

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

**Seventy-Eighth Session
April 9, 2015**

The Committee on Government Affairs was called to order by Chairman John Ellison at 8:09 a.m. on Thursday, April 9, 2015, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website: 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; 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 Jim Wheeler
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

Assemblyman James Oscarson, Assembly District No. 36
Assemblyman P.K. O'Neill, Assembly District No. 40

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Eileen O'Grady, Committee Counsel
Jordan Neubauer, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Joni Eastley, Assistant County Manager, Nye County
Donald L. Cavallo, Public Administrator, Washoe County
Michael Rebaleati, representing Nevada Public Agency Insurance Pool and
Public Agency Compensation Trust
Linda Bromell, Private Citizen, Amargosa Valley, Nevada
Anne A. Rose, Private Citizen, Amargosa Valley, Nevada
Jeff Fontaine, Executive Director, Nevada Association of Counties
John Fudenberg, D-ABMDI, Government Affairs, Assistant Coroner,
Office of the Coroner/Medical Examiner, Clark County
Daniel Rotter, P.E., Engineering Manager, Public Works Department,
Carson City, Nevada
Steve K. Walker, representing Lyon County, Storey County, and Douglas
County
Tray Abney, Director of Government Relations, Chamber of Commerce of
Reno, Sparks, and Northern Nevada
Todd Koch, representing Building and Construction Trades Council of
Northern Nevada
James Sala, representing Southwest Regional Council of Carpenters
Richard Daly, representing Local 169, Laborers' International Union of
North America
Danny L. Thompson, Executive Secretary-Treasurer, Nevada State
AFL-CIO
Jack Mallory, representing Southern Nevada Building and Construction
Trades Council
Brian Reeder, Government Affairs Coordinator, Nevada Chapter, The
Associated General Contractors of America, Inc.
Joanna Jacob, representing Las Vegas Chapter, The Associated General
Contractors of America, Inc.; and Nevada Contractors Association
Jesse A. Wadhams, representing American Insurance Association

Jeanette Belz, representing National Association of Surety Bond Producers

Gustavo Nuñez, P.E., Administrator, State Public Works Division, Department of Administration

Robert Nellis, Assistant Director, Administration, Director's Office, Department of Transportation

Ernest E. Adler, representing Nevada Rural Housing Authority

Chairman Ellison:

[April 8, 2015, meeting was reconvened and adjourned at 8:09 a.m.]

[Roll was called. Committee rules and protocol were explained.] We are hearing four bills today and have four bills on the work session. We are going to move Assembly Bill 280 to tomorrow. If there are bills that members do not have concerns about, we are going to try to schedule everything for work session tomorrow. We only have one day to get everything done. I will open the hearing on Assembly Bill 293.

Assembly Bill 293: Revises provisions relating to public administrators. (BDR 20-168)

Assemblyman James Oscarson, Assembly District No. 36:

I appreciate the opportunity to be here before your Committee, and I appreciate your indulgence in allowing us to present this bill. I sponsored this bill on behalf of Nye County. Assembly Bill 293 attempts to address some concerns that have arisen with public administrators. [Continued to read from prepared text ([Exhibit C](#)).]

We felt like it was important to statutorily address some of these issues. We want to put things in legislation that might be able to help us prevent and protect those who cannot protect themselves. [Continued to read from prepared text ([Exhibit C](#)).]

Joni Eastley, Assistant County Manager, Nye County:

Assembly Bill 293 was requested by Nye County for the reasons that were detailed by Assemblyman Oscarson. We are grateful to him for bringing this forward for us. Yes, Nye County has had numerous problems in the past with the public administrator function. With requesting this bill, it was our goal to provide for more accountability and oversight of the public administrator function, which tends to somewhat operate outside of county government. I do want to apologize to county administrators around the state. It was not our intention to introduce a one-size-fits-all bill that would only fit Nye County and hurt the other counties. There has been a friendly amendment ([Exhibit D](#))

offered by Mr. Cavallo from Washoe County and another friendly amendment ([Exhibit E](#)) offered by Mr. Rebaleati, who is representing the Nevada Public Agency Insurance Pool and the Public Agency Compensation Trust. We agree with the amendments.

Section 1 of this bill requires that a deputy public administrator be held to the same standard that a public administrator be held to when the public administrator runs for that office, specifically: be a qualified elector of the county, be 21 years of age or older, not have been convicted of a felony for which his or her civil rights have not been restored by a court of competent jurisdiction, and not have been found liable in a civil action involving a finding of fraud, misrepresentation, material omission, misappropriation, theft, or conversion. The language in the current statute does not hold the appointed deputies to the same standards that the public administrator is held to.

Section 2 of the bill requires that a public administrator who has been made an administrator of the estate obtain permission from the board of county commissioners before he or she removes the decedent's property from the county to be sold. There is a friendly amendment that has been offered to this section and we agree with it.

Finally, section 3 authorizes the board to take any appropriate action that it deems necessary to resolve any complaints that are brought against the public administrator. Currently, boards of county commissioners have the authority to order an investigation of a public administrator if a complaint is brought, but they have no authority to act on those complaints. Section 3 also requires the public administrator to submit an annual independent audit report to the board of county commissioners. A friendly amendment has been added to that also.

Chairman Ellison:

Are there any questions from the Committee? [There were none.]

Donald L. Cavallo, Public Administrator, Washoe County:

This is my 25th year in office, so in some sense I have put myself here as a subject matter expert. I have no objection to the first changes in the bill, which require that the deputy public administrators be held to the same standard as the public administrators.

The next portion of the bill speaks to removing the property out of the county where the decedent resides. I have added in a friendly amendment ([Exhibit D](#)). Essentially, I have set it up so that in counties with populations of 100,000 or less, the board of county commissioners may set an ordinance in place requiring the public administrators to adhere to that part of this amendment. Certainly,

we have issues arise where an individual might live in Washoe County and own property in other counties, and we have to transport the property to safeguard and secure it during the process. Once we have been appointed by the district court to be the fiduciary, personal representative of that estate, we have the obligation to do what is in the best interest of the estate.

I have spoken with the Storey County public administrator, who was concerned with this bill in the sense that there were no storage facilities available on county property. They would have to drive down Geiger Grade and into Washoe County to store the property of the deceased. It can be very cumbersome every time they have to do something like that. When you are fulfilling your court-ordered fiduciary obligation to administer an estate, you have to go before the board. We put the change in the language to make it an ability of the board of county commissioners to set it up in the particular counties which are having these types of problems. I understand that problems are arising in some of the smaller counties. We, Washoe County, and I know John Cahill, the Public Administrator of Clark County, would be happy to be of any assistance.

The next change is the board of county commissioners being able to investigate any complaints brought against the public administrator and take appropriate action as deemed necessary. I am in full support of this part.

The last change is for the board of county commissioners to order an audit of the public administrator's office. I submitted a friendly amendment ([Exhibit D](#)) to that particular part of the bill stating again that in counties that have a population of 100,000 or less the board of county commissioners may enact an ordinance to require it.

I have attached a fiscal note for my office. I checked with the certified public accountant (CPA) firm that I deal with in Washoe County, and to complete a random audit of my office on a yearly basis would cost \$150,000, and a full audit would cost over \$250,000. The way the bill is originally written says, "The public administrator is responsible for paying the costs of the audit." It does not say whether that is as in Clark County and Washoe County where the public administrators are funded and supported by the county's general fund, or as in the smaller counties where they are not supported by the county's general fund. Would the individual themselves have to pay for the audit annually?

I believe Ms. Eastley could attest to this fact, and all of you know too, that it is already difficult enough to get people to run for this office in some of these

counties. If you are going to put an additional financial burden on them just to become an elected official, that could be cumbersome.

In my friendly amendment ([Exhibit D](#)), I have added an additional increase under *Nevada Revised Statutes* (NRS) 253.0403. This is a statute that deals with the public administrator's ability to file an affidavit with the district court for estates that are valued under \$20,000. Currently, Assembly Bill 130 is increasing that number for family members to do an affidavit of entitlement, so now it is \$100,000 for the surviving spouse of the deceased and \$25,000 for other participants or people utilizing this affidavit. We have always mirrored the public administrator's affidavit to the general affidavit, so I am asking to increase that from \$20,000 to \$25,000.

Chairman Ellison:

Does the Committee have any questions?

Assemblyman Stewart:

Is the Clark County Public Administrator on board with the amendments?

Donald Cavallo:

Yes he is. I actually expected him to be in Las Vegas this morning to testify, but I do not see him there. I have communicated with him and he supports this.

Assemblyman Stewart:

What do you do with the audit in your amendment? Do you do away with it?

Donald Cavallo:

I believe we put it to be at the pleasure of the board of county commissioners in populations of 100,000 or less to order the audit and to determine who pays for it: the county's general fund or the individual public administrator.

Assemblyman Stewart:

In counties of a population of 100,000 or more, who pays for the audit now?

Donald Cavallo:

Currently, there is not an audit. The only counties that have a population over 100,000 are Clark County and Washoe County. They are both funded by their county's general fund, so we submit a budget to the county every year for our service, supplies, and staff, and the district court oversees our probate processes. At this time, I have approximately 125 open probates in the district court, and we average 250 to 275 cases a year. The audit, as I showed in my fiscal note, would be extremely expensive. In a sense, the district court does audit all of our accounting on all of the probates we do anyway.

Chairman Ellison:

Will the county be doing the audit?

Donald Cavallo:

The way the original bill is written requires that a CPA do the audit. I am not sure that there are CPAs in all of the counties, so I would think it would be sent outside to an independent accountant. That is why the cost would be so high. If it were done by an internal audit system through Clark County's Comptroller's Office or Washoe County's Comptroller's Department, it would skew the number of what an audit would cost. It would be more man hours as opposed to out-and-out costs.

Assemblyman Wheeler:

I certainly do not have a problem with an audit. I think everyone should be held accountable. Why would we want a group of elected officials telling you what you can and cannot do? Why in the world would you have an internal audit? An internal audit instead of hiring an outside agency that is completely unbiased is kind of like having the fox watch the hen house, is it not?

Donald Cavallo:

I agree with your analysis, yes. That is why I went to an outside CPA firm to get information on what an outside audit would cost. There had been one done in the office of the Washoe County Public Administrator around 1994, and it was completed by an outside audit accounting firm.

Elected officials telling other elected officials how to function and do the duties of their office is certainly a concern. In some ways, some of the other bills and amendments are trying to set policies and procedures for the public administrators, but it is the elected official who is in charge of running the office.

Assemblyman Wheeler:

I think setting in regulation what the public administrator as the elected official can do is a good idea, just as we set in regulation what commissioners can do, et cetera. I do not think it is a very good idea to set in regulation that one body of elected officials can set regulations for another body of elected officials.

Donald Cavallo:

I would agree. Our office in Washoe County has prepared and assembled office policies and procedures. We have manuals of the obligations and job tasks for every position in our office. They are all overseen by myself, as the elected official. We certainly ask for input. I know the smaller counties do not have the resources that the larger counties have. Every year my office contacts every

public administrator in the state to make sure it is the same person holding the office. We have a website where the information is accessible. We offer assistance to any of the offices. I do not want them to think that I am trying to tell them that this is the way it should be run. You do not need to reinvent the wheel every time and can take the best practices from one county and utilize them in another county, which I think it is a great idea.

Joni Eastley:

I understand your concern about boards of county commissioners setting regulations for other elected officials, but I would like to bring your attention to the existing statute, NRS 253.091, which requires that the board of county commissioners shall establish regulations for the form of any reports made by the public administrator. That is already some limited regulatory authority that is held by the board of county commissioners in statute. The only thing we are asking for in this bill is for greater oversight.

I agree with Mr. Cavallo about the cost of an audit, but currently there is no audit function at all and even the county treasurer is audited. I agree that cost wise it might not be the best that a CPA perform the audit. I realize it would be very expensive. I appreciate Mr. Cavallo's amendment on the audit. Boards do have some regulatory authority now.

Assemblyman Wheeler:

I appreciate your answer, and I think the key words were "some limited."

Joni Eastley:

Yes.

Chairman Ellison:

Looking at the fiscal note ([Exhibit F](#)) on the Nevada Electronic Legislative Information System (NELIS), it shows no impact to Carson City County, the impact to Churchill County would be \$15,000, the impact to Clark County would be about \$15,000, and the impact to Washoe County would be \$250,000. It looks like a big increase between Clark County and Washoe County from \$15,000 per year to \$250,000 per year. Can you elaborate on that?

Donald Cavallo:

To be blunt, no, I cannot tell you the difference. I met with Ronald Milligan of Cupit, Milligan, Ogden & Williams, and these were the numbers they gave me for Washoe County. As I stated earlier, the number of cases my office handles is quite a large volume and it was put into two categories, a random sample and a full audit. I cannot answer why Clark County's fiscal note is smaller. If there

is anything I can do to get that information, I would be happy to get it back to the Committee.

Michael Rebaleati, representing Nevada Public Agency Insurance Pool and Public Agency Compensation Trust:

We have a friendly amendment ([Exhibit E](#)) concerning NRS 253.0405. There was one sentence added to section 3, subsection 3, that is proposed in [A.B. 293](#). I had this amendment written and reviewed by the attorneys that represent public administrators through the Nevada Public Agency Insurance Pool and Public Agency Compensation Trust. This is clean-up language to help clarify what the public administrator is responsible for, and the limits on the bond are an important portion that should be added.

Chairman Ellison:

Does the Committee have any questions? [There were none.] Those who are in favor of the bill in Las Vegas please come forward. Also, you did not mark if you are in favor, opposition, or neutral, are you in favor of the bill?

Linda Bromell, Private Citizen, Amargosa Valley, Nevada:

This bill is better than nothing, but there needs to be a lot more done.

Anne A. Rose, Private Citizen, Amargosa Valley, Nevada:

I agree.

Linda Bromell:

This bill is a step in the right direction. At least we are going to have background checks done on the deputy public administrator to ensure they are not a felon. The outside audit might help, but the biggest problem is the absolute lack of oversight. These people go into the homes of the deceased and go through all of their personal belongings. If they are honest, that is wonderful; if they are not, it is an absolute license to steal. [Continued to read from prepared text ([Exhibit G](#)).]

Or at the minimum, if a sheriff deputy contacts a relative, there should be permission granted for the public administrator coming on the property.

Anne Rose:

I just want to say that I feel the freedom of the public administrator is very unfair. I do not want anyone coming on our property if my husband and I both die at the same time. We have a young man who lives with us and is our executor of our estate. If our public administrator follows true to form, he would be told to leave our property. I do not want strangers going through my private things and taking what they feel is necessary. Our friend is like a son,

and he knows how to take care of everything including securing our home, which is his home too. What can I do? This whole thing with the public administrator seems so un-American. I cannot believe what is going on in Nye County. I would like to know why there is not a database. I and all of the people I spoke to in Amargosa Valley would be more than willing to pay a fee to have our names on file. We do not want them entering our property.

Chairman Ellison:

When they do an audit of the material that is removed from the house, where is the inventory list?

Linda Bromell:

I have a meeting with the new district attorney later this afternoon to find out if they even keep records.

Chairman Ellison:

Is there anyone else in favor of this bill?

Jeff Fontaine, Executive Director, Nevada Association of Counties:

We support this bill with the amendments and appreciate the proponents working together to create legislation that increases accountability and provides for the protection of the counties, but more importantly provides for additional and necessary protections for the families of the deceased.

Chairman Ellison:

Have the counties provided concern on the unfunded mandate on the audit?

Jeff Fontaine:

It is not a concern we have at this point.

John Fudenberg, D-ABMDI, Government Affairs, Assistant Coroner, Office of the Coroner/Medical Examiner, Clark County:

We also support the bill with the proposed amendments.

Chairman Ellison:

Is there anyone else in favor of A.B. 293? [There was no one.] Those in opposition please come forward.

Donald Cavallo:

I received the amendment ([Exhibit F](#)) from Nevada Public Agency Insurance Pool and Public Agency Compensation Trust about 36 hours ago and did not have much time to review it. I have some concerns over it. They are attempting to create policies and procedures for the offices themselves. I would like the Committee to look at that. That is the only opposition I have to this bill.

Chairman Ellison:

You say you are going to review it and make an amendment?

Donald Cavallo:

The first change is to NRS 253.025. It adds additional language to the bonding aspect of the malfeasance of the office. It states the public administrator and/or his deputy are not the final policy makers of the county of which they serve. I would agree in a sense with that statement that we do not make policy for Washoe County, but we do make policy and procedures for the operations of the office of the Washoe County Public Administrator. I have concerns about the verbiage, and maybe it can be changed slightly to accomplish what they are looking for. I understand the Nevada Public Agency Insurance Pool and Public Agency Compensation Trust are the organizations that do a lot of bonding for the public administrators in the state if not the nation. My bond within Washoe County is the second highest bond of any required department. I have over a quarter-million-dollar bond in place at this time, even though the statute only requires \$10,000 or more.

The second part of the amendment ([Exhibit F](#)) to NRS 253.0405 is where I have concerns. It is essentially trying to determine policies, procedures, and operations of the distribution and liquidation of the assets of the office. This conversation can take place outside with the representative for Nevada Public Agency Insurance Pool and Public Agency Compensation Trust to try to make it more palatable.

Chairman Ellison:

We are going to have to resolve these issues because tomorrow is the deadline. We need to see if we can figure out the amendments. We do not want one to ruin the other. Can you get with them today?

Donald Cavallo:

I understand. This is a new process for me. Is it possible that these friendly amendments can stay with the bill and once it goes over to the Senate, we can work on it? I know about the deadline, and I do not want to hinder this bill from going forward because I think it is important in many aspects.

Chairman Ellison:

I agree.

Assemblywoman Neal:

I am looking at ([Exhibit F](#)) where it says, "NRS 253.0405." You have circumstances under which a public administrator may secure the property of the deceased, but it is before the issuance of the letters of the administration for an estate and before the petitioning. Excusing the statement that I have to stand on my husband's dead body to get relief, they are saying that is the problem, correct? You enter the house without the petition and the letter of administration and in the act of identifying, securing, and protecting, you may be taking tangible and intangible assets for yourselves and walking out of the house, and no one has an inventory of what it is that was there. That is the problem. The amendment does not speak to that problem.

Donald Cavallo:

This is an amendment by Nevada Public Agency Insurance Pool and Public Agency Compensation Trust; I am the Washoe County Public Administrator. We do enter residences prior to the issuance of letters of administration. We do a number of things that the statute gives us authority to in securing and protecting the property of the deceased. I am fortunate in Washoe County to have a staff of myself and nine individuals. All of our deputies go to a death scene in teams. We photograph an entire residence before we go in. If we remove anything, it is inventoried and put into safekeeping. I am talking about Washoe County. Maybe this is not what other counties do, and I understand because of staffing it can be a problem. Language to fit for 1 or 2 counties is not specifically beneficial to all 17 counties. I think it can be cleaned up a little bit.

Assemblywoman Neal:

What were your amendments that help the counties that are having the problem? This is not the first time this bill has come to the Assembly Committee on Government Affairs. Apparently it is an issue of public administrators in these counties stealing people's belongings. We had this bill last session and in 2011, so it is an ongoing issue. Whatever is happening is not being fixed. Even though it may not be an issue in Washoe County, it is an issue in the smaller counties. There is a need to try to figure out how to get the right person for the right job. Who is going to be truthful and not take people's belongings? I am just trying to get an understanding on what your middle ground is that would satisfy a systemic issue of quality individuals who may be stealing.

Donald Cavallo:

Apparently I am not going to make any more friends from this point forward. The best way is to compensate the public administrators in those counties. I understand that funds are tight everywhere, but there needs to be a system within those particular counties to compensate public administrators for their duties. Under NRS Chapter 253, there is a way to compensate them. The public administrator can submit a bill to the board of county commissioners for services rendered in performance of their duties and be paid out of the county general fund. I envision that to be one of the smaller counties. Where these things have occurred in the past, just let the public administrators do their jobs and do it honestly, distribute the personal property back to the family members once they have the estate released back to them, keep time logs, mileage logs, gas logs, and hourly logs, and submit that bill to the board of county commissioners. It is in the NRS already. I think the remedy is there.

About 15 years ago, I went to Lyon County and testified that it was one way to remedy the problem they were having at the time. It is for the palate of their board of county commissioners and the budget as to what should be done. I just want the Committee to know I have concerns about the language. I think if we could get the bill moved along, we could meet again as a collective group and try to work this out.

Assemblyman Stewart:

I would like to know if Clark County has the same concerns as Washoe County.

John Fudenberg:

I have been in contact with our public administrator, John Cahill, and he does express the same concerns that Mr. Cavallo has in regard to the amendments.

Assemblyman Stewart:

Please work with Washoe County to get satisfaction from the two larger counties.

John Fudenberg:

We will work closely with them to try to get this straightened out.

Chairman Ellison:

Do you have a problem with moving the bill forward and then trying to clean it up in the Senate?

John Fudenberg:

No, we do not have a problem with that.

Chairman Ellison:

If anyone else is going to testify in opposition, please come forward. [There was no one.] Is anybody neutral? I do not see anyone; therefore, can the presenter of the bill please come back up to the table?

Joni Eastley:

I want to thank the gentlemen for their amendments. I am certain if we can get this out of Committee, we can reach resolution on their issues and produce a bill that will put us on the path to correcting some of the problems we have had with the function.

Chairman Ellison:

If all of the counties could work together and make sure it is not a heavy unfunded mandate, that would help a lot.

Joni Eastley:

I think that is absolutely doable, particularly with the amendment ([Exhibit D](#)) that Mr. Cavallo recommended, which was simply to delegate the authority to the board of county commissioners to request an audit if they believe one is necessary.

Chairman Ellison:

I will close the hearing on Assembly Bill 293.

Assemblyman Wheeler:

Due to the suspension of the 24-hour rule in yesterday's floor session, I would like to make a motion on Assembly Bill 293.

Chairman Ellison:

I will take a motion.

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 293.

ASSEMBLYMAN SILBERKRAUS SECONDED THE MOTION.

Is there any discussion?

Assemblywoman Spiegel:

Can somebody please clarify what amendment?

Assemblyman Wheeler:

The amendment ([Exhibit D](#)) from Mr. Cavallo.

Assemblywoman Joiner:

I saw the amendments for the first time on NELIS this morning, and there are some pieces that are still unclear. In concept, I support the idea of what the bill is trying to do, so I would like to reserve my right to change my vote on the floor, but I will vote for it today.

Chairman Ellison:

Is there any other discussion? [There was none.]

THE MOTION PASSED. (ASSEMBLYMEN MOORE AND
WOODBURY WERE ABSENT FOR THE VOTE.)

Assemblyman Wheeler, will you do the floor statement?

Assemblyman Wheeler:

Yes, sir.

Chairman Ellison:

I will open the hearing on Assembly Bill 172.

Assembly Bill 172: Requires contractors and subcontractors on a public work to use the federal E-Verify system to verify eligibility for employment for workers on the public work and revises prevailing wage requirements for public works. (BDR 28-565)

Assemblyman P.K. O'Neill, Assembly District No. 40:

I want to thank you, Mr. Chairman and Committee members, for allowing me to present to you today Assembly Bill 172, proposed legislation dealing with prevailing wage threshold and bidder's preference. [Continued to read from prepared text ([Exhibit H](#)) and referred to amendment ([Exhibit I](#)).]

Section 3.5, subsection 3, paragraph (b), raises the bidder's preference from the current 5 percent to 7.5 percent to ensure our in-state labor force has a preference in bidding for all public work projects.

Assemblyman Wheeler:

You lowered the threshold from \$5 million to \$350,000. What was the reason?

Assemblyman O'Neill:

I met with several of the labor groups, contractors, and representatives and did some research. In looking at both the Consumer Price Index several years back when it was established in 1985 and looking at the number of projects we have had that fell within the price range of \$350,000, I came to the agreement that

\$350,000 would be a reasonable amount. Five million was excessive. With the additional research and study, I would have trouble justifying \$5 million. I want to be honest to you all here, our taxpayers, and the construction industry.

Assemblyman Wheeler:

How many projects fall under \$350,000 versus how many go over \$350,000?

Assemblyman O'Neill:

I was unable to obtain that information. The state keeps the records. We put requests out to the local agencies, and they did not respond.

Chairman Ellison:

For ten years we have been trying to address the issue of the threshold. The \$100,000 mark went to \$500,000, then it lost and went to \$250,000, and then it went back up as the costs of materials changed and the cost of labor went up. I think it is a great compromise. When I first read the bill with the threshold at \$5 million, it about killed me. I thought it was extreme, but I really believe that \$350,000 is a great starting point. It works with both union and nonunion, and it helps the counties and cities a lot. These are small projects. I commend you for dropping down the threshold to where it is reasonable.

Assemblywoman Spiegel:

I understand your intent to tie the limit of the cost back to the Consumer Price Index to account for inflation, but when I go to the U.S. Inflation Calculator and plug in \$100,000 in 1985, it calculates using actual inflation and in 2015, the same item would be worth \$218,143.12. There is a big difference between \$218,000 and \$350,000. Can you speak to the discrepancy between the actual increase in inflation and the number you have in this bill?

Chairman Ellison:

When \$100,000 was implemented in 1985, it was about \$150,000 too low. Projects were killed because they were not able to complete them based on the \$100,000 limit. We have been trying to raise it for ten years. I think this is a great compromise. It is something everyone can live with.

Assemblyman O'Neill:

Ditto.

Assemblywoman Neal:

Section 3, subsection 3, says, "A unit of the project must not be separated from the total project, even if that unit is to be completed at a later time, in order to lower the cost of the project below \$350,000." What is the effect of this on subcontractors? It says, "Any contract for a public work whose cost is

less than \$350,000." The unit of the project must not be separated from the total project. Typically, this would have been an unbundling if you had kept the threshold at \$5 million, correct? You would have been able to break up the project and allow multiple people to participate. What is the effect now with subcontractors who want to get involved?

Assemblyman O'Neill:

I do not think there will be any effect. The bid is still \$350,000. Part of that was at a time where people or some of the government agencies were piecemealing things out to stay under the threshold and were subverting the intent of the law. It is my understanding that it would be the total \$350,000. I would like to have Legal respond.

Eileen O'Grady, Committee Counsel:

The intent of this section was to make it so the contract cannot be broken up into pieces to get under the threshold, not the subcontract parts of it.

Assemblywoman Neal:

A small subcontractor who has never participated and maybe had a lower capacity can still bid for the project and it will not be an issue that it is no longer broken up? I think there is another statute under highways that says \$250,000 in certain public works for a person to participate. Is there a relationship there? The dollar amount is lower.

Chairman Ellison:

I think the bill is intended so they cannot piecemeal a project. With 90 percent of the projects, that is what they will do. They take it to the board of county commissioners or the city council, tell them they have \$350,000 for a project and that is the amount, period. If they get caught piecemealing the project, they get in trouble.

Assemblywoman Neal:

Page 3, line 11, is new language, correct? The strikeout of 5 [percent] and insertion of 7.5 percent is new.

Assemblyman O'Neill:

I do not see that.

Chairman Ellison:

It says, "Not more than 7.5 percent higher than the bid submitted by the lowest responsive and responsible bidder." This is about the bidder preference. It gives advantage to local contractors in the state. He is raising the threshold to give our local contractors preferential treatment, is this correct?

Assemblyman O'Neill:

Yes. That is the bidder preference. In-state businesses and contractors will actually get an additional 7.5 percent added to improve their chances at being awarded the bid.

Chairman Ellison:

I believe that is the maximum under the Commerce Clause, correct?

Assemblyman O'Neill:

I found out that you can set it as high as you want if you can justify it in court. In my discussion with Legal, who may give a more educated option, they said that if it is challenged at 7.5 percent, my argument would be that we have a large number of unemployed contractors and construction workers here in the state. The increase to 7.5 percent would allow them to get back to work and not bring in out-of-state businesses. I think it is justifiable, and I think I can argue it and defend the 2.5 percent increase to protect our local labor force.

Chairman Ellison:

I wanted to move it up to 10 percent, and I was told that we could not do that because of the Commerce Clause. If there is ever a way to get it up to 10 percent, I would want to do that. The reason is that the taxpayers are paying for the roads, infrastructure, schools, et cetera in their cities. I am glad we are changing it to 7.5 percent, and eventually I am hoping we can get it to 10 percent.

Assemblyman O'Neill:

I was thinking and discussing 10 percent, but in discussion with some of the contractors, they felt that would harm them in the end. That is how I arrived at 7.5 percent.

Assemblywoman Joiner:

We have been talking a lot about numbers and the language of the bill; for me, the whole picture has been lost. You mentioned that half of all of the public projects would be at or below \$350,000, correct?

Assemblyman O'Neill:

Yes, 44 percent or 619 projects in the last several years were under \$300,000. The next range was \$300,000 to \$500,000, which was almost 18 percent more. That is why I said about half were under the \$350,000 threshold.

Assemblywoman Joiner:

What would the real impact of this be? It is interesting to me that you say half of the projects in our state would fall under this, as if you are proud of that.

For me, when I hear half of the state projects would fall under this threshold, it means those projects are exempt from paying a decent wage to people. I just want to make sure I understand the prevailing wage part of this. I see half of our construction workers working on our projects and not getting a decent living wage, correct? Does this exempt them from prevailing wage? I see families losing money in this. I just want to make sure the actual impacts are on the record. Half of our public works would not have to pay people a decent salary, correct?

Assemblyman O'Neill:

I do not mean to sound argumentative with you or play semantics, but what do you describe as a decent wage? I know several people in the construction business that are not receiving prevailing wage and are still living fairly well in regard to the rest of the community. I think this is a different discussion on what a decent living is. A contractor wants to hire and provide the best work available with the best workers available and that will set the price. I think we are going to play a game of semantics, and I do not want to do that. I believe that \$350,000 and under still require bidding and the work will still be done. It is allowing more efficient use of our taxpayers' money.

Assemblywoman Joiner:

Thank you, but this removes the requirement that there be any standard on the wages, correct? It may be that you know people who make a good wage.

Assemblyman O'Neill:

Yes, but standards are set by the labor force and the work itself. It is a commodity, and I do not think government should be dictating that in this sense.

Assemblyman Wheeler:

I am wondering why construction workers should be held to a higher standard of wage than other workers in our state, including state workers. Personally, I would like to see them get back to work. It is one of the jobs and industries that were hit hardest by the recession, and there are still quite a few people who are not working. I am assuming that if we save some money on this, there will probably be more projects. In other words, we are going to put more people back to work at a good wage instead of an excessive one, is that what you are looking for here?

Assemblyman O'Neill:

I appreciate your statement, yes. I want to get people back to work.

Assemblyman Wheeler:

It is not a thing where the construction workers are going to make a fortune or nothing at all. You are going to get people back to work and give them some self-respect and self-worth and get our economy moving again. I want to thank you for that.

Chairman Ellison:

Many people think that \$350,000 is a large amount. Try to build anything for \$350,000 right now. You cannot construct a building. These are projects where the cities can go in and take out sidewalks or put in a streetlight, they can be minor things, but everybody in the world can bid on the projects. They are still high wages. It just gives the cities and counties a little bit of operating room to get projects they normally would not be able to. This is what it comes down to. These are small projects.

Those in favor of the bill, please come forward.

Daniel Rotter, P.E., Engineering Manager, Public Works Department, Carson City, Nevada:

I am testifying in support of this project. I thought Assemblyman Wheeler had a question about some of the other surrounding municipalities and their projects. I did not come prepared with numbers, but I did a back-of-a-napkin-type quick calculation. I think in any given calendar year we do about 40 projects, and I think about half of those projects would fall below \$500,000, but I think 44 percent of projects below \$350,000 is a good number for Carson City.

Steve K. Walker, representing Lyon County, Storey County, and Douglas County:

Lyon County, Storey County, and Douglas County are all supportive of this bill.

Chairman Ellison:

Storey County is a small community and trying to get people out there to work on projects is almost impossible, but when you do they are not big projects; \$350,000 is very small. You could probably come in here and gut and redo this room for probably \$150,000. It is a small room. It goes to show you that it is not a lot of money.

Steve Walker:

I agree with you, but I want to say that in your profession, you would have much more experience than I would. You have a better feel for the cost of the project.

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

We think this is a very reasonable, balanced proposal. This bill will allow for more projects to be completed and more jobs to be created. Zero dollars per hour is not a living wage. More people will be put back to work. More people will be able to put food on the table. More people will be able to take care of their families. We support this bill.

Chairman Ellison:

Is anyone else in favor of the bill? [There was no one.] Is anyone opposed to the bill?

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

Mr. Chairman, I heard you say how shocked you were when you first saw the \$5 million threshold, and we too were shocked. I can tell you that workers, such as painters, floor coverers, slurry sealers, contractors, et cetera, through this recession have held on by their fingernails and barely provided for their families on the projects between \$100,000 and \$350,000. Five million would make them think they need to possibly think about moving to another area of the country where they can continue to survive. I would suggest that the projects that fall between \$100,000 and \$350,000 are not chump change. I understand maybe in the electrical world \$350,000 is a small project, but I have to tell you when you are repainting a school and that is the only contract, \$100,000 is a good-sized project.

Chairman Ellison:

We are not talking just electrical, we are talking painting, framing, drywall, flooring, et cetera. When you start doing a small project and you bring all the trades in, it does not take long to burn up \$350,000. I thought the other good trade-off was raising the bidder's preference from 5 percent to 7.5 percent. Are you a painter?

Todd Koch:

I represent painters. Even at \$350,000, we can all assume that half of the work that is currently prevailing wage is not going to be prevailing wage anymore. What we are saying is we are going to give up half of the prevailing wage projects at this point. The prevailing wage jobs have been providing a minimal living lately for our workers, along with health insurance, pensions, and training money, and we are going to get rid of half of those jobs. Then we are going to hope that changing the bidder's preference from 5 percent to 7.5 percent is going to recoup that? I do not agree with the math. I think

recently the failed experiment that we saw at the West Wendover Elementary School shows exactly what happens when you eliminate prevailing wage.

Chairman Ellison:

You mean the \$2 million savings? That project will be rebid. Did you know that?

Todd Koch:

Yes, I did know that. I will tell you with the number of contractors who are coming from out of state, the amount of tax dollars that our Nevadans, contractors, and the construction workers would be paying that are going to leave our economy is going to be staggering.

Chairman Ellison:

That is the first school in rural Nevada that Nevada contractors have bid. They have always been from Utah, Arizona, or Idaho. It is the first project where we are starting to get Nevada contractors to bid.

Todd Koch:

By lowering construction workers' wages, health insurance, retirement plans, and training plans are going to be eliminated, and it will cause a future burden for our social services. What appears to save our taxpayers money will end up being a false economy costing all of the taxpayers' money. Let me speak about one of our biggest fears. We are at a crossroads now in diversifying Nevada's economy. In the north, contractors and workers in the construction industry were decimated through the recession. I cannot tell you how joyful we were when we heard that Tesla Motors and all the other projects were coming. We started an apprenticeship program and trying to recruit because we quickly realized as the economy ramped up, construction workers are not coming back to our state. They are staying where they are living now in other areas of the county. The only way we are going to be able to get done what we need is by training.

As we have continued to ramp up our apprenticeship training and staffing the jobs we are doing in the north, it has become very apparent that there is a worker shortage. The message we are sending to construction workers or young people who would consider getting into the construction industry is that we want good paying jobs, just not in the construction industry. They had probably better go look for a job working for Tesla Motors or somewhere else in the economy. At the end of the day, if we cannot build the economic development that is coming our way, then the big companies who are going to provide good paying jobs cannot come here. If we cannot build it, they cannot come. I implore you to stop sending the message to the construction industry

that we do not care about them and we do not care about the place they occupy in our economy, the 25 percent that they should be taking up in our economy. We oppose the bill.

Chairman Ellison:

I agree. I want to get everybody back to work. I put a bill in that would increase penalties against the unlicensed contractors. The painters were the worst hit by unlicensed contractors. We put teeth into bills this year to help individuals. We are trying to do a balancing act and get people back to work. If you get a chance, look at that bill. It was just passed. It will increase the penalties by double or triple on the unlicensed contractors.

James Sala, representing Southwest Regional Council of Carpenters:

I represent the 7,000 members and their families of the carpenters in Nevada and over 470 contractors that we work with closely and help provide a lot of employment for this state. Assemblymen Munford and Stewart probably remember when I spent a lot of time in the Legislature from 1999 to about 2007 working on a lot of legislation. Most of the people who were here then and the ones who remember know that almost all of the bills we ever brought here about the industry were about how to make the construction industry healthy. Back then, it was the second-largest industry in the state, and I think now it has dropped to about fourth. One of the things that disturbs me about this bill, and many other bills we have testified on this session, is I am not sure this is what the bill does. While I appreciate Assemblyman O'Neill and the conversations we have had, I cannot say that I appreciate him bringing the bill forward, but I do appreciate the discussion we have had. We are opposed to this bill. The threshold proposal is the third highest in the country at \$350,000, and one of those that is above that has a \$100,000 threshold for smaller and remodel work. I think this may even have a fiscal impact. If you lower the wage on 50 percent of the construction projects, that will lower the modified business tax. There has been a lot of discussion around the building about how that will impact people in our industry.

In regard to the bidder's preference at 7.5 percent, I am not sure it is going to make that big a difference on the West Wendover Elementary School. I only say that from the standpoint of the two contractors in West Wendover, which is where the project is. They have a 5 percent bidder's preference, and they are from out of state. Everybody who has a 5 percent bidder's preference is going to have a 7.5 percent bidder's preference. There may be some retaliation from other states in regard to our contractors going out to those areas and working. There are a lot of unintended consequences here. In regard to the threshold and the Consumer Price Index, I keep hearing the 1985 limit at \$100,000 and many of you know how we got to that number. Essentially if you went back to the

\$200,000 threshold from when prevailing wage was established in the state, I think the threshold would be about \$40,000. If you are going to use the Consumer Price Index, let us use it from the beginning. Even if you took \$100,000 back in 1985, with inflation today it would be right around \$200,000. We are not in favor.

I hope they do rebid the West Wendover Elementary School project because we do general contracting, we work with drywall contractors, we work with the finish contractors, and every single one of those that was one of the top two low bidders was from out of state. Some of the drywall contractors from Utah I am very familiar with have been penalized by the U.S. Department of Labor on overtime violations. They are hiring the people we cannot hire with our contractors, and I think everyone on this Committee knows what that means. That would be the workers coming over to work on the West Wendover Elementary School and other projects. If you exempt 50 percent of the projects in the state based on this threshold, I think you are going to hurt our industry, contractors, workers, and families in this state, and for an industry that is crawling up off of its knees, this is not the time to enact this kind of action in our industry. I would urge you to not support this bill.

Chairman Ellison:

I was hoping that the first bidder that put in the bid did not have the mistakes they had in their bidding. If they did not have any mistakes, we would not be having this discussion today. There were many mistakes and we all know that.

James Sala:

Mr. Chairman, you know better than most that gambling in Nevada is actually a construction bid.

Chairman Ellison:

I agree.

Richard Daly, representing Local 169, Laborers' International Union of North America:

Without repeating what others said about the threshold, we do think that it is something that will adversely affect workers and contractors in Nevada. It would result in a false economy at a time when the industry is just recovering. Mr. Sala talked about inflation; we are moving way past what it would be if you were to take it from the \$200,000 limit or from \$100,000 going forward. \$350,000 is way above what inflation would have been even as proposed in this bill.

In my opinion when you look at changing the 5 percent bidder's preference up to 7.5 percent, it creates some unnecessary issues. I would like to remind the Committee that Assemblywoman Kirkpatrick had a bill three sessions ago for Nevada First that said that if you won the job using the bidder preference, then a bunch of other criteria kicked in: 50 percent of Nevada materials, all of your trucks registered in Nevada, et cetera. It sounded good. Those are things we should still strive for and want to do, but what contractors found themselves doing is questioning whether they wanted to use bidder's preference to get a job that then triggers a bunch of extra things.

Last session, Assemblyman Horne had a bill that dialed some of that back. The process is you can put your bid in without your certificate if you have bidder's preference. Look and see if you are within 5 percent and then make a decision if you want to take on the entire extra burden and give them your 5 percent. Changing it to 7.5 percent makes it more difficult. You also get into competition with other states, the Commerce Clause, et cetera. We have had it at 5 percent for a long time. If it was challenged by someone who was kicked out of the bid and they took it to court, they would probably kick the entire thing out under the Commerce Clause. Messing with it is not a good thing to do. We have had it at 5 percent for more than 20 years and over that time I can remember one job where a contractor got it based on the bidder's preference. It rarely happens and I do not think it is something we should be messing with. It creates extra issues that we do not need.

I fail to understand and I question why, on the redevelopment law in NRS 279.500, a person is getting an incentive for a redevelopment area and the tax increment is frozen at that level at that period of time, which then goes to the city to try to create the investment. These are good things to do, but you are providing a company, corporation, or somebody an incentive, and this just raises the amount of the giveaway before we are going to take care of Nevada workers. I think that entire section should be left alone at \$100,000. It is an incentive that you are giving. It is not a tax dollar you are saving. It is giving a bigger incentive before you have to take care of Nevada workers. I think that is misguided analysis of what it is intended to do.

Chairman Ellison:

I agree. I liked what Assemblywoman Kirkpatrick proposed last time. There were some problems, but I still supported it. I thought it was a great idea. We could have gone through a lot less headaches today if we could have gotten some of that implemented. She did a lot of work on that bill. I am hoping someone will bring it back again. I did not think about it this year, but we should have done that.

Danny L. Thompson, Executive Secretary-Treasurer, Nevada State AFL-CIO:

Prevailing wage laws, especially the law in Nevada, are designed to maintain the standard in a county in that the survey is done by a county. Changing the threshold with this law only lessens that standard. I do not think you have to look any further than West Wendover and what happened on the school. If contractors in Nevada are still in business, I guarantee they have had to sharpen their pencils to live through this recession. I know contractors who bid jobs knowing they would not make any money just so they could keep their employees and keep their equipment. This in an industry that is on its knees trying to get back up. There is a light at the end of the tunnel. Now lowering the standard in the county is not right.

I have to tell you, all of these prevailing wage bills fly in the face of what the Governor says he wants. He says he wants good paying jobs with good benefits that hire Nevadans. That is what prevailing wage laws do. They ensure you hire local workers at a decent wage that is a standard in the community where they live. I am at a loss to understand why we would change this. It is not just this bill, there are eight of them this session that change prevailing wage. To change the standard in your communities where your constituents live makes no sense to me. I think it flies in the face of what everyone needs in this state and that is the end of the recession. All of these bills are going to continue the recession for Nevada contractors and Nevada workers. Look at West Wendover and see who bid on that job. I know that nonunion companies pulled out of that bid because of Senate Bill 119. It was specifically written into the bid documents. On behalf of over 2,000 members of the Nevada State AFL-CIO, we are adamantly opposed to this bill and any change to lower the standard in our communities.

Chairman Ellison:

Can you provide me a list of how many union Nevada contractors in rural Nevada bid on school projects in the last ten years?

Danny Thompson:

I do not have a list of contractors. I am sure you could get that from the entities who led the bids.

Chairman Ellison:

I can tell you they have not been bidding schools. They have in Clark County, but in rural Nevada, they are not. They opened up the bids trying to get Nevada contractors to bid on school projects and the union contractors are not bidding. Maybe because they are out in the middle of nowhere, I do not know.

Danny Thompson:

I know of a nonunion company contractor who bid on school projects in Clark County and pulled out of the bid once the bid documents came out without prevailing wage because he knew that he would not be able to compete with a contractor from Utah who has, and I think Mr. Sala said it best, questionable workers. The reason was that he could not compete.

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

This Committee has already taken a serious swing at so-called prevailing wage reform in the form of Senate Bill 119, which excluded approximately \$4.2 billion worth of construction work coverage under prevailing wage law in Washoe County and Clark County. We have already seen some of the impact of that. On a couple of projects with the University of Nevada, Las Vegas (UNLV), the general contractors forwarded a request from UNLV that the subcontractors reevaluate their bids and this was prior to Senate Bill 119 even being passed. On the issue of the threshold itself, Nevada is currently tied for seventh in the United States of all states that have prevailing wage laws, for the highest prevailing wage threshold. If this bill were to pass in its current form, Nevada would be tied for the third highest.

When you speak of threshold numbers and the Consumer Price Index, I am glad Assemblyman O'Neill brought this up; prior to 1985, the threshold in Nevada was \$20,000. If you applied that same theory he is applying to 1985 simply to 1983, the current threshold would be \$47,132.93. It is subjective to use the Consumer Price Index. If you go all the way back to 1937 when Nevada's prevailing wage law was implemented and compared it to today using the U.S. Inflation Calculator, it would be \$32,600.28. As stated by Mr. Thompson, there are a number of bills under consideration currently, and we struggle to come to an agreement on any single bill because of the potential impact on all of the other bills that are existing.

I would like to read the conclusion from a study that was provided to the 63rd Legislative Session: "Prevailing wage laws undoubtedly will remain controversial for some time to come. Several studies have attempted to measure the effect of such laws on the cost of public construction projects. However, it appears that no study yet has developed a satisfactory methodology to take into account all of the factors involved in construction projects. Public projects vary widely, and it is difficult to measure the effects of costs versus quality and productivity. Even if these cost/benefit questions were resolved, the other philosophical policy issues would remain." That is exactly what is in front of you today, the philosophical policy issue, whether or not you

believe philosophically that it is the best policy for the state to increase the threshold.

Chairman Ellison:

What does it cost per mile to build a road?

Jack Mallory:

I do not have a lot of experience with highway construction, but I believe it is approximately a million dollars a mile.

Chairman Ellison:

A million dollars a mile, exactly. At \$350,000, you think they are going to be building roads?

Jack Mallory:

I believe they are going to continue building roads, but the cost of building a road is much more than just the cost of labor. You have the cost of oil, aggregate, and all of the different things that are involved in the project. Typically, the cost of labor on horizontal construction is lower as a portion of the total cost per project than vertical construction, especially industrial construction.

Chairman Ellison:

What is the material rate on a project? It is close to half, correct?

Jack Mallory:

No, sir.

Chairman Ellison:

Labor versus material?

Jack Mallory:

No, sir. The total cost of labor as a percentage of a project varies from project to project depending on the type of work, from 15 to 30 percent.

Chairman Ellison:

I would probably argue with that number. The higher you go the worse it gets. It goes to show you. How many projects do you bid at \$300,000?

Jack Mallory:

In my primary job, I also represent painters, floor coverers, and glazers. I have contractors that bid projects as small as \$2,000 in private sector work. They also bid those amounts on public sector work that are not covered by current

prevailing wage statute. I have contractors that will bid work on a 7-Eleven, a bank, a McDonalds, et cetera. They bid work on projects from that size and scope all the way up to a multi-billion-dollar resort-casino project.

Chairman Ellison:

However, they bid them, right?

Jack Mallory:

That is correct.

Brian Reeder, Government Affairs Coordinator, Nevada Chapter, The Associated General Contractors of America, Inc.:

We come to the table opposed, but we appreciate the work the sponsor has done to bring everyone to the table in his attempt to come up with an adjustment to the prevailing wage threshold that is good for the state of Nevada and for the construction industry in this state. We appreciate the deletion of the language in section 3 removing prevailing wage from school construction. We opposed those provisions in the other house. While the threshold proposed is much lower than the threshold in the original bill of \$5 million, we believe it remains still too high. We submitted an amendment to a similar bill in the Senate that would raise the threshold to \$250,000, which is one and a half times what it is today. We came up with \$250,000 by calculating the value of \$100,000 in 1985 to April of 2015 using inflation area indexes. In order to ensure a fair adjustment, we then chose the highest, which was the construction price index, which was \$238,000 and rounded it up to the nearest \$50,000. We believe that \$250,000 is an appropriate increase and we urge this Committee to consider that as the amount for the threshold for prevailing wage in this state.

Chairman Ellison:

I appreciate that. That is how we get things done. We try to sit down, roll up our sleeves, and find out what will work. Mostly the small communities are having a hard time. I like the amendment, but it is up to the bill sponsor. You said it is in a bill in the Senate?

Brian Reeder:

We proposed that amendment to the sponsor of Senate Bill 108.

Chairman Ellison:

Who is the sponsor?

Brian Reeder:

Senator Settlemeyer.

Assemblyman Silberkraus:

Do you know what percentage of projects reducing the threshold from \$350,000 to \$250,000 would effect?

Brian Reeder:

I will look into that for you.

Chairman Ellison:

What about the 2.5 percent? Would it be \$25,000 per \$1 million?

Brian Reeder:

Are you talking about the bidder's preference increase? I think that there could be some struggles as far as contractors that are currently in Nevada getting work in other states.

Chairman Ellison:

Is anyone else opposed? [There was no one.] Is anyone neutral?

Joanna Jacob, representing Las Vegas Chapter, The Associated General Contractors of America, Inc.; and Nevada Contractors Association:

I represent approximately 600 member firms of the Las Vegas Chapter of the Associated General Contractors (AGC), and the Nevada Contractors Association. We are neutral on A.B. 172. We have been in discussions with Assemblyman O'Neill, and I want to just say that I appreciate the time he has spent with us. What we want is to be brought to the table and to talk about the issues with the industry in talking about prevailing wage this session.

We agree with the comments put on the record by Mr. Reeder with regard to the adjustment to the threshold. We also believe that \$100,000 in today's dollars is about \$230,000; therefore, we think \$250,000 is more reasonable given the number of contracts we are talking about that could potentially be impacted.

We appreciate the deletion of the language in section 3 exempting the school projects from prevailing wage, the similar language that is in Senate Bill 119. As you know, AGC Las Vegas had opposed the passage of that bill earlier this session. Our membership generally does not support exempting out an entire subset of construction projects from prevailing wage, and that was the basis for our opposition. This bill layers additional changes on top of that bill, on top of things we are already facing. As you may recall, that bill had significant opposition from the construction industry, the workers, and the employers who I represent. I could not testify in support of this measure because it is on top of Senate Bill 119, and we look forward to continued discussions on this issue.

Chairman Ellison:

Are there any questions from the Committee? [There were none.] If there is not anyone else neutral, Assemblyman O'Neill, please come back to the table.

Assemblyman O'Neill:

First let me address bidder's preference; I can keep it at 5 percent. I was originally discussing 10 percent, but when the contractors and various entities came in and talked to me, they talked about how they would be pushed out and out-of-state bidders would come in and take businesses away, which would hurt Nevada workers.

The majority of my friends are police officers because that is what I did for 40 years, but after that, from riding motorcycles and other endeavors, my closest friends are laborers. They are carpenters and painters, some are union and some are nonunion. The last thing I want to do is hurt them. They have been out of work, and I want to see them get back to work. I do believe this bill will provide the opportunities for both union and nonunion to work at a good wage.

If the bidder's preference at 7.5 percent is a real issue, I will leave it at 5 percent. I will put an amendment in to take it out entirely if the contractors think it will help them do more work. I would like to leave it at 7.5 percent for now though. One of the things I also found out is so many of these contractors in the labor force do have footprints out of state. They may be Nevada contractors, but they might be Idaho, Wyoming, Utah, California, and Arizona contractors too. They have increased their businesses, and I am happy to hear that. I am willing to work with them. I ask to keep the threshold at \$350,000. I seek that you pass this bill as it stands. We can work with it in conjunction with the other bills. I am open to any other discussions, and I thank you for your time and consideration today.

Chairman Ellison:

I want to thank you; you really do come to the table and try to compromise. You changed the threshold from \$5 million to \$350,000. The intent was to raise the bidder's preference up 2.5 percent, from 5 percent to 7.5 percent. That gives someone \$25,000 on a \$1 million project which gives you an idea of how it could help. I was shocked to hear that some contractors did not think it would. I guess I am not seeing something. Is there any other discussion? [There was none.] We will put this on work session tomorrow in case you want to talk to any other people and work on it more. I will close the hearing on A.B. 172 and open the hearing on Assembly Bill 345.

**Assembly Bill 345: Revises provisions relating to certain government contracts.
(BDR 27-398)**

Assemblywoman Dina Neal, Assembly District No. 7:

I am bringing Assembly Bill 345 on behalf of a constituent. It was a last-minute bill and I did not have a lot of time to focus, but I think we can at least have a conversation. Please disregard the original bill; I have an amendment ([Exhibit J](#)) that I would like you to use.

Surety is an important part of the functioning of government and commerce. If my amendment causes a negative consequence, that is not my intent. Ultimately, my intent for this bill was to try to help companies who came out of the recession with a limp. Typically, when you want to try to get into public works, you need to bond. What I am trying to flesh out is the type of collateral that can be used to obtain a bond. The bill fleshes out additional securities that can be used for a surety to give you a bond so you can work on a public work project. The whole idea was that businesses that survived the recession and came out with less cash and less credit, came out hurt and so they did not have the ability to fully function in the market. This would help them get back in with the ability to say that they have X, Y, and Z.

The bill does not apply to local government. We limited it to the Purchasing Division of the Department of Administration and the Department of Transportation because I did not have a lot of time. If you look at page 2 of the amendment ([Exhibit J](#)), it uses the word "may." It says, "The Administrator may request a certified check, cashier's check or bond." Later we also include a deed of trust, but the deed of trust is an interesting piece of collateral because the only way a surety will more than likely use a deed of trust is if you have a high equity position in the deed. It is not something I agree to use, but my constituent likes it, so I did not delete it. The way to look at it and understand it is most sureties are not going to use your mortgage because the foreclosure market was hit hard in our state and your deed may not have the same value in a nonforeclosure market, so it would have to have a high equity position, but it is up to the surety to decide. When you look at coming in with cash of a security interest approved by the administrator in an irrevocable letter of credit, my goal for this bill is to allow combinations to be created so that an individual who was financially hurt could explain what all they have in combination so they can at least bond. It allows individual combinations so that they can participate in the market.

I know the bill is not perfect, and I understand people will come up in opposition. My constituent was hurt in the recession and wants to participate in public works. They had cash and credit deficits. I wanted to talk about what

we could do to help individuals get through the door. This was what we thought we could do. When I did my research, these things would be accepted and would be helpful. They will not put companies in a further cash deficit, especially if companies have the irrevocable letter of credit and a certain amount of cash. They were able to get different items and help from other outside entities.

All of the deletions are because the original bill allowed for individual sureties, which was not a way we could go because to have an individual surety outside of one that is already inside of a represented group that is regulated under our state would create an unregulated market. Each page, even page 7, is just a repeat of what we are looking at to say what a surety could review if they were going to give a bond so that a person can participate for a public work. I am trying to help people who do not feel they are ready or can bond because they have so many things that are working against them in terms of credit and cash.

[Assemblyman Moore assumed the Chair.]

Assemblywoman Spiegel:

I understand putting in bills because constituents ask for them even if they are messy. Page 2, line 28, says, "A mortgage or a deed of trust on real property located in this State." I am not as familiar with sureties as probably many others are. Would a lien then be put on the property so that the person could not sell the asset that is securing the bond, or is there some other protection that is put in place?

Assemblywoman Neal:

I believe that a lien would be placed on it. Most bonding companies typically do not want to use deeds. They look at the home equity line of credit balances and they will place a lien. If it is posted as collateral with the surety company, it must be refinanced and subordinated as a deed of trust with the bonding company.

Vice Chairman Moore:

Are there any other questions? [There were none.] If there is anyone in favor of this bill, please come forward. [There was no one.] Is anyone opposed to the bill?

Jesse A. Wadhams, representing American Insurance Association:

The policy is laudable and I think there are different ways to try to execute what Assemblywoman Neal wants to do, but we have to speak to the bill before us. We are opposed to this bill. We have concerns about how this seems to change how surety business is conducted. Typically a surety does not collect a

collateral; it takes a premium and then the surety is issued. We have concerns with the new sections 15 and 16. There is a deletion with regard to a surety authorized to do business in the state. I do not think the intent is to deregulate the surety industry. We have concerns with creating some ambiguity, and ambiguity leads to enforcement problems. We think there may be other programs that can help Assemblywoman Neal's constituent, and we would be happy to work on it and get some additional information. We do not think there is a need to change the law in this area. Maybe we can solve this problem a different way.

Assemblyman Flores:

What is the industry doing now to help individuals who were legitimately strong stakeholders at the table prior to the recession and unfortunately are not where they used to be? I understand the concern with somebody coming to the table, but I am sure there are many players who were respected and known prior to the recession. I know individuals who after the recession have been struggling to get back on their feet.

Jesse Wadhams:

I think there are a number of different programs offered by both the American Insurance Association and through my colleague's trade association as well. I can get more information on those. I cannot speak to anything specifically, but I do know there are programs that are attempting to help address this exact issue because all of us are still reeling from the recession.

[Assemblyman Ellison reassumed the Chair.]

Jeanette Belz, representing National Association of Surety Bond Producers:

We worked with Assemblywoman Neal on the original bill and greatly appreciate the fact that she has removed the deregulation that was implied by introducing the individual sureties. When listening to Assemblywoman Neal, she said she wanted sureties to be able to look at these items, but I think what has inadvertently happened is now they are requiring security against the bond. As the bill originally talked about assets that could be used in lieu of the bond, now they actually have to post assets against the bond. I am not sure that is what she intended. Also as she mentioned, this applies to the Purchasing Division and the Department of Transportation, which now creates different rules for different public works, and that is always very confusing to people.

In reply to Assemblyman Flores's question, yes, there are programs. The U.S. Small Business Administration has programs, and I have several documents that I would be happy to forward to you. You are right; this

recession has impacted contractors greatly. The ones that are still on their knees are starting to slowly stand up. Assemblywoman Neal and I had a long discussion with one of the individuals with public works who had a private company and how he was able to make it back over time and successful strategies he used. I am happy to share those resources that are available to small contractors.

Chairman Ellison:

In the construction world right now, getting a bond is almost impossible. You can have \$1 million in assets, but when you walk in, they will say they would rather have what you can put up for cash. A lot of these people do not have that on a \$250,000 bond. Usually they end up in a big battle. I think there has to be a way to simplify this. Some cash assets or property values are greater. I understand what Assemblywoman Neal is trying to get at. Getting bonds right now is hard. The bond market took a crash. Am I correct?

Jeanette Belz:

It is challenging, and I think one of the things that Assemblywoman Neal is trying to address is that the sureties would have to look at various assets. What is difficult about this is now they would have to pledge them as a security, which means they would not be able to use them for something else. I think in general, public works is a challenging business because public works takes longer to pay than a private entity. When the company is looking at what the bond is being used for, they need to understand whether or not the contractor can withstand having some really lean cash flow for a period of time.

Chairman Ellison:

When I sat on the State Contractors' Board, I had an individual who had about \$2 million in cleared property assets, but his cash flow line was so low because he was trying to get up and started, and he could not qualify to get a bond. That creates a problem. He should have been able to use his assets to get his bond, but you cannot tie up an asset by using the same assets. There has to be a way to work through this and help get this problem resolved. A lot of people do not have a lot of cash floating around, but they do have the ability to work and make money. Where do we start, the chicken or the egg?

Jeanette Belz:

I think we would be happy to have some people come in and do an informational session on what is available and what is happening in the industry.

Chairman Ellison:

We are down to crunch time. Can you spend some time with Assemblywoman Neal and see if you can figure out something so we can get the bill moving? We can work on it in the Senate too. I am more than happy to help.

Jeanette Belz:

We would be happy to add to the hours that we have already spent.

Chairman Ellison:

Thank you. Are there any questions from the Committee? [There were none.] Is anyone else in opposition? [There was no one.] Is anyone neutral?

Gustavo Nuñez, P.E., Administrator, State Public Works Division, Department of Administration:

We just wanted to thank Assemblywoman Neal for the proposed amendment. With this amendment, we can withdraw our fiscal note.

Robert Nellis, Assistant Director, Administration, Director's Office, Department of Transportation:

We originally signed in as opposed, but with the amendment, we are neutral.

Chairman Ellison:

Is anyone else neutral? [There was no one.] Will the sponsor of the bill please come back to the table?

Assemblywoman Neal:

I just want to thank you for hearing my bill and for the allowance of additional time because this bill needed a lot of work. We were able to get to a point where it was readable. Hopefully we can get something worked out, and if it is your will and desire to move this bill out of Committee, we will try to get it as clean as possible and then work with it in the Senate.

Chairman Ellison:

I know you were working on this late last night.

Assemblywoman Neal:

Yes, I was. I appreciate Legal helping me.

Chairman Ellison:

You have some good friends behind you that will try to get this bill to where we can get it out of Committee. Is there any more discussion? [There was none.] I will close the hearing on A.B. 345.

We are not going to hear Assembly Bill 413 today. We will now start the work session on Assembly Bill 428.

Assembly Bill 428: Exempts the Nevada Rural Housing Authority from the Local Government Purchasing Act. (BDR 27-1098)

Jered McDonald, Committee Policy Analyst:

Assembly Bill 428 exempts the Nevada Rural Housing Authority from the provisions of the Local Government Purchasing Act. It was heard in this Committee on April 6 and was sponsored by this Committee. [Read from work session document ([Exhibit K](#)).]

Chairman Ellison:

I know we have been working with the Nevada Rural Housing Authority (NRHA) on this bill. In some of these areas it is almost impossible for the NRHA to do its work, so I think the bill will help clean it up, is that correct?

Ernest E. Adler, representing Nevada Rural Housing Authority:

That is correct. Most of the money spent by the Nevada Rural Housing Authority is not in this category because it is federally funded tax credits. It is all prevailing wage projects.

Chairman Ellison:

Are there any questions from the Committee? [There were none.] I will accept a motion.

ASSEMBLYMAN SILBERKRAUS MOVED TO DO PASS
ASSEMBLY BILL 428.

ASSEMBLYMAN MOORE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN WOODBURY WAS
ABSENT FOR THE VOTE.)

Assemblyman Munford, will you please do the floor statement?

Assemblyman Munford:

Yes, sir.

Chairman Ellison:

We are recessed [at 10:24 a.m.].

We are reconvened [at 11:31 a.m.].

We have three bills that are going to be referred without recommendation to the Assembly Committee on Ways and Means. First is Assembly Bill 300.

Assembly Bill 300: Creates the Office of the Inspector General in the Department of Administration. (BDR 18-581)

Chairman Ellison:

I will entertain a motion.

ASSEMBLYMAN WHEELER MOVED TO REFER WITHOUT RECOMMENDATION ASSEMBLY BILL 300 TO THE ASSEMBLY COMMITTEE ON WAYS AND MEANS.

ASSEMBLYMAN MOORE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Next is Assembly Bill 403.

Assembly Bill 403: Revises provisions concerning peace officers. (BDR 23-813)

I will entertain a motion.

ASSEMBLYMAN WHEELER MOVED TO REFER WITHOUT RECOMMENDATION ASSEMBLY BILL 403 TO THE ASSEMBLY COMMITTEE ON WAYS AND MEANS.

ASSEMBLYMAN MOORE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Next is Assembly Bill 355.

Assembly Bill 355: Revises provisions governing administrative regulations. (BDR 18-843)

I will entertain a motion.

ASSEMBLYMAN WHEELER MOVED TO REFER WITHOUT RECOMMENDATION ASSEMBLY BILL 355 TO THE ASSEMBLY COMMITTEE ON WAYS AND MEANS.

ASSEMBLYMAN MOORE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We will now finish the work session with Assembly Bill 364.

**Assembly Bill 364: Revises provisions relating to the state business portal.
(BDR 7-696)**

Jered McDonald, Committee Policy Analyst:

Assembly Bill 364 was sponsored by Assemblyman Thompson, Assemblywoman Bustamante Adams, and others, and was heard in this Committee on April 2. Assembly Bill 364 requires the Secretary of State to establish common business registration information that is used by state and local agencies and health districts to conduct necessary transactions with businesses in this state. The amendment was discussed in the hearing and presented by Assemblyman Thompson. The amendment removes mandatory provisions requiring integration with the Business Portal System and enables government agencies to interact with the business portal at varied levels based on feasibility. [Continued to read from the work session document ([Exhibit L](#)).]

The Committee received an updated fiscal note from the Department of Business and Industry. The fiscal note is now zero based on the amendment.

Chairman Ellison:

Is there any discussion from the Committee?

Assemblyman Stewart:

I think with the amendment making it optional, it will allow the counties that can afford to do this to do it and those who do not want to do it do not have to. I am strongly in favor of this bill.

Chairman Ellison:

I will entertain a motion.

ASSEMBLYMAN STEWART MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 364.

ASSEMBLYMAN SILBERKRAUS SECONDED THE MOTION.

Is there any discussion?

Assemblywoman Shelton:

I would like to reserve my right to change my vote on the floor.

Assemblyman Wheeler:

I have expressed a little trepidation over the camel's nose under the tent for the rural counties, so I will also reserve my right to change my vote on the floor.

Assemblywoman Dooling:

I would also like to reserve my right to change my vote on the floor.

Chairman Ellison:

I too have some reservations on the bill, but I am hoping I can get some clarification on the floor. I would like to reserve my right to change my vote on the floor.

THE MOTION PASSED UNANIMOUSLY.

Assemblyman Stewart, would you please do the floor statement?

Assemblyman Stewart:

Yes, I will. If you want Assemblyman Thompson to do it though, that is fine with me.

Chairman Ellison:

Thank you. We are trying to move bills out. We have Assembly Bill 172 and Assembly Bill 345.

Assemblywoman Spiegel:

I do not have all of my bills with me. I have the ones we discussed this morning, but if we are going to be considering anything else, can we have a little advance notice so I can get my notes?

Chairman Ellison:

We can do some of these tomorrow. Right now, we have Assembly Bill 312, Assembly Bill 410, and Assembly Bill 64 to refer until tomorrow. We are

working on some of these bills. Assemblywoman Neal, do you want to try to pass Assembly Bill 345 and work on it as we go?

Assemblywoman Neal:

That is fine, but we are working on an amendment.

Chairman Ellison:

I will open the work session on Assembly Bill 172.

Assembly Bill 172: Requires contractors and subcontractors on a public work to use the federal E-Verify system to verify eligibility for employment for workers on the public work and revises prevailing wage requirements for public works. (BDR 28-565)

Jered McDonald, Committee Policy Analyst:

Assembly Bill 172 was heard in this Committee this morning and sponsored by Assemblyman O'Neill. The original bill had language on E-Verify, which was taken out along with some other language. The main amendment was the prevailing wage piece that sets the minimal level at \$350,000 and then it also sets the bidder's preference; it moves it up by 2.5 percent to 7.5 percent. That is based on the amendment that Assemblyman O'Neill presented this morning.

Chairman Ellison:

I will entertain a motion.

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 172.

ASSEMBLYMAN STEWART SECONDED THE MOTION.

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

Chairman Ellison:

Assemblywoman Neal and Assemblyman Silberkraus would like to reserve their right to change their vote on the floor. I am hoping we can tweak this bill on the floor. We are running out of time. Assemblyman O'Neill will do the floor statement. Is there any other discussion? [There was none.] Is there public comment? [There was none.] We are recessed [at 11:45 a.m.].

[The Committee reconvened and adjourned at 3:12 p.m.]

[([Exhibit M](#)), ([Exhibit N](#)), ([Exhibit O](#)), ([Exhibit P](#)), ([Exhibit Q](#)), ([Exhibit R](#)), ([Exhibit S](#)), ([Exhibit T](#)), ([Exhibit U](#)), ([Exhibit V](#)), ([Exhibit W](#)), ([Exhibit X](#)), ([Exhibit Y](#)), and ([Exhibit Z](#))] were presented but not discussed and are included as exhibits for the meeting.]

RESPECTFULLY SUBMITTED:

Jordan Neubauer
Committee Secretary

APPROVED BY:

Assemblyman John Ellison, Chairman

DATE: _____

<u>EXHIBITS</u>			
Committee Name: <u>Assembly Committee on Government Affairs</u>			
Date: <u>April 9, 2015</u>		Time of Meeting: <u>8:09 a.m.</u>	
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 293	C	Assemblyman James Oscarson	Prepared Text
A.B. 293	D	Donald L. Cavallo / Public Administrator Washoe County	Amendment
A.B. 293	E	Michael Rebaleati / Nevada Public Agency Insurance Pool and Public Agency Compensation Trust	Amendment
A.B. 293	F	Michael Nakamoto / Deputy Fiscal Analyst	Fiscal Note
A.B. 293	G	Linda Bromell / Private Citizen, Amargosa Valley, Nevada	Prepared Text
A.B. 172	H	Assemblyman P.K. O'Neill	Prepared Text
A.B. 172	I	Assemblyman P.K. O'Neill	Amendment
A.B. 345	J	Assemblywoman Dina Neal	Amendment
A.B. 428	K	Jered McDonald / Committee Policy Analyst	Work Session Document
A.B. 364	L	Jered McDonald / Committee Policy Analyst	Work Session Document
A.B. 172	M	Sam Merlino / Ironworkers Labor Management Cooperative Trust	Letter
A.B. 345	N	Assemblywoman Dina Neal	Better Business Bureau Current Alerts and Press Releases
A.B. 345	O	Assemblywoman Dina Neal	ENR.com Article
A.B. 345	P	Assemblywoman Dina Neal	ENR.com Article
A.B. 345	Q	Assemblywoman Dina Neal	Maryland Insurance Administration Final Report

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A.B. 345	R	The National Association of Surety Bond Producers, Inc.	Prepared Text
A.B. 345	S	Assemblywoman Dina Neal	News Release
A.B. 345	T	Assemblywoman Dina Neal	U.S. Attorney's Office Southern District of Texas News Release
A.B. 345	U	A. Wade Leavitt / Leavitt Insurance Agency	Letter
A.B. 345	V	Gustavo Nuñez / State Public Works Division, Department of Administration	Letter
A.B. 345	W	LP Insurance Services	Letters
A.B. 345	X	The Surety and Fidelity Association of America and American Insurance Association	Letter
A.B. 345	Y	Assemblywoman Dina Neal	Amendment
A.B. 345	Z	Yolanda C. Jones / City of Las Vegas	Prepared Text