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

## Eightieth Session
## March 20, 2019

The Committee on Government Affairs was called to order by Chair Edgar Flores at 8:33 a.m. on Wednesday, March 20, 2019, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/80th2019.

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Edgar Flores, Chair
Assemblyman Alex Assefa
Assemblyman Richard Carrillo
Assemblywoman Bea Duran
Assemblyman John Ellison
Assemblywoman Michelle Gorelow
Assemblyman Gregory T. Hafen II
Assemblywoman Melissa Hardy
Assemblyman Glen Leavitt
Assemblywoman Susie Martinez
Assemblywoman Connie Munk

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Shannon Bilbray-Axelrod (excused)
Assemblyman William McCurdy II, Vice Chair (excused)

**GUEST LEGISLATORS PRESENT:**

Assemblyman Skip Daly, Assembly District No. 31

**STAFF MEMBERS PRESENT:**

Jered McDonald, Committee Policy Analyst
Geigy Stringer, Committee Secretary
Trinity Thom, Committee Assistant

**OTHERS PRESENT:**

Danny L. Thompson, representing International Union of Operating Engineers, Local 12 and Local 3
Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO
Daniel Honchariw, Senior Policy Analyst/Government Affairs, Nevada Policy Research Institute
Craig Madole, CEO, Nevada Chapter, Associated General Contractors of America, Inc.
Brian Reeder, representing Nevada Contractors Association
Michael Pelham, Director of Government and Community Affairs, Nevada Taxpayers Association
Warren B. Hardy II, representing Associated Builders and Contractors of Nevada; and Nevada League of Cities and Municipalities
Chase Whittemore, representing Nevada Builders Alliance
David Dazlich, Director, Government Affairs, Las Vegas Metro Chamber of Commerce
Darren Schulz, Director, Carson City Public Works
Vinson Guthreau, Deputy Director, Nevada Association of Counties
Cole Mortensen, Chief Engineer, Department of Transportation

**Chair Flores:**
[Roll was called. Committee rules and protocol were explained.] We have one item on the agenda for today. I ask those of you testifying, either in support or opposition, that if the person before you has already stated your point, please highlight that and say, I have the same concerns on that specific section, and/or I support the bill for the same exact reason. That would be helpful. There is no need for us to say the same thing four or five times. Also, I hope that you all had the opportunity to coordinate whether you are in support or opposition, so that each section can be discussed on its own and, again, we do not have one person talking about every single section. There are many of you signed in to speak today. In the interest of being efficient, I hope that you have coordinated in that manner.

I am going to open up the hearing for Assembly Bill 190.

**Assembly Bill 190: Revises provisions relating to certain construction. (BDR 28-637)**

**Assemblyman Skip Daly, Assembly District No. 31:**
I will go through all the provisions of the bill. I will read my notes so that I do not leave anything out, but then I will be happy to answer any questions at the end. If somebody does need to stop me in the middle, feel free.

Assembly Bill 190 is a bill relating to construction and addresses several issues in *Nevada Revised Statutes* (NRS) Chapter 338 as it applies to construction bidding and the application of prevailing wage.

Without any further delay, I will start walking you through the bill. I know there are a lot of sections. If you want to stop me at any point to ask any questions, if it pleases the Chair, I will be happy to do so.

Section 1 adds a definition for "bona fide fringe benefits" to NRS 338.010. This provision is to give clarification on what is or is not a fringe benefit under the definition of wages in this section. Specifically, the definitions under subsections 2(a) and (b) require benefits to be for the sole and exclusive benefit of a worker and that the benefits cannot revert back to the employer or sponsor of the fund.

Section 1 also changes the definition of an "offense" to include not paying the fringe benefits on an annualized basis, which I will discuss later.

Section 1 also makes a change to the definition of “wages” by deleting the now unnecessary and potentially conflicting language with the new definition of bona fide fringe benefits.

Section 2 makes a conforming change regarding annualization that is discussed in Section 5.

Section 3 is the first section of the bill that moves the threshold for prevailing wage to apply from $250,000 back to where it was prior, $100,000.

Section 4 does three things: First, it removes the 10 percent reduction to the applicable prevailing wage rate on K-12 and Nevada System of Higher Education school construction. Second, section 4, subsection 7 requires the Office of Labor Commissioner to include in the prevailing wage determination, if the wage rate determined to prevail is a collectively bargained rate, the applicable premium pay for hours worked over 8 hours in a day, hours worked over 12 hours in a day, hours worked on weekend, and holiday pay, as well as zone rates pursuant to the applicable collective bargaining from which the rate is determined. Section 4, subsection 7 also allows the Labor Commissioner, again, if the collectively bargained rate prevails, to make adjustments to the rate to coincide with the collective bargaining agreement (CBA) increases.

Just for clarity, the Labor Commissioner has been recognizing the zone or area pay rates under regulatory authority for some time. The requirement to pay overtime at time and one-half for hours over 8 in a day is also already required. The premium pay for hours over 12 in a day and weekend and holidays would be new.

In section 4, subsection 9 are many words that say we are going to follow the current procedure where the prevailing wage rate applicable on the date that the job bids, or on a construction-manager-at-risk project, the date that the construction contract is entered into, remains frozen. Currently wage rates remain frozen from the day the bid is opened. Under this new language, the rate will only remain frozen for 36 months. This is needed because on some of the multiyear contracts, if the frozen rate gets too far behind, workers will quit working on those projects, often at critical times when the contractor is trying to finish the project, and go to other higher-paying projects.

Section 5 establishes in Nevada law a requirement on public works for contractors to pay any bona fide fringe benefits on an annualized basis. This matches similar prevailing wage requirements under the federal Davis-Bacon Act. The simplest way to say this is that basically, any bona fide fringe benefits paid by a contractor on public work must be paid on all hours worked by that employee on all public or private jobs. Section 5 provides for a penalty for a violation of this section and requires the contractor to make the worker whole for any underpayment. I want to explain this, so if you can, follow me a little bit.

Let us start at the beginning. One of the definitions of wages in NRS 338.010 includes the hourly wage rate paid plus any amounts paid for bona fide fringe benefits such as pension, health and welfare, vacation, and training. The existing language in this section states that a contractor can meet part of its obligation to pay the prevailing wage rate by making payments as fringe benefits to a program. Wages and benefits together need to equal the determined prevailing wage from the Labor Commissioner.

Under this new annualization requirement, if a contractor only pays fringe benefits on its public works projects, the amount the contractor will be credited toward meeting its obligation to pay the prevailing wage rate will be reduced by the amount as calculated had the fringe benefits been paid on all hours worked by that employee on both public and private projects.

I will give this quick, simple example, as it is fairly easy math. Say an employee works 2,000 hours in a year, 1,000 hours on public works and 1,000 hours on other projects. On the public jobs the employer meets its obligation to pay the prevailing wage rate, in part by paying a health and welfare benefit contribution at $10 per hour. On the other projects the employer does not make any health benefit contributions. Under the annualization requirement, the $10 per hour paid for 1,000 hours, or $10,000, would have to be divided by the total number of hours worked by that employee, or 2,000 hours. Dividing the $10,000 total benefits paid by the 2,000 hours equals $5. Under this example, the employer would only get credit toward meeting its obligation to pay the full prevailing wage rate on the 1,000 hours at $5 per hour, not the $10 paid. The employer in this example would be in violation of the annualization requirement, and the employer would owe the worker $5 per hour for the 1,000 hours worked on the public projects. The reason for this annualization provision under federal law and, if this bill passes, under Nevada law, is that employers should not be allowed to subsidize their benefit programs on the backs of their public projects. That is the premise behind the federal annualization requirements.

I want to take just a minute more in this section, on subsection 5. In 2013 the Governor vetoed this annualization language. In the negotiations with the interested parties led primarily by Senator Warren B. Hardy II, they asked for relief for defined contribution programs, essentially 401(k) plans, to be exempt from the annualization requirement. At that time we agreed, providing the contribution was not higher than 25 percent of the applicable prevailing wage rate. So, if the total package was $40, the maximum the employer could pay as a defined benefit contribution was 25 percent, or $10, and it would not be subject to the annualization requirement. The employer could just pay it on public jobs. We agreed to give

employers relief in section 5, subsection 5(b), and they agreed to accept the language in subsection 5(a). I spoke with former Senator Hardy yesterday and I told him that if that agreement is no longer good, I have no problem removing subsection 5(b).

Section 6 is another threshold change.

Section 7, in addition to the threshold change, removes the exemption from prevailing wage being applicable to charter schools.

Section 8 is conforming language for annualization.

Section 9 is conforming language to reflect the number change in the definitions.

Sections 10 through 28—I will be as clear as I can, I am sure I will get questions— add clarifying language to every section in the law that already exists referring to the application of prevailing wage, making them all read the same to say that NRS 338.013 to 338.090 apply. Sections 10 through 28 also add language to further clarify that those provisions apply to the same extent as if the public body had undertaken the construction work or awarded the contract.

Section 29 makes the changes in section 4 effective after July 1, 2019.

Section 30 clarifies the changes in this bill do not apply to a public works bid prior to July 1, 2019.

Section 31 repeals NRS 338.1405, which will lift the prohibition against the use of project labor agreements (PLA) by public bodies on public works projects in Nevada.

Finally, section 32 makes this bill effective July 1, 2019.

I will be happy to answer any questions.

**Chair Flores:**
I appreciate that summary. That was actually a lot faster than I thought it would be. Let us see if the questions are equally as fast. I would like to open for questions. Members?

**Assemblyman Hafen:**
I appreciate your meeting with me and explaining as much as I needed to understand your bill proposal. I just want to get a couple of things on the record and ask you one question. After everyone else has finished and if I have time for another question, I will ask then.

In section 4, subsection 7, the bill talks about the premium pay, including holidays and zone pay. I think you know my concerns with the zone pays, that it is adding somewhere between 5 percent and 15 percent of additional cost on the rural counties, which I just cannot support. I hope you can understand that. Could you go into a little bit more on section 4, subsection 9,

and explain the purpose of the 36-month period and how a contractor would be able to adequately bid on a project, not knowing what those prevailing wages would be after the 36 months?

**Assemblyman Daly:**
I understand your issue on the zone rates, and we discussed that you have your position and we disagree. On the 36 months—what we are talking about is on long projects that are going to go that long. Most of the time, awarding bodies are going to know and contractors are going to figure that those projects are going to go over that length of time. There are a handful that do and, when they do, it can be a problem for the contractor and for the public agency if the wage rate was frozen at the bid date. What the regulations say now is, the wage rate that is in place on the day the bid is opened is the wage rate, frozen, for the duration of the job. If the job is an eight-month job, ten-month job, even a two-year job, it is usually not that big of an issue; depending on when it starts, et cetera, there may be one wage increase that goes into effect over the course of that job. However, if it is going to be a longer job or one that goes longer, then there may be two or three wage increases. I know, at least in the northern part of the state and I think it is even higher in the south, that by the time there are three wage increases on a project over a period of time, wages could be $6 or more behind because they have been frozen. All the bill is saying is that at the end of 36 months, the wage rate then would go into effect on a going-forward basis only.

An agency asked me the same question yesterday. I said, Look, all of the bidding agencies in this state, or the majority of them, are sophisticated. They know what they are doing, they know how long these jobs are, they know how many working days they have given a particular contractor, and they know how long the contract is expected to be. So they would ask the same question that you are asking. We do not know what the prevailing wage is going to be then. They would build a contingency at that point, I am sure, through a change order process which they would submit and say, Here is the new rate that is going to apply going forward. The benefit to the public agency and to the contractor is, many times you are near the tail end of that job. You are in key issues and portions of the work that are being done and you cannot afford to lose the people that you still have, who are usually the best people, if the job is starting to wind down. You do not want those people to leave you and go to other public works jobs, leaving you scrambling to find people to finish and exposing the public agency to the potential of having its job delayed because of things it could not foresee. I do not think this provision will be in effect or trigger that often, but when it does it can be significantly beneficial for both parties.

**Chair Flores:**
Members, I know I previously mentioned that I would ask all to limit to one question. However, we have a single presentation today. It is more than reasonable, if you have an additional question, that you ask it now.

**Assemblyman Hafen:**
Assemblyman Daly, I am sorry if I do not understand the subject matter as well as you do. I think you have a few more years of experience in handling this. But if I understand you

correctly, the way that the process would work is, if a project was supposed to be done in 35 months and it was going to go over the 36 months, the additional wages would be calculated into a change order and then billed to the public agency through the change order process. Is that what you were saying?

**Assemblyman Daly:**
I anticipate that is how it can be done. Awarding bodies could handle it in whichever way they wanted to, but it seems to me that would be the easiest way. They will know for sure if they think it is going to get up to that duration and, of course, they would have a contingency for it when they write up the contracts, among various things. If the contingency does not get used, the awarding body never spends the money. Many factors get considered, such as weather and working days—you have so many working days that you are usually given. Usually you can ask for extensions and you can get credit for days if there are weather days or various things. If the schedule is for 35 months and it goes 36, almost all of the contracts have built-in penalties such as liquidated damages for not completing on time. There would be an offset in there where the contractor is going to be working to get his job done as quickly as he can. The 36-month provision is going to be more critical for the contractor in that situation so that he does not lose his key people.

**Assemblywoman Munk:**
On page 11, section 5, subsection 4(a), the bill says the penalty imposed on the contractor or subcontractor is not less than $2,500 or more than $5,000. What about the smaller contractors who are on a smaller job? This seems more geared to big contractors who are able to pay those amounts, not the smaller ones.

**Assemblyman Daly:**
It has been my experience—and as Assemblyman Hafen pointed out, I have been doing this for a while, and the Labor Commissioner can probably tell you more stories than I can—that some contractors do not just make a mistake. They are cheating. It is difficult to find them. My experience has been that yes, we have the debarment. Potentially they take a deal, which is a pretty big penalty, but the financial hit in the pocketbook is the thing that gets their attention and they respond to most quickly. I am not going to call it a deterrent, but it is what they respond to. That is why that penalty is there. Some people who came to talk to me had concerns about that as well. Of course, we can talk about that; we could look at other thresholds. In regulation of certain other things, the Labor Commissioner has a sliding scale that could be applied based on the size of the contract or the size of the contractor's license limit. Those are all potential options.

**Assemblyman Ellison:**
What section is it where you are changing from the 40-hour workweek to an 8-hour workday for overtime?

**Assemblyman Daly:**
I believe that is in section 4.

**Assemblyman Ellison:**
Many smaller companies always allow their people to take time off during the week to do banking or take their kids to doctors or whatever. This bill will screw that up. We allow people to exercise discretion if they want to take a couple of days off in the middle of the week and make it up somewhere during the week. This takes that away, is that correct?

**Assemblyman Daly:**
The eight-hour requirement is currently in the law—it is a little difficult to find—but it is already there. You may be looking at the section in NRS Chapter 338 that says a person on a public work job is not exempt under the NRS Chapter 608 section where overtime applies. Currently in the state of Nevada, you are paid overtime after eight hours as long as you do not make more than 1 1/2 times minimum wage. There are several exceptions, such as if you are a salesman and a few other things. The other exception in NRS Chapter 608 says that if you are employed in a public works job, you get paid overtime after eight hours of work. That is already an existing law, that overtime is paid after eight hours. The overtime after eight hours rule in this section just makes it clearer. It is spelled out right there. I do not think it changes any of the other things. The provisions to pay overtime after 12 hours and to pay premiums for Saturday and Sunday could potentially change things, but there is nothing that stops a person from taking a day off in the middle of the week and then coming back and working later, except if it is on a Saturday or Sunday, it would be subject to the premium.

**Assemblyman Ellison:**
I will get a clarification from the Legislative Counsel Bureau (LCB) to make sure that we are on the right track and make sure that the bill is for prevailing wage jobs only, because it creates a problem for the smaller companies that say, If you need to take a day off, take your kid to school or a doctor or whatever, then you can make it up instead of losing the 40 hours of work. Then the employee can still come back and make that up during the week or add an hour extra. The 40 hours was what we were trying to maintain after which overtime comes into play, not 8 hours a day. I will go back and get clarification to make sure that we are not in violation of the law, because if it is, it is going to create a different problem for the smaller contractors out there. I will check on that.

**Assemblyman Daly:**
I invite you to ask LCB, but it does only apply to public works jobs. Other than that, it does not. This would only apply if the rate that is determined to prevail is determined based on a collective bargaining agreement. If the union rate or the collective bargaining agreement did not prevail, then this provision would not be applicable.

**Assemblyman Ellison:**
Thank you. I want to make sure that that is still there. Another question: has the amendment for the rural counties to go from $250,000 to $100,000 been proposed?

**Assemblyman Daly:**
Are you referring to leaving the rural counties at $250,000 rather than having them come down to $100,000? No, that has not been proposed by anyone I have talked to. I would not consider that a friendly amendment.

**Assemblyman Carrillo:**
Thank you, Mr. Daly, for bringing this forward. I am asking for clarification regarding the penalties in section 5, subsection 4. What is currently in place now for enforcement? You mentioned about the pocketbook but, ultimately, is there no enforcement whatsoever?

**Assemblyman Daly:**
There are penalties. If you do not pay a prevailing wage or you do not meet your prevailing wage obligation, the Labor Commissioner has enforcement over that. There is almost always a hearing, unless the contractor agrees to make the person whole. The Labor Commissioner can give an administrative penalty, and I believe there are provisions that say in addition to any other penalty, the Labor Commissioner can impose an administrative penalty. There are other administrative fines that can be imposed, there are other penalties that can be imposed, and then the administrative penalty potentially comes with a debarment. The specific part that we are trying to hit on is the failure to do the annualization so that contractors are not just taking advantage of the public works. Mr. Chair, Assembly Bill 218 of the 77th Session has some examples and exhibits—I thought about bringing it, but I will just mention it and you can go look it up.

Let us just say the wage rate is $40 an hour. That is the total package. I will use my craft as an example: $25 is the hourly wage rate and benefits are $15, including health and welfare, training, all of the benefits under the collective bargaining agreement. Those two add up to $40 that you are meeting the obligation to pay. There is whole cottage industry selling "Davis-Bacon Plans," which they sell to contractors and they say, Pay the guy only $15 an hour and add $25 in benefits, or $20 and $20, to meet that obligation. The reason that contractors would want to do that is, the hourly wage rate—the $25 in the example for the union guy—is the wage that all of the federal income tax is paid on, the employment tax, workers' compensation; all of the roll-up taxes are paid on that. The $15 is tax-exempt and not subject to those taxes. The contractor then wants to pay just $20 or not give the guy the extra $5 because he is already used to making $15 an hour. They say, If he is now getting that $5 raise, we do not want him expecting to get up to $25 or $40, God forbid. So they also then just pay those benefits so that they do not have to pay the taxes on them. I understand. I am not faulting them for trying to lower their cost, but they are not doing it to benefit the workers and they are only paying for that on the public jobs. That is where the federal government is and, I hope, the state of Nevada will be in adopting annualization. It should not be paying for your entire program, just on your public works.

**Assemblyman Hafen:**
I would like to go back to Assemblyman Ellison's question regarding the amendment for the rurals to stay at the $250,000 threshold. Mr. Daly, you and I discussed it; there was no proposed amendment. In other committees, we have been talking about the current threshold

and putting in an index so that it will continue to increase. Have we ever had legislation before that has actually gone backwards and not gone forward? Or would this be setting a brand-new precedent?

**Assemblyman Daly:**
I do not believe we have ever gone back. I listened to testimony from Assembly Bill 136 the other day. Mr. Danny Thompson [of International Union of Operating Engineers] came up and said that the threshold used to be $2,000. As I recall, it was at $10,000 at the time. He talked about when it was raised up to $100,000, which was a 1,000 percent increase. There were no numbers behind it or any math that went into it. I do not think that it has gone down, but I can tell you that it is $2,000 at the federal level and it has been that for as long as the law has been in existence, since the 1930s. Our state law came in existence a couple of years after the federal law went in, 1937. That threshold has been relatively stable and reliable. Regardless of people's philosophies, we believe $100,000 is fair. I had a bill last session to take it back to $25,000 [Assembly Bill 406 of the 79th Session]. I think $100,000 is fair and I think that was stated clearly in the Governor's address as well. We want to have prevailing wage be meaningful in the state, and $100,000 is a fair amount.

**Assemblyman Leavitt:**
Are the fines that would be assessed by the Labor Commissioner mandatory fines or discretionary fines?

**Assemblyman Daly:**
I was asked that question by a gentleman yesterday, and I went back to reread the bill. The way it reads currently, it is mandatory if you are found to be in violation of the annualization requirement. If you just paid the wrong prevailing wage rate—for example, if it was supposed to be $40 and you only paid $38—there would be a hearing and this bill would not kick in if you paid $38 on all your jobs and you did not have any benefits. The annualization would not be a factor. If you violate the annualization, the way it reads currently, it is mandatory. The language says the Labor Commissioner "shall" as it applies to the violation of the annualization requirement; of any other potential violation, it does not.

Going back to the question we had earlier, a discussion can be had to address the fine, maybe allow a little more discretion or impose it on a sliding scale based on the size of the contractor's license limit.

**Assemblyman Leavitt:**
Ruling out the annualization miscalculations, are all the rest of the fines at the discretion of the Labor Commissioner?

**Assemblyman Daly:**
As far as I can recall, they are. The only thing I think that is required is that the worker be made whole.

**Chair Flores:**
Members, are there any additional question? Seeing none, Assemblyman Daly, if we could have you step back, I would like to invite forward anyone wishing to speak in support of A.B. 190.

**Danny L. Thompson, representing International Union of Operating Engineers, Local 12 and Local 3:**
We support this bill for the same reasons we supported A.B. 136. I am happy to answer any questions.

**Paul McKenzie, Executive Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada, AFL-CIO:**
We are also in support this legislation. We think the annualization of benefits is something that is long overdue. It has been a loophole in our statute that has allowed contractors to cheat their workers out of money for a number of years. We also believe that the wage escalator in this bill is something that is beneficial. We have several long-term projects in this state that we have seen this effect on. The last one that I worked around was the Spaghetti Bowl project in Reno. That project turned into a seven-year project. It was originally bid to be a four-year project. By the time that project was closing up, we could not get a worker to go to work on it. The prevailing wage on that project was $4.50 below the prevailing wage that was in effect on other prevailing wage projects, and we had seen an almost $7 increase in health and welfare costs that had come off of the workers' wages, so they were losing those off their hourly wage as well. So workers were making almost $12 an hour less to work on that prevailing wage project than on any other prevailing wage project. Other than foremen, we could not get anybody to work on it.

We have another project coming to the same Spaghetti Bowl in the next few years that is scheduled to go for 15 years. I think it will probably last into 20 years, ultimately. It is a design-build project. If the wages are going to be stagnant for that length of time, we are not going to be able to man that project towards the end. Very important action needs to be taken to address this escalator. The 36 months is a good number where we can maintain people on projects. We usually do not get major benefit changes, which always adversely affect the wages, within a 36-month period. Our hourly wage does not usually go up that much in 36 months. When we get these long-term projects, we have to have some kind of relief or we cannot man the projects. I would be happy to answer any questions.

**Assemblyman Carrillo:**
Thank you for your testimony. What do you do when you have situations such as you mentioned, the Spaghetti Bowl, where it takes longer and, of course, changes to where you cannot man the projects and your contractors are calling saying, Hey we need more men, we need bodies to finish this project up. What do you do in a situation like that?

**Paul McKenzie:**
I was a dispatcher at that time, and I was getting a weekly ass-chewing for not manning the project. You end up picking up people who are less qualified. They are willing to work for

less money, but they are less qualified because you cannot hold the job with somebody who is paying a higher rate of pay. You end up putting less-qualified workers on the job, which ends up leading to a poor-quality project. We see a lot of the areas in that project where we have had failures after completion and where they have had to go back in and rework, because work was done during that time frame when we had lower-quality workmen on the project.

**Assemblyman Ellison:**
I never thought of long-term projects. I thought it would be in a union contract that cost of living would be a factor if the project extended out. That is good to know. We do not usually bid projects that are that far out. The other thing is, our policy analyst, Mr. McDonald, has given me the research showing that the 40-hour week versus the 8-hour day is still in the law for nonunion workers.

**Assemblyman Hafen:**
One of your comments sparked a question. Maybe this is a question for Mr. Daly. Is there anything under existing law that prevents the contractor from actually paying more than the prevailing wage when the project is extended into the seventh year? Is there any reason that contractors cannot just pay more money to keep their good workers on their payroll?

**Paul McKenzie:**
Their foremen were the ones who stayed on the job because the employer paid them more money to stay on the job. The pay of day-to-day workmen—where you have to have five guys to do one thing one day and the next day you may not need them—that rotating workforce did not get a boost because they were going to go run someplace else as soon as they could, and most of those workers were not running for eight-hour days, day in and day out, for that last section of the project. Contractors would need them for a couple of weeks and then they would not need them, or contractors would need them for a couple of days and then they would not need them. When they were bouncing back and forth like that, they were not going to stay anywhere, regardless of what contractors paid them. Contractors would not have paid them enough because of the cost it would put on the company instead of on the project. They had bid that project based upon those fixed wages. The state of Nevada was not going to give them a change order to pay people excess wages. It had to be a change order based upon a need in the project. If they had a guy they wanted to keep, which was mostly the foreman, they went ahead and ate that loss. There was nothing that said they could not have paid the other guys more, but because of the nature of a rotating workforce, they did not have the guy long enough to know if he was worth more money to keep around. It was a mess. It is not any kind of a mess compared to what we are going to see with this next Spaghetti Bowl project. You guys just lived through Project NEON down there, which was a long-term project. They were probably fighting the same issues down there with the locked-in wages.

**Assemblyman Hafen:**
If I understand you correctly, it was the employer's choice not to pay to keep the employees. It had nothing to do with the NRS.

**Paul McKenzie:**
The prevailing wages that are laid out by the NRS are the minimum wage that has to be paid on the project. It is not the maximum wage. It does not restrict anybody from paying over that.

**Chair Flores:**
Members, are there any additional questions? Seeing none, thank you for responding to those questions. Is there anybody else wishing to speak in support? I will recognize for the record that we have at least five others signed in in support, but I do not believe they will be coming up to testify.

Next, I would like to invite those wishing to speak in opposition to A.B. 190 to fill up all the seats. [Committee protocol was reviewed.]

**Daniel Honchariw, Senior Policy Analyst/Government Affairs, Nevada Policy Research Institute:**
Nevada Policy Research Institute opposes A.B. 190 because it will cost taxpayers tens of millions of dollars, as indicated by the fiscal notes submitted to date, just so workers on public works projects can be paid wages that, on average, are 62 percent above market rates. I have submitted into record our calculations for that statistic (Exhibit C), which rely on official federal and state employment data. Thus, this proposal will increase the tax burden on regular Nevadans by requiring governments to pay inflated wages on their construction projects. I urge this Committee to oppose A.B. 190 and the unwarranted giveaway of taxpayer money it represents.

**Craig Madole, CEO, Nevada Chapter, Associated General Contractors of America, Inc.:**
We are particularly concerned with this, not just the term "annualized" to define bona fide fringe benefits. We agree with Mr. Daly's proposal in section 1, subsection 2, to identify and define what a bona fide fringe benefit is. However, in section 5 of the bill the "any signatory employer" would be exempt from having to annualize their fringe benefit packages.

To explain how that works, say I am a signatory employer. I do concrete placement and finishing and the name of my company is Annualized Concrete. On a private construction project, my union employees are likely paid lower fringe benefit rates for their health and welfare and in some circumstances their vacation pay and their retirement pay. This provision in the bill would exempt that from having to be considered annualized, so when they go to a public works construction project, they would, in fact, be compensated in those fringe benefit packages at a much higher rate. I think that it is only right that nonsignatory employers have that same benefit that the union employers have. This bill would create that disparity between the signatory and the nonsignatory employers.

Another area that I am particularly concerned about is section 7, subsection 5, which would require payment of prevailing wages on charter school projects. Charter schools do not receive capital improvement funding dollars from the government. In many cases—in fact

we are very closely affiliated with Ace Charter High School in Reno—we privately assist them to privately fund-raise for all of the capital improvement projects. It is my opinion that privately funded construction projects should not be subject to the prevailing wage rate. I will defer my time, but I am happy to answer any other questions.

**Brian Reeder, representing Nevada Contractors Association:**
Nevada Contractors Association (NCA) represents more than 600 members throughout the southern Nevada construction industry. Nevada Contractors Association performs the vast majority of public works projects in southern Nevada, and our members are arguably impacted the most by prevailing wage laws through our construction in southern Nevada. We support prevailing wage. I do not want anyone to be confused by that. We made that clear in 2015 when we worked the entire session to bring back prevailing wage on school construction. This bill goes beyond what the NCA members are willing to support, though. First of all we support the testimony from Mr. Madole from the Nevada Chapter of Associated General Contractors of America (AGC). Additionally, we want to put on the record that this bill will, in our mind, increase the cost of public works construction. Specifically, section 4 effectively provides the premium wages we pay on our public works. For example, if, per a collective bargaining agreement, an operating engineer is getting paid double time on Sunday, which is something that is common in collective bargaining agreements, that double pay on Sunday would be required of operating engineers on other public works projects throughout the state when they are working on Sunday. Even though the contractors on those projects have nothing to do with the collective bargaining agreement, they are still subject to that increased rate.

Prevailing wage and collective bargaining agreements are not the same thing. We think that this bill is combining the two in ways that make the contractors uncomfortable. I would be happy to answer any questions, and we are more than willing to work with Mr. Daly on the provisions of this bill. He is always good with bringing everyone to the table, and we will continue to do that.

**Michael Pelham, Director of Government and Community Affairs, Nevada Taxpayers Association:**
I am here to oppose this bill today. We think that it greatly reduces the amount of money that is available for building and repairs of state facilities, including schools and the university system.

**Warren B. Hardy II, representing Associated Builders and Contractors of Nevada; and Nevada League of Cities and Municipalities:**
I will not go into—per your request, Mr. Chair—those items that have been brought up. I would just associate myself with the comments of Mr. Madole, Mr. Reeder, and Mr. Pelham.

Speaking on behalf of League of Cities, I should indicate that we did meet with the sponsor. I find Assemblyman Daly to be wonderful to work with. We have not seen eye to eye very often in this Legislature, but his door is always open and he is always a gentleman when we

work on these things. I would indicate also for the record that my clients are not opposed to prevailing wage either. We simply have been concerned, globally, for all the years I have been here, with how prevailing wage is calculated. We just want to make sure that the prevailing wage that is being paid on a public works job is actually the rate that prevails in the private sector.

The intent of the Davis-Bacon Act, initially, was to ensure that the individuals working on public works projects were not paid less than those who were working in the private sector. We still support that goal. We think that is a worthy goal and a worthy objective. Unfortunately, the way we have chosen to calculate prevailing wage in Nevada has driven that wage on the public works project considerably higher than what is actually being paid in the private sector. That is our concern.

On behalf of the Nevada League of Cities and Municipalities, we do have concerns with the 36-month provision. I spoke with Mr. Daly about this yesterday. I understand what he is trying to accomplish with this. The problem that he brings up is a real one. We do need to collectively figure out a way to deal with that, and we look forward to working with him on that. I think a random 36-month provision, however, has the potential to create unintended consequences that might be difficult. We will continue to work with him on that provision. We do have real concerns with the calculation of prevailing wage being tied to the collective bargaining agreements the way it is in this legislation. That works directly against what I spoke about earlier, which is finding a method for determining prevailing wage that actually reflects what is being paid in the private sector. This, in my opinion, will move us farther away from that. So that the Committee understands, the reality of this bill is that it is going to remove public input from the determination of prevailing wage. We already have a process that makes it difficult for anybody but union contractors to have their wage calculated into the prevailing wage. The way the current statute works is, if 40 percent or more of those surveys were turned in by union contractors, the process is basically dropped and the collective bargaining rate is determined to be the prevailing wage. We do have concerns with that. As I testified on A.B. 136, Mr. Chair, we would like to ask the Committee to consider leaving the threshold at $250,000. We did that in 2015 and thought that was a very reasonable number. I would remind the Committee members who were here that there were proposals to raise it to $1 million. We supported $250,000 as reasonable, based on the consumer price index and other factors' increases. Those are the concerns of the cities. I think there will be others to testify, so I will not go into any more detail.

I want to spend my time as quickly as I can regarding section 31, which nobody has spoken to yet. That is the section in the legislation that repeals Assembly Bill 159 of the 78th Session. The concern resides around Nevada's historical application of project labor agreements (PLAs). I will just cut to the chase on our concerns. Now I am speaking exclusively for the Associated Builders and Contractors of Nevada. We do not have a concern with the goals and objectives of a project labor agreement. What we do have is a concern about how the historical application of PLAs affects nonunion contractors. For the Committee, let me be clear about who nonunion contractors are. They are small contractors, sometimes large, but the overwhelming majority of our membership are

family-owned small businesses, women- and minority-owned businesses. The high 90 percentile are nonunion contractors that will be affected by what I am going to tell you next.

I just ask you to put that in context, as we have had a goal in this Legislature, for many years, of trying to increase the hiring of women, minority, and small businesses. The repeal of section 31 works directly against that goal. I will explain why.

Let me read the text of the legislative declaration that is being proposed to be eliminated by this bill [NRS 338.1405]:

> 1. The Legislature hereby finds and declares that the provisions of this section prohibiting requirements for certain terms in contracts entered into by a public body for a public work or entered into by the awardee of a grant, tax abatement, tax credit or tax exemption from a public body are:
>
> (a) Intended to provide:
>
> (1) More economical, nondiscriminatory, neutral and efficient contracts for public works by public bodies in this State as market participants; and
>
> (2) Fair and open competition in awarding contracts, grants, tax abatements, tax credits and tax exemptions.

That is the language in the legislative declaration that is being proposed to be deleted by this legislation.

I indicated we do not have a problem with what I would call a fair PLA, but the historical application of PLAs in Nevada provides two things, specifically, that we have a difficult, difficult time with. If you would, Mr. Chair and Committee members, put yourself in the position of a small business that is faced with the prospect of having to sign a project labor agreement and see if these provisions would be acceptable to you as a business owner. Under the historical application of PLAs in Nevada, you are not entitled to use all of your own employees. You are required by the provisions of the PLA to hire one from the union hall, and then one of your own employees may work on the project. Then another from the union hall, then one of your own, up to a total of seven of your own employees. So you have to employ a total of 15 individuals before you are even able to use 7 of your own. So imagine, if you will, Mr. Chair, that you are the owner of a small construction company and you deliver the good news to your company that you have been awarded a contract to work on a publicly funded governmental project, and you have to say, That is the good news; the bad news is only seven of you get to work on this project. The rest will be hired from the union hall and you will not be able to work as a gainfully employed Nevadan working for a small or women- or minority-owned business, as you will be excluded from working on that project. We have serious concerns with the provision.

The second provision that we have difficulty with is that the historical application of project labor agreements essentially requires the payment of double benefits. If you are

a small-business owner who provides benefits to your employees currently, here is your choice. If you win a project with the government that is going to mandate a project labor agreement, you have two choices. You can take away the current benefits package you have for your employees and pay into the union trust fund and hope they eventually vest in it, which almost never happens because the vesting process takes a long time. Your choice is to lose your benefits or to pay for both, because the historical application of project labor agreements in Nevada requires you to pay into the union trust fund whether your employees are vested in that program or not. You can pay twice to make sure your employees continue to be covered under their health and benefit program, or you can eliminate the program that you currently have with your employees. Those are the two primary concerns we have with project labor agreements.

I should indicate, Mr. Chair, two project labor agreements were recently negotiated because the provisions of A.B. 159 of the 78th Session allow and permit the contractor to decide to enter into a project labor agreement. The provisions of that bill simply prohibit the government from requiring a project labor agreement. The two PLAs were negotiated on the Las Vegas Convention and Visitors Authority and on the Raiders Stadium [Las Vegas Stadium]. Two projects were negotiated between the building trades, the general contractor, and the owner of that facility. Neither of those project labor agreements contains the two provisions that I just articulated to you. It is possible, Mr. Chair, it has been omitted to create a fair project labor agreement. My client would have zero problems or concerns with memorializing and putting that in statute if given the opportunity to work on that. Mr. Chair, you have been very gracious in allowing me to go on and on. These are our primary concerns. We will work with the sponsor; we will work with this Legislature to ensure that we do not have a provision in law that will force individuals who are currently employed not to be able to work on a job. It is our concern that this legislation disproportionately impacts women- and minority-owned businesses and is directly contrary to the efforts this Legislature has made for many years to try to increase participation from those groups. Thank you, Mr. Chair, I will be happy to stand for questions.

**Assemblyman Ellison:**
Thank you for bringing up project labor agreements. As this bill stands right now, would that remove that totally?

**Warren B. Hardy II:**
That is correct. It repeals in its entirety NRS 338.1405, which is A.B. 159 of the 78th Session. We would go back to the pre-2015 status quo.

**Chair Flores:**
Members, are there any additional questions? I see none.

**Chase Whittemore, representing Nevada Builders Alliance:**
We oppose A.B. 190 in its current form. Primarily, we have concerns with section 5. I have met with many of the Committee members on this as well as the bill sponsor, and I feel like we could probably work with the bill sponsor in addressing our concerns. The biggest

concern is that if you have a hearing with the Labor Commissioner and after it has been determined by the Labor Commissioner that you have violated this provision—whether or not it is a willful violation—you would then be imposed a $2,500 minimum fine regardless. All of our members want to make our employees happy and pay what they are owed, so in terms of subsection 4(c), that would be the first violation in our mind. If you were to violate this section, then you obviously must make the employee whole. Now if there were a second violation and it was willful, then the Labor Commissioner could then fine and assess an administrative penalty. That is our conceptual amendment, and we would be happy to work with the bill sponsor on those.

**Chair Flores:**
Understood. Thank you.

**David Dazlich, Director, Government Affairs, Las Vegas Metro Chamber of Commerce:**
We maintain several concerns with A.B. 190, the substance of which has been addressed at length. I will just briefly touch on the points of concern to us: the increased cost of capital improvement projects to the school district, not only in Clark County, but throughout the state; the lowered threshold to $100,000; the concerns with the implementation of annualization; and, finally, most concerning is in the charter school section, privately funded projects being subjected to prevailing wage. It is of special concern to us.

**Darren Schulz, Director, Carson City Public Works:**
My comments have been mostly addressed, so I will just reference what we are concerned with. Overall this is going to cost our municipality more money, and we want to make sure that if we are paying more money, it is for the right reasons. We would agree with the comments made by AGC in regard to the disparity between the signatory and nonsignatory contractors as related to fringe benefits. We oppose that prevailing wages can be tied to collective bargaining and that prevailing wages are allowed to be modified during the year based on collective bargaining and not on a fixed annual basis as set by the Labor Commissioner, and we also oppose the repeal stated in section 31.

**Vinson Guthreau, Deputy Director, Nevada Association of Counties:**
We represent all 17 counties. The Chair has mentioned this Committee appreciates brevity, so I will not belabor the points that have already been mentioned, but we are opposed to this bill also. We do want to thank the sponsor. As has been mentioned, we spoke to him yesterday; he has always had an open-door policy.

**Chair Flores:**
I do not want you to summarize exactly what you are against, but if you would just state the specific section that you are against.

**Vinson Guthreau:**
We have issues mostly with section 5, which is the 36-month provision. We believe it creates some uncertainty there, as do the other issues that were mentioned on the overall cost to local governments.

**Chair Flores:**
Understood. Is there anybody else wishing to speak in opposition to A.B. 190? I see people in Las Vegas whom I believe do not want to speak, is that correct? Is there anyone wishing to speak in the neutral position? Please come up.

**Cole Mortensen, Chief Engineer, Department of Transportation:**
I would like to clarify some of the previous testimony on the project lengths. For example, Project NEON is the largest public works contract that this state has ever done, and we are managing to get that done in about 43 months. We also have some concerns that we would like to work with the project sponsor surrounding the language with regard to working the weekends. Often we start our workweek on Sunday nights and perform night work to increase the safety of the traveling public as well as that of the contractors and workers we have in the field. We also encourage working in times when it minimizes the impacts to the traveling public for the same reasons, which does include some weekend work and night work on weekends.

**Assemblyman Ellison:**
I was wondering where the Department of Transportation was on this. You do long projects. You go into long negotiations on some of these road projects, as they would for airports. Have you ever run into a situation where these run out 7 to 10 to 15 years? Most of the contracts are not that long, are they?

**Cole Mortensen:**
While the projects themselves may carry on for a number of years—for example Project NEON was started in 2002 with the environmental process—the contracts with the contractors are not generally that long. As I mentioned, with NEON, we are getting $600 million of construction done in 43 months. We anticipate the Reno Spaghetti Bowl Xpress Project to be done in under 30 months.

**Assemblyman Ellison:**
Will this bill have a large effect on how you are doing these projects?

**Cole Mortensen:**
To the extent that it would either discourage the contractors from working weekends or discourage them from taking some of the measures that we normally take to reduce the impacts to the traveling public and increase safety, I do not anticipate it being a huge impact.

**Chair Flores:**
Members, do you have any additional questions? Seeing none, thank you for coming up. Is there anyone else wishing to speak in the neutral position for A.B. 190? Seeing no one,

Assemblyman Daly, do you have any closing remarks and/or things you wish to say to address statements by the opposition?

**Assemblyman Daly:**
I do have several comments, which I have in order.

Mr. McKenzie was asked the question about how do you fill the job. I would just like to get on the record that all of the guys we dispatch are qualified. Some have more experience than others, some are on different levels, so yes, top dollars are going to the top hands. All are qualified, but some with less experience than others.

To Assemblyman Hafen's question about the minimum: Prevailing wage is a minimum. Contractors can pay more, but remember, with these long jobs, when you put your number in on bid day, you need and want to be the low bidder so you could have all these contingencies and try to second guess—although you are trying to get the low number—cover yourself, take care of your workers, but you are also trying to be competitive. It is difficult. Your chances of being successful on the job are diminished the more you try to add some of those things on. So it is a calculation each contractor makes. It is not as simple as, Oh yes, you can pay more, go ahead.

On the comments from the gentleman from Nevada Policy Research Institute: I disagree with his whole concept that all prevailing wage does is cost people more money. Let me go back and give this Committee a little bit of history on the origin. Figures do not lie . . . . I will not say the rest of the saying, but you know what it is. In the 1930s, when we were in the Depression and the federal government was trying to spend money in order to create work and stimulate the economy by doing a variety of things, there was a project that was in upstate New York. The Republican sponsors, Senator James J. Davis and Representative Robert L. Bacon, were happy this project was coming because it was going to be a stimulus to the area of the state that they wanted to represent. The project goes out to bid and the contractor from Alabama gets the job. So the local economy is not getting benefited.

So let us just go back and use simple terms and say that this is a masonry job and it is going to be a brick building, and bricklayers get paid $5 an hour. That was the established rate in that local community, the rate that the contractors would have to pay on this local job in their area. They are not going to say, Hey, we have to compete against people from Alabama because they did not know they were coming and that Alabama is paying half that. When that situation happened, the law was put in. It was meant to say that the government, whenever it is the procurer or consumer of construction services—at any given point it really has not changed since then; 30 percent of all construction dollars are public dollars; it is a significant portion of the market. They took the position, rightfully so—and then we adopted a little of Davis-Bacon in the state of Nevada a few years after—that when we are the consumer of construction services, we do not want to be a force in the marketplace that upsets the balance and wages and the establishment in the local communities and the local workers network. So we will pay the rate that is determined to prevail in that local market. There is a process in the federal government and there is a process under the state to

determine what that is, and that rate then is determined to prevail, so that when the government works on a project they are paying the local rate, the same as everybody else who had bid on the project. I can go into the whole thing about how the rate is determined in the last step, but I will save that for a second. Davis-Bacon is meant to protect local workers, local companies, and the local wage rates that have been established in the local market. End of story. It is as valid today as it was then.

On Mr. Madole's concerns over the charter schools, public funds, and various things, charter schools may not receive dedicated capital funding money per se—I would agree with that, they do not. They do, however, receive public funding. They are district schools in Washoe County. The charter schools are covered by the Washoe County School District and they receive per-pupil funding. If they do not have any other sources, then they have to use some of that money for their school construction. When there was a large revamping, a reshaping of the charter school laws in 2013, we put the provision in. We put it in, and in 2015 they took it out. Here we are. I believe it applied and should apply, they agreed to it in 2013, and all we are trying to do is repair that.

The premiums for Saturdays and Sundays are not tied to collective bargaining agreements. Some of those things are already done only if the union rate prevails. All we are saying is, we do not only want you to recognize the wage rate that has prevailed. The Labor Commissioner already recognizes that on October 1, if there was an increase previous in the year in remaining collective bargaining agreements, the wage rate goes up. I know ours does on October 1 to coincide with that so we do not have that lag, and we have our contractors—if our rate prevails—as close to the actual wage rate in existence per the agreement. When we turn in the survey numbers from the previous year, we show the wage rate that was in effect, and if the union rate prevails they will recognize that increase on October 1. We are asking to say, Recognize the other things that are based on that agreement that are based on wages. We are not asking for show-up time and some of the other things. We are asking for the premium pays that are paid as overtime. Some collective bargaining agreements have their wage rate changed July 1 so that the Labor Commissioner can recognize the increase in July. That way, there is not seven months that jobs are bid at a lower rate. We are not tying prevailing wage to collective bargaining agreements. We are just recognizing the rest of the wages that are included in the determination. That is all we are asking for. People can disagree on that. I understand.

People were talking about costs. Mr. Hardy talked about project labor agreements. I need to give a little bit more explanation or language there. The language that he said we are deleting, in my view, was self-serving language at the time it was added. It was not needed. It says, This is what we think it is for and we are going to put all these fancy words in here to make everybody feel good about what we are doing. The fact of the matter is, all we were doing was allowing a public agency to enter into a project labor agreement or to require their contractor to do that.

Let me go back a little bit on the history of that. The landmark case, which you have probably heard of, is "Boston Harbor" [*Building & Construction Trades Council v.*

*Associated Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218 (1993)], which went to the U.S. Supreme Court. The Massachusetts Water Resources Authority (MWRA) was sued because Boston Harbor had dirty water. The U.S. Environmental Protection Agency told them they had to clean up the harbor and they had to get it done within a certain period. It was a multibillion-dollar project, high profile, very complicated, and time-sensitive, one for which the MWRA was under the gun. They wanted to make sure that they had access to the best-qualified workforce, access to the apprenticeship programs as much as they could, and access to ensure that there would be no labor disputes that would disrupt or slow down the project. In their bid there was one little clause that said the public agency had made the finding that it was in the best interest of the people whom they represented, in the use of the taxpayer's dollars, to address these quality issues in the contract. One paragraph said whoever the successful contractor was shall negotiate an agreement with parties to address these labor issues. They did that by negotiating a project labor agreement with the building trades in the Boston area. That contract allowed every contractor, big or small, mom and pop, whatever, the same access to bid on and be successful in the project, as long as they adhered to the terms and conditions that were in the project labor agreement. Project labor agreements have been litigated in this state a couple of times and have been upheld. They have been litigated in California and Colorado. Everywhere they have gone, they have been upheld. The Boston Harbor decision was a 9-0 decision in the Supreme Court.

There are a couple of distinctions there. When the public agency is acting as a consumer of construction services, they can make that policy decision. They make that policy decision—each individual awarding authority—on what is in the best interest of the people whom they represent. They make a determination and findings and they say to whomever the contractor is, This is what we want to see whenever you come forward; we want for you to address these issues. If the public body chooses to do that through a project labor agreement, it is now a tool in the toolbox that they can use. It is not mandated. All of the various issues and adverse things that Mr. Hardy mentioned would have been negotiated in there—it is true. It has to also then be approved by the awarding body. I am reminded of a court case in Los Angeles over a PLA that has been in place for 20-some years now; the judge referred to the PLA as a manticore to be slain by the Associated Builders & Contractors. He was responding to the quote, "If the AGC looks upon a PLA as a manticore, that beast sprang from the demands of a proprietor rather than from the demands of a regulator." [*Associated General Contractors of America v. Metropolitan Water District of Southern California,* 159 F.3d 1178 (9th Cir. 1998)] We are not going to entertain that. The opposition is opposed to them on principle. End of story. It does not matter how we have it or what it says, they can be opposed. But the contractors who choose to bid on the project can take that business opportunity as it is presented, or they can walk away from it. It is their choice. No one is forcing them to accept these terms and conditions that are the same as when you go to the grocery store and you can buy this product or you cannot buy the product, or you go to buy a car or whatever. All that this does is give the opportunity to the public body to make that determination in the best interest of the people they represent, and all we are doing is giving them that tool. I am happy to answer your questions.

**Assemblyman Ellison:**
Mr. Daly, you heard the comments by Mr. Hardy. Will this bill totally remove the collective bargaining agreement that went in in 2015?

**Assemblyman Daly:**
I am not sure I understand the question. It will remove the prohibition against PLAs that went in in 2015; it will remove the threshold at $250,000 that went in 2015; it will remove the 10 percent reduction on school construction that went in 2015; it removes the charter school exemptions from 2015; really, all of what was done in 2015. The annualization, the premium pay, the 36 months, those are new things.

**Assemblyman Ellison:**
But the collective bargaining units allow them to go in and negotiate. Would that still be standing, because right now you have the unions and if a nonunion company comes in and bids a project and gets it, then they can sit down right now and work with the unions. Would this bill remove that?

**Assemblyman Daly:**
No, and I am not sure I am following you. Are you talking about under a project labor agreement?

**Assemblyman Ellison:**
That is right.

**Assemblyman Daly:**
Under the project labor agreement, the agreement is already negotiated between the prime contractor and the owners as mandated. Under current law, you are not supposed to go directly to the agency that has the agreement. Mr. Hardy said that the ones they have on the stadium and the convention center are driven by a contractor decision, so whoever that contractor was negotiated with the building trades, and that is the resulting agreement. Any subcontractor who wants to bid on the project has to bid it under the terms of the PLA. They have to meet those requirements. None of that changes. This just gives them the opportunity. Right now, if a public body wanted to say, or a school district wanted to say, Hey, we have these sensitive projects, they have to be open by school date. We cannot afford to have any delays. We want to make sure the most qualified people are developed in the workforce and we have access to apprenticeship programs on all the trades. These are issues that we believe are a concern. We want whoever is our contractor to address them in an agreement that is to our satisfaction. That is how the project labor agreements come forward. The contractor would then negotiate a contract with the building trades to address all of those issues. Then whoever bids on that project as a subcontractor has to agree to adhere to that. We did it just that way on the Reno Aces stadium.

**Assemblyman Leavitt:**
Does the per-pupil funding for noncharter schools go into the construction of those schools?

**Assemblyman Daly:**
I believe only public schools, which charter schools are, receive the per-pupil funding. Private schools do not receive per-pupil funding.

**Assemblyman Leavitt:**
I am talking about public schools that are not charter schools. If it is a Clark County School District noncharter school, does their per-pupil funding go into the construction of their buildings?

**Assemblyman Daly:**
I missed it last time, sorry. I cannot speak to all of the counties. I can talk a little bit to Washoe County. We had a ballot question, 2016 Washoe County Ballot Question 1 (WC-1), the election before last, that did create a funding source specifically for school construction. Prior to that, there was no dedicated funding for school district construction. Washoe County School District received its per-pupil funding from the state. They also received property tax from Washoe County. All of these sources together had to go to the teachers to put in classrooms and various things. If they had to do capital improvements, they had to take it out of one of those plots. They could use per-pupil funding, they could use some of the property tax, but they did not have a dedicated source for school construction. So yes, they had to use the publicly funded sources for their capital improvements. Now that they have a dedicated source for that with WC-1 passing, they have a dedicated sales tax revenue to pay for school construction. It can only be used for that. However, currently they could use other funds if necessary for capital improvements.

**Chair Flores:**
Assemblyman Leavitt, I appreciate the intent of your question. I know exactly where you are going with it, but for the sake of clarity, I would prefer that we have that question answered by our committee counsel. What I will do is I will send out a question. We all know that our legal staff are working incredibly hard to meet some of the deadlines that we have placed on them to get our amazing bills out there. I will send out a request so that legal can get us an answer and each member will get a response (Exhibit D). I just want to make sure that we are 100 percent clear on this. I do not know whether anybody in here is equipped to answer that question precisely.

Mr. Leavitt, if you do have any other questions, please proceed.

**Assemblyman Leavitt:**
I just want to make sure that we are comparing apples and apples and not apples and oranges when we are talking about private construction with charter schools. If I could get that clarification, that would be great.

**Chair Flores:**
Members, are there any additional questions?

**Assemblyman Hafen:**
Mr. Daly, I do not think you are going to expect me to say this, but I actually agree with one of your testimonies. Your analogy of New York and Alabama—if you could just replace that with Clark County and Nye County, you would understand where I am coming from, in the scenario when we do not get enough surveys brought back. The additional cost burden that is placed on Nye County and the other rural counties that end up with the Clark County wage structure and then get the zone pay besides—it is the exact same scenario that you presented where Alabama came in and undercut the New York wages. I hope that we can get together offline and you can see it from my perspective, just using your exact analogy. I want to thank you for that and let you know that I agree with you.

**Chair Flores:**
The only remark that I will make is for the sake of consistency on my end. In the past, I have made it clear I understand that when we do not pay prevailing wage, at times that may be paying less, but that also means companies from other states are often coming in. What that translates to is these individuals are here for four days to work, they get a check and then they take it to another state. That means they are spending their money on restaurants out there. They are going to the movies out there. They are purchasing homes out there. They are purchasing cars out there. We have a philosophical question that we have to answer which is, is the cheapest always the best route? We have a responsibility to Nevadans—they are whom we represent. We need to ensure that when we pay somebody a strong wage here, we understand it is going to translate to a benefit to every other business around him or her. It has been my biggest concern. Every time we have this conversation about prevailing wage, I understand the spirit of the opposition that often goes with that conversation. But I think we have to answer a very important question and it is: Are we prioritizing Nevadans and are we ensuring that every dollar we pay into somebody's pocket is actually going to come back to everybody else in one way or another?

Assemblyman, I believe you have one additional remark.

**Assemblyman Daly:**
I have one final comment. To all of the stakeholders, the people who came up to testify, if you want to be involved in whatever discussions there are, please give your email contact information to my attaché because we are going to work on this. We are going to try to address as many issues as we can. There are some philosophical splits, so do not be surprised if I tell you, No, we are not changing that. However, I will work on addressing as many of these issues as I can, and it is going to happen swiftly. Do it quickly and we will get going.

**Chair Flores:**
I only ask that you please include Assemblymen Carrillo, Munk, and Ellison in those conversations. We are going ahead and closing out the hearing on A.B. 190. I invite anybody wishing to speak for public comment to come forward, either in Las Vegas or Carson City. There is nobody here for public comment. This meeting is adjourned [at 10:02 a.m.].

RESPECTFULLY SUBMITTED:

_____
Geigy Stringer
Committee Secretary

APPROVED BY:

_____
Assemblyman Edgar Flores, Chair

DATE: _____

## EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is written testimony, dated March 20, 2019, submitted by Daniel Honchariw, Senior Policy Analyst/Government Affairs, Nevada Policy Research Institute, in opposition to Assembly Bill 190.

Exhibit D is a memorandum titled "K-12 Facility Funding," prepared by the Fiscal Division, Legislative Counsel Bureau, in response to a question from Assemblyman Leavitt during the Assembly Committee on Government Affairs meeting on March 20, 2019.