Chairman of the Senate Committee on Government Affairs. It is a philosophy I believe in deeply, but I also believe that there is a role for the state Legislature in protecting the rights of the people of the state of Nevada.

**Assemblyman Munford:**

I commend many of the comments that Assemblywoman Neal made and in some ways, we share constituents. I made a statement yesterday in terms of totally supporting this bill. Last night I went to an event, and I have never been confronted so much since I have been an Assemblyman. A lot of people talked to me about the statements I made yesterday. Some of the black members of the union came up to me and talked to me. After the event was over and I went home, it was like a tug-of-war. It was a sleepless night. I told Mr. Warren Hardy in the elevator that I am tired because I had a tough time sleeping last night. I am sitting here now and listening. I have heard this debate for many sessions, and it is still a tug-of-war. It is a tough, tough decision to make. I am not committing myself right now; I am just saying it is

one of the toughest things I have had to confront since I have been serving. Everybody wants the good aspects of a job in terms of the benefits. Everybody wants to live a middle-class life, and the bottom line is about people working and making a living and putting food on the table. That is what makes this so tough.

**Warren Hardy:**

I have stood ready and have been ready for 20 years to negotiate an agreement on this issue. There is more than one way to deal with things. I continue to stand ready to find a compromise that assures that all Nevada workers can work, and they will not lose their benefits. I stand ready to have discussions with anybody who is in opposition to this bill.

**Chairman Ellison:**

I saw you talking with some people this morning, and it looked like you were discussing issues on this, so the door is not closing. If you come to an agreement, good, if not, we will take it to a work session and go from there. You never say die in this building.

**Jered McDonald:**

We received a written statement ([Exhibit E](#)) from the Las Vegas Convention and Visitors Authority. It is on the Nevada Electronic Legislative Information System and available to everyone.

**Chairman Ellison:**

I will close the hearing on A.B. 159. If anyone here for public comment? [There was no one.] We are adjourned [at 10:13 a.m.].

RESPECTFULLY SUBMITTED:

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Jordan Neubauer  
Committee Secretary

APPROVED BY:

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Assemblyman John Ellison, Chairman

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



**EXHIBITS**

**Committee Name:** Committee on Government Affairs

**Date:** March 12, 2015

**Time of Meeting:** 8:37 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 159	C	William Stanley / Southern Nevada Building and Construction Trades Council	Prepared Text
A.B. 159	D	E. Lee Thomson / Clark County	Prepared Text
A.B. 159	E	Luke Puschnig / Las Vegas Convention and Visitors Authority	Written Statement