

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

**Eightieth Session
April 8, 2019**

The Senate Committee on Government Affairs was called to order by Chair David R. Parks at 1:24 p.m. on Monday, April 8, 2019, in Room 1214 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator David R. Parks, Chair
Senator Melanie Scheible, Vice Chair
Senator James Ohrenschall
Senator Ben Kieckhefer
Senator Pete Goicoechea

GUEST LEGISLATORS PRESENT:

Senator Chris Brooks, Senatorial District No. 3
Senator Nicole J. Cannizzaro, Senatorial District No. 6
Senator Marilyn Dondero Loop, Senatorial District No. 8

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Committee Policy Analyst
Heidi Chlarson, Committee Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

Kate Marshall, Lieutenant Governor
Courtney McKimmey, Chief of Staff, Office of the Lieutenant Governor
Mendy Elliott, Reno Sparks Chamber of Commerce
Winnie Dowling, Nevada Small Business Development Center
Bryan Wachter, Retail Association of Nevada
Shaundell Newsome, Chair, Board of Directors, Urban Chamber of Commerce
Chuck Mohler, Henderson Chamber of Commerce

Senate Committee on Government Affairs
April 8, 2019
Page 2

Daniel Tafoya, Chair, Board of Directors, Latin Chamber of Commerce
Kristin Edholm
Gina Bongiovi
Bill Marion, Purdue Marion & Associates
Kris Sanchez, Director, Governor's Office of Economic Development
Derek Stonebarger
Jo Cato, African Chamber of Commerce
Nevin Endy
Ginnie Salazar
Lelia Friedlander
Kenneth Evans, President, Urban Chamber of Commerce
Dana Berggren, National Association of Women Business Owners, Southern Nevada Chapter
William Stanley, Southern Nevada Building Trades Unions
Jamar Steele
Brandon Jaimes
Jeremy Watson
Joseph Tillema, International Union of Elevator Constructors Local 18
Paul McKenzie, Building and Construction Trades Council of Northern Nevada, AFL-CIO
Nicole Crossley
Al D. Davis, Business Manager, Financial Secretary, International Brotherhood of Electrical Workers Local 357
Jeff Proffitt, Business Manager, Sheet Metal Workers Union Local 88
Nick Vassiliadis, Southwest Regional Council of Carpenters
Ruben Murillo, President, Nevada State Education Association
Craig Madole, Associated General Contractors, Nevada Chapter
Adam Rutherford, Spanish Springs Construction
Luke Lippincott
George Del Carlo
Marc Markwell, Sierra Nevada Construction, Inc.
Mac Bybee, President/CEO, Associated Builders and Contractors Nevada Chapter
Travis Coombs, Core Construction
Frank Lepori, President, Frank Lepori Construction, Inc.
Tyre Gray, Las Vegas Metro Chamber of Commerce
Chris Ferrari, Nevada Contractors Association
Warren Hardy, Associated Builders and Contractors Nevada Chapter; Nevada League of Cities and Municipalities

Senate Committee on Government Affairs
April 8, 2019
Page 3

Jessica Ferrato, Granite Construction
Darren Schulz, Director, Public Works Department, Carson City
Albert DeVita, Laborers' Union Local 169
Bill Wellman, Las Vegas Paving Corporation
Danny Thompson, International Union of Operating Engineers Local 3, Local 12
Tom Morley, Laborers International Union Local 872
Thomas Memmer, Teamsters Local 631
Michael Pelham, Nevada Taxpayers Association
Randy Soltero
Rusty McAllister, Nevada State AFL-CIO
Paul Enos, CEO, Nevada Trucking Association
Matt Klainer, Public Works Department, City of Las Vegas
Teresa Herrera, H&R Trucking
Chase Whittemore, Nevada Builders Alliance
John Davis, Quality Transportation, Inc.; 3D Concrete
Shannon Chambers, Labor Commissioner, Department of Business and Industry

CHAIR PARKS:

We will open the hearing on Senate Bill (S.B.) 495.

SENATE BILL 495: Creates the Office of the Small Business Advocate. (BDR 18-136)

KATE MARSHALL (Lieutenant Governor):

Senate Bill 495 creates the Office of the Small Business Advocate. Governor Steve Sisolak spoke about this in his State of the State address.

Nevada Small Business Development Centers (SBDC) help businesses start up. The Department of Business and Industry has many divisions within it that regulate businesses. However, we do not have what other states have—an organization which advocates on behalf of businesses that might need assistance navigating various State agencies.

I have provided a two-page document which describes what the Office of the Small Business Advocate would do ([Exhibit C](#)). There is also a two-page document ([Exhibit D](#)) that describes the differences between the Office of the Small Business Advocate, the Department of Business and Industry and the SBDC. I have also provided an example of a small business annual report from another state ([Exhibit E](#)). At the end of the year, we expect to provide the

Legislature with an annual report that would summarize the issues with which we are dealing. If things could be streamlined or changed to be more efficient, or if additional resources are needed, the Legislature would have the information to do that.

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):

I am here to lend my support. I am grateful to the Lieutenant Governor for bringing this idea forward and for trying to put resources behind how the State interacts with and assists small businesses. Often, small businesses do not have large human resource departments, large compliance departments or the types of legal departments large corporations do. Nevertheless, they still have to comply with a litany of rules and regulations and interact with a number of State agencies. Senate Bill 495 would create a portal through which small businesses would be able to get the assistance they need to interact successfully with State agencies.

LIEUTENANT GOVERNOR MARSHALL:

Information about the Office of the Small Business Advocate has been in the newspapers, and we have actually gotten some phone calls. A mortgage lending firm was trying to get a license for mortgage lending in Nevada. After 30 days, the company had not heard from the Division of Mortgage Lending, so it called our office. My chief policy advisor called the Division of Mortgage Lending to find out what was going on. When one agency calls another agency, calls are returned. We found out the individual who was handling that application had left the Division of Mortgage Lending, another person was given that additional work and the person was new. The application was located, and we were advised the mortgage lending company would have its license in 90 days. We called the company and it advised that getting a license in other states has never taken longer than 34 days. We were on Day 31. The company was concerned that this is the way it is in Nevada. We called the Division of Mortgage Lending and asked if it could assist their new person with getting through his or her work backlog. The mortgage lending company had its license in one week and it hired people in Las Vegas and Reno.

Many businesses simply do not understand what the holdup is. The Office of the Small Business Advocate would not simply give businesses a 1-800 number to call but would actually walk them through the process.

COURTNEY MCKIMMEY (Chief of Staff, Office of the Lieutenant Governor):

Sections 1 through 7 of the bill provide definitions. I will point out that the definition of a small business as 100 employees or less in section 6 is in line with the federal definition of a small business.

Section 8 creates the Office of the Small Business Advocate within the Office of the Lieutenant Governor.

Section 9 outlines the duties of the Office of the Small Business Advocate in terms of how it operates and where businesses shall be referred if their scope of business is not within this Office.

Section 10 defines the types of cases the Office shall handle and formalizes the reporting process for interested agencies.

Section 11 establishes that the Office will be able to collect data which is part of the annual report the Office will submit to the Legislature.

SENATOR SCHEIBLE:

How many staff members will this Office have?

LIEUTENANT GOVERNOR MARSHALL:

The Governor developed a budget for the Office that included one person. The Governor questioned if we would be able to do this with one person. We realized it was important to formalize the structure of the Office so it is an office within an office. We want to ensure those resources will always be available for small businesses. We have added a fiscal note. Instead of one person, we will have two people in the first year and a third person in the second year.

SENATOR SCHEIBLE:

I know we are talking about a small staff, but I do not see a consideration for having interpreters on staff in the bill. Are you going to be able to serve small business owners who do not use English as their first language?

LIEUTENANT GOVERNOR MARSHALL:

When we start hiring, we will make sure that some staff are fluent. However, in larger states, materials are produced not just in one other language but in multiple languages. The ultimate goal for our website is to have multiple

languages. We have a strong Asian-American community which has many different languages and, obviously, a strong Latino community. But there are many different languages, even if someone speaks English well, it might be easier for that person to understand specific regulations if they can be translated into his or her language. We will work toward that. That is a resource issue. We will probably start with Spanish.

SENATOR SCHEIBLE:

That makes good sense to me.

SENATOR KIECKHEFER:

Scope-wise, why is it appropriate for this office to fall under the Office of the Lieutenant Governor rather than the Governor's Office of Economic Development? We have the SBDC and the Office of the Secretary of State which are most often a business's first interaction with State government. Why is it most appropriate in your Office?

LIEUTENANT GOVERNOR MARSHALL:

The Office of the Small Business Advocate should not have any conflicts and should only represent small businesses. If it is housed in an agency having certain vested interests in producing certain results, that would be a conflict. For example, if the Office is housed within the Department of Business and Industry, the Department has interests in the Division of Mortgage Lending doing well. My Office would be able to bring issues forward that might be going on in the Division of Mortgage Lending in a neutral, not punitive, way. The Department might not be able to do that in a neutral fashion. The Office of the Small Business Advocate is only advocating on behalf of the small businesses. Placing it in the Office of the Lieutenant Governor would provide peer-to-peer interactions with other agencies. There would be no conflict because we do not represent any other agency or interest.

SENATOR KIECKHEFER:

Sometimes, it is in the interest of the State to side with its regulators. One of the lines in the bill says the duty of the Office is to resolve issues that arise in the administrative, regulatory and enforcement functions of a State agency with respect to small businesses. Those enforcement functions may very well go against a small business if it is a bad actor. However, you are talking about running an office that is charged with advocating on behalf of that business. Is that a position in which we want to put ourselves?

LIEUTENANT GOVERNOR MARSHALL:

The State is often in the role of being a regulator. The State is well-represented in the role as regulator. We do not have someone to be a voice for small businesses that are unable to articulate that voice because they do not have the resources. In terms of trying to be efficient and to serve our constituents, both voices need to be heard.

SENATOR KIECKHEFER:

Is sounds like it is almost a long-term care ombudsman who looks out for the interests of someone who is unable to look after themselves when he or she is vulnerable. Am I understanding you correctly?

LIEUTENANT GOVERNOR MARSHALL:

I would never consider an entrepreneur someone who cannot care for himself or herself. However, you are correct—in other states it is called an ombudsman.

SENATOR OHRENSCHALL:

We often hear that small businesses are the economic engine of the Country. I appreciate what this bill is trying to do.

I am looking at the language on page 3, line 21 about coordinating with State agencies, facilitating interactions between small businesses and state agencies, and developing processes ensuring small businesses receive timely responses. One thing occurred to me, especially after Senator Scheible's question about many small business people who may have a language barrier but are still trying to provide service to the community and start a profitable business.

Do you envision this Office helping people with language barriers connect to federal resources through the U.S. Small Business Administration, whether pointing them in that direction or letting them know about loans or investment capital—things that might help them of which they might not be aware?

LIEUTENANT GOVERNOR MARSHALL:

Short answer to your question is yes. We are not here to reinvent the wheel but to make sure small businesses are connected to places to which they need to be connected. For example, if the SBDC is a place they ought to go, we would literally pick up the phone and connect them with someone at the SBDC who is ready to talk to them. In other words, we would not simply give that person the number for the SBDC. We would follow through on the phone so that the call is

expected and we can connect him or her. The same would be true with federal agencies.

SENATOR OHRENSCHALL:

That can be helpful, especially for someone who is trying to start a small business.

MENDY ELLIOTT (Reno Sparks Chamber of Commerce):

Often, small business owners are not sure where to start. There are many tools out there, but they are not sure how to begin, where to go and who to talk to. This role within the Lieutenant Governor's Office will help. We hope it will be a one-stop shop for a small business if it needs a loan or to understand licensing, protocols, or the Occupational Safety and Health Administration—everything someone would need to know in order to operate a small business.

It is helpful to have a voice at the other end of the phone to make sure before the small business even begins, it knows what to do and how to do it before it gets into trouble.

We support this bill. We appreciate the Lieutenant Governor and Senator Cannizzaro for bringing this bill forward.

As to what Senator Kieckhefer said, sometimes, one wonders if this Office is duplicative, but when it comes to small businesses just knowing there is a one-stop shop for them to go to, someplace for them to start will help them as they continue to be an economic engine for Nevada.

WINNIE DOWLING (Nevada Small Business Development Center):

We support S.B. 495. Seventy percent of businesses have ten or fewer employees. Small businesses are important. They have all kinds of questions and problems, especially new and relocating businesses. How do they know whom to call? Many people are moving here. State government is a good place to start when thinking about starting or relocating a business. We anticipate working closely with this Office. We already have had major discussions.

The SBDC is a boots-on-the-ground type of organization. It has provided free and confidential assistance since 1985 and would definitely support this Office because it could provide better service. Other states have this type of role. It would be a good thing for Nevada.

I have submitted a letter from the Small Business Development Center supporting S.B. 495 ([Exhibit F](#)).

BRYAN WACHTER (Retail Association of Nevada):

We support this legislation. It is important that small business is defined in this bill.

The size of State government seems to keep growing, and being able to navigate it is incredibly helpful. It is important that the Office of the Lieutenant Governor is able to provide a one-stop shop for small businesses as they attempt to comply with State departments. Businesses being able to use this tool is important.

SHAUNDELL NEWSOME (Chair, Board of Directors, Urban Chamber of Commerce):

It is important to understand, while some people mentioned language barriers and so forth, it is also tough to be an entrepreneur who is transitioning out of the military. I spent ten years in the United States Air Force. When I transitioned into gaming and hospitality and started my business in 2003, there was a lot of State agency navigation. I wish I had a small business advocacy office at that time.

I participated in the Service Corps of Retired Executives, the Small Business Administration (SBA) and the SBDC. I had a counselor and mentors. I still have mentors today who help us through our business. Through these times, the role of advocacy is important because it helps expedite things. Most of the time, if small businesses are up and running faster, they create economic development immediately.

In 2015, my company, Sumnu Marketing, won the SBA Family-Owned Small Business of the Year for Nevada. We also help with internship programs from the University of Nevada, Las Vegas, in media and communications. We have 11 employees, which is important to our community. I want to make sure people understand this bill will give strength and a voice to small, microbusinesses that are often overlooked.

Why place this advocate in the Office of the Lieutenant Governor? Because people in that office answer their phone calls. They will not send them to voice mail and not get back to them. I am not saying that always happens, but it

happens more often than not. People take it more seriously when it comes from a State agency with some weight behind it.

The Urban Chamber of Commerce supports S.B. 495.

CHUCK MOHLER: (Henderson Chamber of Commerce):

The Henderson Chamber of Commerce consists of more than 1,800 businesses throughout southern Nevada. More than 85 percent of those businesses have 50 or fewer employees. The Henderson Chamber of Commerce supports S.B. 495.

Each stage of developing a business is different based on a variety of factors. Sometimes, those factors or variables appear to be within the business owner's control; sometimes, they are not. All stages are important, but each variable, good or bad, can have a significant impact on the success of any business, especially small businesses. For small business owners, operating a business is not a 9:00 a.m. to 5:00 p.m. job. They make a 24/7 commitment to themselves, their families, their customers and their employees. If they work hard, provide outstanding services and products, make good decisions, and sometimes get a little lucky, they find success along the journey.

For most businesses, owners and leaders are responsible for a wide variety of roles. They are not only the owners, they are also the sales people, the client relationship managers, the marketing managers, human resources managers and finance managers. Due to the assortment of functions and roles, it is often difficult for them to gain enough insight and expertise to navigate the regulatory system. Typically, they are totally unaware of the resources and support Nevada provides small businesses.

Therefore, we strongly support the creation of the Small Business Advocate Office. This Office will serve as a concierge of sorts to help these businesses with critical information and assistance to provide success in the Nevada marketplace.

DANIEL TAFOYA (Chair, Board of Directors, Latin Chamber of Commerce):

The Latin Chamber of Commerce supports the creation of the Small Business Advocate Office within the Office of the Lieutenant Governor. When we first heard about this bill, we were quick to start research to ensure that it would enhance the mission not only of our small businesses but also the services we

provide as a chamber of commerce. By working with small businesses and regulatory agencies to ensure all small businesses have a voice in State regulatory matters, the Small Business Advocate Office would improve the business climate in Nevada. Placing it in the Office of the Lieutenant Governor gives this Office the authority to have the connectivity to other State agencies that small businesses deserve.

Our research also brought to light a recent report from the SBA which indicated over 99 percent of small businesses in Nevada are considered small businesses with less than 100 employees. In 2015, Nevada small businesses created over 26,000 jobs while firms with fewer than 20 employees experienced the largest gains, adding 15,000 jobs. Small businesses were responsible for employing 42 percent of the workforce in Nevada—almost 474,000 people. They are a major source of innovation and economic growth in Nevada.

While, collectively, small businesses form the backbone of much of Nevada's economy, individually, many small businesses lack the resources to effectively navigate and understand the State's many regulatory burdens and requirements. Small businesses encounter difficulty receiving timely responses or resolutions from State agencies that regulate business. In business, time is money and money is time.

The many laws, rules and policies in State government are at times complex and confusing. State agencies may often be understaffed, overworked and may not be equipped to provide timely feedback or responses to small businesses to ensure that requests are met in a timely manner.

Nevada small businesses could use an advocate inside State government to help them work with State agency regulators to understand agency decisions or requirements and to better understand and advocate on behalf of themselves and other small businesses.

The Small Business Advocate Office would help Nevada small businesses overcome many of these obstacles by providing a small business owner a place in State government to take their concerns and hopefully have them addressed. Specifically, an office of small business advocacy will facilitate State regulatory agency interaction with small businesses by giving a timely response, recommending improvements to positively impact the business climate in Nevada, providing outreach to small businesses and small business advocacy

groups, and directing small businesses to the appropriate resources to assist them in navigating the State's government.

KRISTIN EDHOLM:

I am a small business owner, and I am its only employee. Having this support would be meaningful to me. This is something that Nevada should be doing for all small businesses, not only for new businesses just starting out. Getting that extra help is so important.

I echo some of the points that have been brought up already by those who support this bill. I appreciate the fact the State will have the opportunity to collect data on what small businesses are experiencing as well as any challenges that may be arising. The State can become more proactive in supporting something that is deemed the foundation of our economy.

I support this bill.

GINA BONGIOVI:

I am a small business owner. I established my law practice in 2008, serving as outside counsel to small businesses. That business model continues undiluted today. We have represented almost 1,500 small businesses and have extensive experience navigating the labyrinth of State agencies.

While the theory of "no wrong door" is aspirational, in reality it is not necessarily the case. I have created or plugged myself in such a way that I have been serving as the de facto ombudsman in this position for over ten years, trying to figure out what relationships to build in order to get things done for our clients.

As others have said, it is not easy to start a business. Managing one in the face of increasing regulations is even harder. Even simple businesses are regulated by a half-dozen different State agencies, each of which has its own set of rules and regulations. The more we grow, the more employees we have, the more streams of revenue we pursue and the greater the likelihood we will make a mistake. I can assure you, small business owners are not the bad actors as was referenced earlier. We are not trying to skirt the rules. We are not trying to get into trouble. We are not getting into trouble. We do not have the time, the money or the energy to deal with that. So when state agencies treat us as the enemy rather than educating us to help us stay compliant, the reputation the

State has built as a business-friendly jurisdiction begins to erode. We have had clients leave the State because of unnecessarily adversarial treatment by State agencies and simply an inability to navigate.

Often, a State agency will tell someone this is not the agency he or she should be dealing with, but it will not tell that person which agency he or she should be talking to because that is legal advice. Small business owners need an advocate—someone on the inside whose role is to help them to be better so we can do better.

Almost 60 percent of Nevada small business owners budget for charitable giving. Many more actually give. The growth and success of small business causes the growth and success of entire communities. On behalf of the Las Vegas Metro Chamber of Commerce, my company and my 1,500 small business clients, I respectfully request that you support S.B. 495.

BILL MARION (Purdue Marion & Associates):

I am here in support of this ombudsman. I want to commend the Lieutenant Governor for bringing it forward even though it has the potential to take business away from me. How would that happen?

A little over a month ago, a friend of mine called who was licensing a medical facility. As part of the licensing process, the facility had to have an on-site inspection. The facility submitted its application in autumn of last year. It had not heard anything, so it called the licensing agency and someone there said that these are handled on a first-come, first-served basis so you will have to be patient and wait your turn. That was not quite good enough for this friend of mine, but he had no idea of where to go, so he called me to ask what I might be able to do. Through some contacts, I got inside, found out the agency had lost the application and now made the recommendation that the facility should just reapply. I had to use my contacts again and asked that because the application was lost, what could be done to expedite the process so this medical facility could get licensed and become operable? Every day that goes by is a loss of investment for the physician and the practice.

My point here is someone should not have to hire someone like me to get the answers he or she needs. An ombudsman could help small businesses navigate. For that reason, I support this proposal and I hope you will too.

KRIS SANCHEZ (Director, Governor's Office of Economic Development):

I am happy to support S.B. 495. From a new company perspective, the aftercare is just as important as attracting a company to come to Nevada. For our incumbent businesses, making sure they have proper access to State government to navigate what can be complex and onerous processes is also important. Any way we can enhance State-business interface, be more responsive to the business community and enhance the image of Nevada as a get-it-done State is something we endorse wholeheartedly.

You have heard from many small business owners today and from the Lieutenant Governor. I want to recognize the Lieutenant Governor and the Governor for their vision on this. This Office will be complementary to what the Governor's Office of Economic Development does and will provide an opportunity for us to ensure there is a handoff to help companies navigate State government as they seek to accomplish their goals.

It is often spoken about and also brought up today in this hearing that small businesses are the backbone and the engine of our economy. Any way we can support them and help them grow will ultimately help our economy overall. We will ensure we can weather the next recession when it comes by having stronger, more forward-leaning companies because of the support we give.

DEREK STONEBARGER:

As a small business owner, I support this bill to create the small business advocacy position. Many first-time business owners who want to open a restaurant, a salon, a dog shelter or maybe a tavern will not be aware of the pitfalls they are about to face. The small business advocate can help these first-time business owners live their American dream. After all, that is what they are doing. They are cashing in all their chips. They are cashing their 401(k)s or mortgaging their homes, only to find out the amount for which they have budgeted is far too small. In Nevada, that is the worst.

On a local or State level, organizations like city planning, code enforcement, business licensing and the health district have zero tolerance for small businesses, especially new ones that may not know the rules. It is not the government entities' fault. They are just doing their jobs, but they tend to compare small businesses to the thing they deal with the most and in Nevada—casinos. If the plans are wrong or an inspector has a bad day, a casino can be told to redo the plans, put a rush on them and pay all the extra fees. They can

tell a casino to move a wall and add a grease trap or a few extra feet to an already completed bathroom, and the casinos will get it done with a smile because they can afford to. But when first-time small business owners hear their plans are wrong or they need to add wheelchair ramps or widen doors or move a wall or wait months for an approval or even add a grease trap for businesses that do not sell food, they get depressed. I know because it happened to me. They run out of money. They have even been known to commit suicide at a high rate. You can check the facts on that. Small business owner failure leads to things like this.

In a gambling state like Nevada, we should all have a chance to cash in our savings to live our American dream. Nevadans should have someone on our side helping us avoid pitfalls and helping businesses open and stay open.

JO CATO (African Chamber of Commerce):

The African Chamber of Commerce was launched in February. We enrolled over 900 members in less than 90 days. On behalf of our membership, we support S.B. 495.

The Office of the Small Business Advocate is a much-needed role. It is my hope this Committee will move it along and support this bill. It is also our hope it will grow into a one-stop shop for small businesses.

I own a small marketing and advertising firm as well as a mobile billboard company. I am the only African-American female who owns a mobile billboard company. It took me nine months to go through the licensing process. I have been in business for over ten years. An advocate would have helped me tremendously without having to incur additional overhead with vehicles waiting six months before I was able to operate in this State.

On behalf of my membership as well as over 700 clients I have serviced over the years, it is my hope that S.B. 495 will be approved and move forward.

NEVIN ENDY:

I am a small business owner. I am happy the Lieutenant Governor mentioned the Asian-American community in Las Vegas because it represents a good portion of Chinatown as well as the Asian-American community.

I also serve on the board of directors for the Chinese American Citizens Alliance. I have learned through communications with clients and others in Las Vegas that issues in the Asian-American community are not only the language barriers but also the fact they are intimidated by the process of opening a new business. When you combine those into one struggle, many times they decide to not go forward. It is not wise to have a section of the community feeling like that, whether it is the Spanish-speaking community, the Chinese-speaking community or any community in Las Vegas.

This would be a strong and important tool for the Las Vegas area as a whole to encourage the community to go forward and open businesses that could benefit the entire community. Therefore, I support S.B. 495.

GINNIE SALAZAR:

The number of people in support of this bill should demonstrate its importance for this community.

I am the owner of Logistical Solutions. I am also the president of the National Association of Women Business Owners. I support the creation of the Office of the Small Business Advocate. It would be beneficial to have a small business advocate helping small business owners stay focused on growing their businesses and strengthening our economy.

LELIA FRIEDLANDER:

I have owned a small business in Las Vegas since 1991. As the primary administrator for my company, having an advocate available to discuss business requirements for State agencies and answer questions that regularly come up would be helpful. Small business owners need this dedicated advocate so we can continue to grow our businesses and our economy. I support S.B. 495.

KENNETH EVANS (President, Urban Chamber of Commerce):

As the president of the Urban Chamber of Commerce. I am thankful several of our board members and small business owners testified as well as several of my colleagues and sister or brother business organizations. We definitely need the business advocate position funded and resourced in a manner that will enable us to expand and diversify our State economy.

DANA BERGGREN (National Association of Women Business Owners, Southern Nevada Chapter):

I interact with business owners on a daily basis. This small business advocate position is needed. When starting a business, people learn on the fly about all of the requirements. It would be nice to have a one-stop shop looking out for the small business owner where these resources and advocacy are available.

I support S.B. 495.

VICE CHAIR SCHEIBLE:

We will close the hearing on S.B. 495 and open the hearing on S.B. 207.

SENATE BILL 207: Revises provisions governing apprentices. (BDR 28-740)

SENATOR CHRIS BROOKS (Senatorial District No. 3):

I am presenting this bill from the proposed amendment (Exhibit G), not as introduced.

Apprenticeships offer people the critical learning and work skills they need when starting off in a trade. They can literally be a gateway into the middle class. I have a background in the trades and have worked on education opportunities for people seeking to enter these types of occupations. I was an instructor in the electrical apprenticeship program for several years. I started the renewable energy training program for the International Brotherhood of Electrical Workers (IBEW) and worked on the IBEW's curriculum development committee. Apprenticeship is the best way to bring people into the middle class and support a new industry—utility skill solar. Senate Bill 207 seeks to ensure participants in apprenticeship programs have a valuable experience.

Among other things, S.B. 207 will do the following: Contractors and subcontractors for vertical construction projects on public works will be mandated to use apprentices for not less than 15 percent of the total hours of labor; for horizontal construction, the mandate would be 5 percent of the total hours of labor.

Apprentices who graduate from their program but are still employed on a public work would still be counted as apprentices for the purposes of this legislation. Graduation day will not be layoff day, which has sometimes been the case. These requirements would not apply to a craft or type of work that is not apprenticed.

Public bodies would be able to request exemption from the mandates for good cause, which is defined in the bill. Such situations would include: the work is complex and hazardous, requiring the expertise of a greater percentage of journeymen; a request by a contractor or subcontractor for apprentices is denied by an apprenticeship program; or no apprentices are made available by an apprenticeship program recognized by the State Apprenticeship Council.

The Labor Commissioner would be able to work with the State Apprenticeship Council to modify these percentages up to 2 percentage points beginning January 1, 2022. Furthermore, apprenticeship programs would provide quarterly reports to the State Apprenticeship Council regarding their enrollment capacity and completion rates. Programs below 40 percent of their enrollment capacity could be required to develop recruitment strategies. The State Apprenticeship Council would be able to revoke authorization to those programs that fail to meet the requirements.

These straightforward measures would keep apprenticeship programs accountable, thus protecting our future trades people. I urge this Committee to approve S.B. 207.

WILLIAM STANLEY (Southern Nevada Building Trades Unions):

Apprenticeship utilization is necessary considering where we are today. An issue identified by almost everyone in the construction industry is its need to train qualified workers for the future. In this room, there are no less than six or eight builders who champion apprenticeship in one way or another. Those who are at the center of apprenticeship programs need help increasing its demand if we are going to place people from underserved and underutilized parts of the community into these great jobs that provide access to the middle class.

There are some people in southern Nevada who will underscore that message through their testimony.

JAMAR STEELE:

I am a first-year apprentice in the Sheet Metal Workers Union Local 88 apprenticeship program. I am here to support S.B. 207 because apprenticeship offers me and others a pathway to a new life.

When I was a young man, I made some bad decisions that landed me in prison for a number of years. During my time in prison, I made the choice that when I

got out, I would not return to my old ways. I was offered the opportunity to attend the Department of Corrections MC3 program which offered me the construction education I would need to be ready to enter an apprenticeship program when I was released.

Shortly after I was released, I was contacted by the Sheet Metal Workers Union Local 88 to tour its training facility. While I was on that tour, I knew this was what I wanted to do for my future. I interviewed with the Sheet Metal Workers Joint Apprenticeship Training Center Board shortly after and was accepted with the MC3 graduation certificate I received while in prison.

Since that time, I have been able to work for a company and learn under journeymen who truly care about my future. I have begun making enough money to provide for my family and look forward to the future I can now provide them. I support S.B. 207 because this will provide more people the opportunity to change their future and leave their past behind them.

BRANDON JAIMES:

I am an apprentice with the Plumbers, Pipefitters, and Service Technicians Local 525. I believe in the importance of hope. Two years ago, I was a guest of the State at High Desert State Prison in Indian Springs. When you are sitting alone in your cell, you think about the life you are going through. I knew most likely my past would lead me right back into my prison cell or worse. That changed for me when I took part in the southern Nevada MC3 program which led me to the Plumbers and Pipefitters Union Local 525 apprenticeship program and the career path I am on today. Thousands of people have no hope and need the same opportunity I was given for a life they can be proud of and a career path instead of a prison cell.

Responsible apprenticeship programs only accept as many people as the market can bear. The bill before you today will increase apprenticeship opportunities, open career paths and give hope to those who do not have a chance at a productive life.

I urge your support of S.B. 207.

JEREMY WATSON:

I am an apprentice with Ironworkers Local 433. Hope is important. For many years, I never had the opportunity I have today. Since June 2018, after being

released from the Department of Corrections, I have become an apprentice with the Ironworkers Union. I have a second chance and a future ahead of me. Not only do I have a job, but I have a career. I provide for my family in a righteous way, and I can go to sleep at night knowing I did the right thing.

I ask that you support S.B. 207.

JOSEPH TILLEMA (International Union of Elevator Constructors Local 18):
I am a journeyman and officer of the International Union of Elevator Constructors Local 18 and a Marine Corps veteran. I honorably served in the Marine Corps for eight years before transitioning into the elevator trade union. Helmets to Hardhats was imperative in transitioning from the military into the building trades where I could use the attention to detail, leadership and technical skills I learned while serving our Country.

Through Helmets to Hardhats, I was able to bypass a two-year waiting list endured by my colleagues and immediately join the elevator trade. I was given the chance to learn an exceptional trade and serve our community the best way I can.

Thank you for your continued support in helping our soldiers transition into civilian life. I support S.B. 207.

MR. STANLEY:

As you have heard, many people benefit through their participation in building trades apprenticeship programs. Our problem is we do not have enough jobs.

We offer programs through the Department of Corrections. I have been asked to optimize the program because it has been so successful. Since we instituted this program at High Desert State Prison, not one of the graduates who has entered the building trades has had another contact with law enforcement.

Out Helmets to Hardhats program is the best. We take people straight out of the military and transition them straight into meaningful jobs that lead to careers. It is not just middle class but in most cases upper middle class.

These are great opportunities. However, our issue is demand for these apprenticeship programs. We need help increasing those jobs. Where we are spending our taxpayer dollars to create construction projects, we need to

leverage those dollars to create more opportunities for people like those who testified today.

PAUL MCKENZIE (Building and Construction Trades Council of Northern Nevada, AFL-CIO):

We have many potential apprentices, but the problem is we do not have jobs for them. We do not enter into education opportunities until a job presents itself for apprentices.

We have a pool of people who are ready and willing to go into the apprenticeship program, but we have to have a job in which to place them. This bill creates opportunities for apprentices to start their education and get into a trade.

On Friday, we thought our proposed amendment would solve some of the issues, but we found out we needed to make more changes. That is the proposed amendment, [Exhibit G](#), you have before you today which brings in the Labor Commissioner to help make some determinations. We ran into many different issues people had with mandating apprentices on jobs. Those are the exclusions we presented in this proposed amendment. If no apprentices are available—we do not foresee that ever happening because we have a pool of applicants waiting to go to work—the Labor Commissioner would have the authority to lower the percentage of hours required or eliminate the requirement in a trade.

If a project is complex and the contractor or the public agency believes the percentage of apprentices we are asking for will be detrimental to the project, that entity would be able to present its case to the Labor Commissioner for a determination to either reduce the percentage or eliminate it.

Many contractors in this State do not have apprenticeships. This bill will enable them to ask an existing apprenticeship program for apprentices. All of those apprenticeship programs will cooperate and provide apprentices because we want to get apprentices to work. If those apprentices are not provided, contractors or the public agency will be able to submit a request for a waiver.

We hope many of the issues with the bill have been addressed in this proposed amendment, [Exhibit G](#). The percentage levels we set are based upon historical percentages of what was successfully put together in the past. The Southern

Nevada Building Trades Council is working on two projects in which it is exceeding 15 percent on vertical construction. We talked with our local unions about the 5 percent average and the percentage of apprentices they were putting on horizontal construction because we want to increase what we have now to get more apprentices into the mix. They indicated that was a goal they could not only achieve but was one that helped to fuel our rate of apprenticeship enrollment.

As I studied my Building Trades Council membership over the last 5 years, I discovered the average age of a journeyman exceeds 51 years old. If we do not do something now to address this issue, in ten years we will not have a construction workforce to construct the new buildings we need in this State. We have waited too long already. To wait longer could be detrimental to the growth of this State. That is why we are asking for your support.

NICOLE CROSSLEY:

I am a fifth-year apprentice for the IBEW. When I started my apprenticeship, my previous qualification was I was a customer service agent at Walmart. Someone told me to do this. I had no experience. I never turned a wrench or knew anything about electricity, but I did it anyway. I applied and I was accepted. I started in Las Vegas and then transferred to Reno.

The beautiful thing was I did not need to know about electricity or how to turn a wrench. The apprenticeship program gave me all of these resources to learn this career, to build my knowledge and to push me forward, not just as a field electrician working at Tesla but forward even farther. Anywhere I want to go, I can take it.

I am studying at the training center and earning an associate degree at the same time. I will graduate with an associate degree in applied sciences. This gives me the opportunity do other than electrical. I can take that degree, expand upon it and become a scientist.

One of the important things for me is equal opportunity. I did not have to fight for my wage. Apprenticeship treats everyone the same, and there is no discrimination toward women, a previous felon or anyone else. Apprenticeship has pushed me forward to give me a career with which I can move on. That is best for everyone trying to get into a trade. I support S.B. 207.

MR. MCKENZIE:

Apprenticeship programs give participants the opportunity to earn a degree as they get their apprenticeship. Several participants have gone on to expand their construction background and complete college courses that have led to jobs in management.

Another opportunity was the MC3 program. We are proud of that program. It is a pre-apprenticeship program given to those who might be interested in entering the trades. The Children's Cabinet is putting young people from underprivileged communities through the MC3 program to determine if they have an interest in construction. When they graduate from that program, they get an advanced placement in apprenticeship programs. We worked hard to expand that program into other areas in order to give opportunities to the underprivileged.

Another part of the MC3 program is if someone does not have a high school diploma, we offer an opportunity for a GED. Having a high school diploma is one of the requirements to get into an apprenticeship program.

We work across the lines to address issues preventing diversified members of society from advancing. We try to bridge those gaps and give them opportunities and apprenticeships.

However, the key to all this is we have to have jobs in which to place them. We can do all the preparatory work in the world. We can make the list as big as we want, but if contractors do not call for those apprentices to put them to work and do not have job opportunities for them, all they do is sit on a list and end up going to Walmart to work as a greeter.

SENATOR KIECKHEFER:

In section 11, subsection 3 of the proposed amendment, [Exhibit G](#), where the Labor Commissioner can increase the percentage, is that supposed to be a one-time or an annual increase?

SENATOR BROOKS:

It states the Labor Commissioner can annually increase it as much as 2 percentage points if necessary.

SENATOR KIECKHEFER:

It would increase from 5 percent to 7 percent and from 15 percent to 17 percent annually, not just the one time.

SENATOR BROOKS:

Yes, that is annually and it is "may." If the Labor Commissioner finds there is a need, he or she can increase the percentage.

SENATOR KIECKHEFER:

On the issue of applying for a waiver, if a public body wants to request one, it needs to submit that request within 15 days of the award of the contract. From a timeline perspective, I do not understand how that would work. If the successful bidder has to apply for apprentices, is denied and that occurs six months after the contract has been awarded, how does that work from an implementation standpoint?

MR. STANLEY:

Under the Davis-Bacon Act of 1931, we often find after a contract has been awarded that we have to do a wage determination. Conformances are done afterward. It is done often in the construction industry involving public works projects. In this case, apprentices would not be available. If this bill passes, the contractor is going to need apprentices, but he or she is not engaged in an apprenticeship program. That contractor can reach out to an apprenticeship program and ask for apprentices. If the program gives the contractor a letter stating apprentices are not available or it gives him or her an intent to comply, meaning the program will dispatch apprentices when they are needed six months from now, the contractor would not be able to seek a waiver. However, if the apprenticeship program gives the contractor a letter stating apprentices are going to be available, then he or she needs to move forward on that basis.

SENATOR KIECKHEFER:

If a contractor does not have an apprenticeship program, requests for apprentices would have to be done before he or she bids on a project.

MR. STANLEY:

No, the contractor could seek a waiver or input from the local union or an open-shop program. For example, a contractor might not participate in the Associated Builders and Contractors (ABC) electrical apprenticeship program.

The contractor could go to ABC to seek apprentices. If a registered apprenticeship program denies him or her the ability to use apprentices who are already registered through the State Apprenticeship Council, the contractor could apply for a waiver. When the project begins, the contractor would have that denial of apprentices and could then apply for the waiver after the job is bid.

SENATOR KIECKHEFER:

But then the contractor only has a 15-day window to get that denial after the contract is awarded. I am worried about the timing. I am trying to understand how this works. If the government awards the contract, then the government has to apply for the waiver, not the contractor. It seems short in terms of time frame, especially because of the distance between the awarding of the contract and the start of construction.

SENATOR BROOKS:

It is the normal course of business for contractors who are seeking to bid on a public work to reach out to subcontractors, labor unions or apprenticeship programs to determine what the labor picture looks like during the time of the construction before they bid the job. Many times, that is the deciding factor on whether they will bid the job. Contractors want to know a pool of labor is available and at what price well before they decide to bid on a job. They would have a good understanding of what the apprenticeship picture looks like and what the wage will be because that needs to be built into the bid. That would be understood. Many times, agreements are in place before contractors bid on the project.

SENATOR OHRENSCHALL:

The testimony of the apprentices in Las Vegas showed how life-changing this could be. When someone who has hit rock bottom is given a living wage and benefits so he or she can take care of his or her family, we see what that can do.

If this bill passes, how will the word get out about the opportunities available to people who want to join an apprenticeship program?

MR. STANLEY:

In southern Nevada, apprenticeship coordinators present programs in high schools every week. This would be built into those presentations in high schools

throughout southern Nevada and Clark, Nye and Lincoln Counties. We would continue to conduct job fairs at high schools, and this would become a part of the process to notify young people about this opportunity.

SENATOR BROOKS:

Senator Ohrenschall, unfortunately, there are far more applicants than there are positions to fill. We conducted a job fair for the Moapa Band of Paiutes for a large solar power project that will be built out there. We were trying to make opportunities available where the job is located.

The nonprofit Nevada Partners intervenes with kids who are in the criminal justice system to get them to a place where they can apply to be in an apprenticeship program.

The truth of the matter is that the demand for open positions in apprenticeship programs exceeds jobs. One of the things this bill addresses is the integration of apprentices into the workforce in a more robust way so those opportunities are more abundant for those who need them the most.

SENATOR GOICOECHEA:

How many apprenticeship programs are there, and what are the crafts or the trades?

MR. MCKENZIE:

The majority of construction trades are apprenticed, and all of them are able to be apprenticed. We have State apprenticeship programs for a majority of them. The Teamsters does not have an apprenticeship program. There is a classification in prevailing wage for landscaper, but there is no apprenticeship program. Laborers do much of that work. There is a separate classification so the apprenticeable craft would be the landscaper classification. That would be one of the exempt classifications.

SENATOR GOICOECHEA:

Do you apprentice laborers as well?

MR. MCKENZIE:

Yes, laborers are an apprentice class.

AL D. DAVIS (Business Manager, Financial Secretary, International Brotherhood of Electrical Workers Local 357):

I represent about 3,500 craftsmen and their families. I have been an apprenticeship trustee since 2001 and a teacher since the 1990s in the IBEW apprenticeship program.

I support S.B. 207. I have the largest apprenticeship population of any construction trade. I have over 400 accepted or indentured apprentices for two different programs: sound and communication, and inside construction wireman programs.

For example, in my sound and communication apprenticeship program, 1,000 people applied. We put 24 of those men and women to work. Within my apprenticeship programs, we can accept 800-plus apprentices. We have a demand problem, not a supply problem.

The other problem I have as a business manager is in the next 10 years, over 1,000 of the 3,500 craftsmen I represent will be at normal retirement age. You can do the math. We need to bring 1,000 people into the apprenticeship program every year and graduate every one of them. We need this for the future of southern Nevada and for the future of the State.

JEFF PROFFITT (Business Manager, Sheet Metal Workers Union Local 88):

I support this bill. I am proud of one of my apprentices who spoke earlier and what he has accomplished. We have not had any apprentices reenter the criminal justice system who have come into our school. Sheet metal workers and electricians take apprentices under their wings. It is more than just school. It is a lifestyle change for them. Most of us have had a few bumps in the road, and we know how things go. We want to show them how to do it right.

We heard from many small business owners who testified previously on S.B. 495. This will also benefit them. The majority of my contractors falls under the small business category of 100 or fewer employees. This is their skilled work force. We can talk about jobs in Nevada, but these are skilled jobs. These jobs take time to learn and learn them safely. Apprenticeships are their way of gaining skilled labor.

NICK VASSILIADIS (Southwest Regional Council of Carpenters):

We support this bill also. It is important. We have seen an increase in the average age of our membership. Getting younger workers and training them correctly and properly is key to keep organized labor going.

RUBEN MURILLO (President, Nevada State Education Association):

The Nevada State Education Association supports S.B. 207 as amended. Much like the Alternative Routes to Licensure program to develop teachers and encourage members of the community who have business degrees to become teachers, we also support expanding opportunities for apprenticeship. It is an investment in our communities and in jobs and thus becomes an investment in our students.

CRAIG MADOLE (Associated General Contractors, Nevada Chapter):

Apprenticeship programs are doing a great job and are turning out a great product for signatory employers. We do not disagree that we need to be actively committed to training the next generation of skilled workers. We have a minor disagreement with what that should truly look like when all is said and done.

A large unintended consequence in this proposal is trying to recruit those who are less fortunate. All of the apprenticeship programs in Nevada require a high school diploma or its equivalent to participate. Fifteen percent of all Nevadans who are 25 years old do not have high school diplomas or an equivalent. Over 40 percent of African Americans and 30 percent of Latinos do not have high school diplomas. A study done by the University of Nevada, Las Vegas, showed the disparities. The Guinn Center recently published the same findings. By not including those people, we will miss a large portion of the population.

The other issue is the construction industry competing for employees for which it was not competing earlier because of what Tesla and Panasonic have to offer. Historically, the construction industry has been able to secure those potential employees. We need to do more now to reach out and incentivize the younger population we need to train, and we need to be proactive in doing so.

In my opinion, tax dollars should be spent to employ all Nevadans. We are excluding or at least creating a barrier to entry for those who do not have a high school diploma or its equivalent.

We need more workers. Only 15 percent of apprenticeship training occurs in the classroom. Eighty-five percent of that training occurs on the job. All employers are already doing that. We need to look for innovative and reasonable ways to provide that other 15 percent outside of these building trades apprenticeship programs.

SENATOR GOICOECHEA:

Presently, there is no requirement on the 15 percent apprentices.

MR. MADOLE:

That is correct.

SENATOR GOICOECHEA:

You are saying you would prefer the training not to be union-only and it could be a classroom setting. But clearly, you still have the ability to hire any number of apprentices and not have to meet a maximum or minimum.

MR. MADOLE:

Yes, I agree. We also need to provide opportunities for those who do not have a high school diploma or its equivalent. Allowing training outside of an indentured apprenticeship program would provide more opportunities for those people.

SENATOR GOICOECHEA:

Do you think kids who do not graduate high school would receive appropriate training through career or technical education programs?

MR. MADOLE:

Yes, I do.

SENATOR KIECKHEFER:

Is there anything in the bill that prevents contractors from continuing to train people in those other ways? I do not see anything in the bill that requires only apprentices as employees within the structure.

MR. MADOLE:

A portion in the bill states "apprentice" has the meaning ascribed to it in *Nevada Revised Statutes* (NRS) 610. Those apprenticeship programs are the ones Mr. Stanley and Mr. McKenzie were referring to in their testimony.

SENATOR KIECKHEFER:

If a contractor bids and is awarded a contract for a public work, he or she is only required to use a set number of apprentice hours as defined by statute.

MR. MADOLE:

The way I understand this bill, a contractor would be required to have 15 percent of all work hours performed by an apprentice recognized by the State Apprenticeship Council by each craft. In northern Nevada where there is no mason's apprenticeship training program, the contractor would have to call Las Vegas to determine if apprentice masons are available. The apprentice masons would have to travel 450 miles to Reno to participate in a job that may last 5 or 6 days and then travel back to their homes in Las Vegas. This would be true with numerous crafts. However, if a contractor trains those employees himself or herself, nothing in this legislation would give him or her credit for that training.

SENATOR KIECKHEFER:

It sounds like your concern is it ultimately blocks many of your members from bidding on public works. Am I interpreting that correctly?

MR. MADOLE:

It also prevents them from training their own employees. Some companies have been training their own workforce for generations. Now they do not get credit for that training for the performance of a public works project. They already do not get to pay those people as apprentices. They pay them as journeymen according to the prevailing wage laws. But now they do not get the recognition for doing the training themselves. That is one of my concerns.

SENATOR OHRENSCHALL:

I am looking at the language on page 4 starting at line 12, "A public body may submit a written request to the Labor Commissioner for an exemption from the requirements of subsection 1 for a public work." In the example you brought up in which there is no mason's union in the northern part of the State, would a public project be able to request an exemption from the Labor Commissioner?

MR. MADOLE:

As I understand it, the public owner could apply for an exemption after the request has been made for all of those crafts for which an apprenticeship may exist in southern Nevada. There are probably five or six crafts at a minimum for

which no apprenticeships exist in northern Nevada. All of those requests would have to be submitted to the State Apprenticeship Council for each craft in southern Nevada. The public owner would have to wait to get a response that the apprentices are not available. Then the public owner would go through the process and, potentially, the public hearing as defined in this bill.

SENATOR OHRENSCHALL:

Would an exemption be possible for that situation under the language of the bill?

MR. MADOLE:

Yes, that is my understanding.

SENATOR KIECKHEFER:

In your experience, are the percentages outlined for the two different types of construction, vertical and horizontal, consistent with what you generally see from contractors that have apprenticeship programs?

MR. MADOLE:

I would say 5 percent of employees in training is probably an accurate number.

ADAM RUTHERFORD (Spanish Springs Construction):

I oppose S.B. 207. I am the president and owner of Spanish Springs Construction. My company is one of the largest nonunion general engineering contractors in Nevada. We regularly compete for public work projects.

Last year, we employed over 170 people with a payroll over \$8.5 million. My employees, many who are minorities, rely on us to perform a mixture of public and private work so they can work as much as possible year-round to support themselves and their families. All we ask for, and would ever ask for, from the State is to ensure a level playing field for us to compete in.

Senate Bill 207 will make it all but impossible for my company and companies like mine to compete on public work projects without going union. Not only would this bill create a lot of extra paperwork and tracking costs, it basically eliminates nonunion companies from competing for public work. It is a huge barrier to entry for newer construction companies which has been shown to be discriminatory to minorities.

My company previously bid on and built public works projects in California but cannot anymore due to laws similar to this bill. On a project in Truckee we constructed a couple of years ago, we had to use a union apprentice to operate equipment to meet the goals. This apprentice hit a building with the equipment he was supposed to be trained to operate.

In South Lake Tahoe, we had to use a union apprentice as a cement mason who kept disappearing all day long. He was found sleeping in his car during his work shift. Getting union-trained apprentices has been a disaster for our company because they were far inferior in skill and quality to our workers. We can control what projects our workers go to and are trained on. We stopped bidding public work in California, just like we would be forced to do if this bill is enacted.

In the last two weeks, my company saved taxpayers around \$150,000 on two jobs on which we were the low bid. A union contractor was second bidder. If we were not bidding on these projects, \$150,000 more would have to be paid by those public agencies. That is a lot of money. Over the years, my company and my nonunion competitors have saved the State and its public agencies millions and millions of dollars. Imagine what each of their budgets would look like today and the number of projects that would not have been built or eliminated if we had not bid on these projects.

Our employees are trained in the classroom and on the job as done in union apprenticeship programs. The difference is when one of our employees who has had less time performing a specific task works on a public works project, I pay him or her the full prevailing wage, not a discounted rate union contractors are allowed to pay on prevailing wage public work projects.

The difference is we do not use an arbitrary number of hours of work to determine if someone is ready to perform a task because people learn at different rates. We only allow them to perform a task when we believe they are ready. There are many ways to educate someone to perform work tasks. To learn skills to perform a job, some people go to college, some go to trade schools, some use apprenticeship programs and some use good old-fashioned on-the-job training.

By enacting this bill, you are saying there is only one way to be trained, which is wrong. As a matter of fact, labor unions welcome nonunion laborers as full

journeymen to join their unions without going through apprenticeship programs. What does that tell you? It tells you our training is good enough for them.

By enacting this bill, all you would be doing is ensuring public work projects in Nevada are almost exclusively performed by union contractors, and workers would be paid prevailing wages. The prices Nevada pays would skyrocket and take much-needed resources away from areas of the State that are truly in need.

Two weeks ago, my company was the low bidder on a project for the City of Sparks. As I will detail in my testimony on a bill later today, we are required to pay a truck driver a total wage of \$56.17 per hour on that project. That is the kind of nonsense you get when you let labor unions take over writing bills and sending in information for calculating prevailing wages. This bill is a Trojan horse for making public works essentially union-only. By voting yes on this bill, you would be ensuring union labor is all that is used in public works construction. You will lose companies like mine that keep prices in check with reality. Do you want to tell your constituents that truck drivers on public works projects should be paid \$116,883 per year and are twice as valuable as teachers? This is what happens when unions take over.

Paul McKenzie and others today said there are not enough jobs for the apprentices they currently have so they want to enact requirements that we use apprentices on public work projects. Well, who loses their jobs to put these apprentices to work if there are not enough jobs for them? Workers performing today would lose their jobs.

Usually, laws are created to solve real problems. Mandatory training has not been a problem in the past. Why is it being pushed now? Pure and simple, to help create union monopolies. These laws add more ways to fleece the State out of much-needed funds that could be used elsewhere to construct much-needed infrastructure projects or to divert those funds to other areas of true need. Please vote no on this bill.

LUKE LIPPINCOTT:

I have worked for Spanish Springs Construction for two and one-half years, and I oppose this bill. We have well-trained employees who work for our nonunion company.

I went to the University of Nevada, Reno, and majored in psychology. After that, I went to the John F. Kennedy University in California and got my master's degree in sports psychology. I am the safety manager for Spanish Springs Construction. I evaluate and train our employees. I found my calling doing that. It has nothing to do with psychology, but it is what I like to do and I do a pretty good job.

To put it into perspective, for the last two years we have been working on a Regional Transportation Commission of Washoe County job redoing all of 4th Street and Prater Way. It was a \$42 million job. We were the general contractor. We had 30 subcontractors on the job, some of which were union. They worked great for us. We would be taking jobs away from our employees if we had to get employees from other companies. We had no accidents or injuries on that job, and we finished on time.

GEORGE DEL CARLO:

I oppose S.B. 207. I am a small business owner. I am signatory to the union. I am signed to five different collective bargaining agreements. Today, I sent three plasterers to Battle Mountain to begin a job. According to the requirements of S.B. 207, I would have to take 15 percent of the hours of my two journeymen plasterers and 15 percent of my journeyman hod carrier, different craft, and have apprentices fill those positions.

In addition to that, I am sending three carpenters to that job. So now I pass the magic number of seven. I would have to take 15 percent of those carpenters' hours and make them apprentice hours. I will have 43 hours where I normally would have journeymen on the job, and I would have to make them an apprentice job. I would have another 15 hours of carpenters that I would have to take from being a journeyman and make those apprentice hours.

Now apprentices are good. We understand that, but it is costing me more money for every one of those. As this bill is written, I would have to take a journeyman from Battle Mountain and send him or her home; he or she sits home for 43 days and then an apprentice comes in to fill that position.

I am a small business owner. I do not have 100 people and all kinds of apprentices I can move from one job to another. I have seven people going to this job that would match the criteria under this bill, and my hands are tied. I am against this. The unintended consequences of this bill are devastating to a small

business owner. We just talked for hours about small business owners and the problems we have. Let us not add more problems to a small business owner like me.

MARC MARKWELL (Sierra Nevada Construction, Inc.):

Sierra Nevada Construction, Inc., is a heavy highway civil contractor based out of Sparks. We are a union company. We are signatory to the laborers, the operators and the masons unions. Without a doubt, the biggest issue we have is workforce development. One of the things we worry about is the unintended consequences of this bill. The percentages we have of our apprentices are six operators, five laborers and one mason. The problem with us trying to meet these goals is to move crews around to make sense of the goal and to actually meet the goal. That is going to be a lot of work. It will take some time for the apprentices to come in to get to a point where we have an opportunity to get to those numbers.

It is difficult to get people. We all know that. The concern we have is where are we going to get the people? Maybe it is different in the north than the south. Maybe there is more opportunity to get qualified people in the south than in the north.

Our other concern is in section 1, which discusses the percentages for vertical versus horizontal construction. Having been doing this for a while, I see some conflict. If we work in horizontal construction, we have to come up with 5 percent. What if we are working as a horizontal contractor on a building? Are we going to be held to the 15 percent or the 5 percent? I want to make sure that is clear because that could be a gray area and cause problems later.

MAC BYBEE (President/CEO, Associated Builders and Contractors of Nevada):

We run open-shop apprenticeships. Everyone who testified is 100 percent right. Apprenticeship can change lives. I have seen it. We have had kids come to us who live in their cars. By the time they are through our program, they are owning homes. There is no doubt that apprenticeship is a great thing.

I want to speak about how apprenticeship would apply under this bill. First, when apprentices are indentured, they actually belong to us. Their training, education, well-being, and welfare belong to Associated Builders and Contractors Nevada Chapter, not the contractor. I am certain trainers in union halls feel the same way. We do not dispatch our apprentices to contractors we

do not know, who have not signed agreements or have not shown us they can properly train and take care of those individuals who come into our facility.

Part of our standards is a ratio to ensure training in safety occurs. Each trade has a different ratio. I do not understand how you can throw out a percentage, which I am not sure how it was calculated, and ensure the standards approved by the State Apprenticeship Council are not violated. Those are my larger concerns.

In addition, a number of apprenticeship program open shops do not have that and are not approved by the State Apprenticeship Council. If we are truly talking about workforce development, moving construction forward, elevating the industry as a whole and creating more craft professionals, then let us put some space between the implementation phases. Allow us to determine what can be developed. What can we put into place? How can it be done the right way in order to build our State and have the best possible workers for the future?

TRAVIS COOMBS (Core Construction):

Core Construction does about \$250 million a year in vertical construction in the public sector. This bill is not directly applicable to this company because as a construction management firm we do not self-perform any work on projects. We subcontract everything out. As a result, we have six or fewer employees working on a project. Nevertheless, I am still voicing my opposition to this bill.

No doubt we have a shortage of skilled labor, and no one is disputing the value of workforce development. This bill will not effectively fix the problem. I am afraid it will drastically limit and reduce the competitive bidding environment we have from our subcontracting partners on public sector projects.

As you heard before, the opinion is that if this bill is enacted, people will not bid on public works projects. In that case, the end result will be public works projects will become more and more expensive due to the lack of competition.

Senator Brooks made comments about guaranteeing the percentages in labor at bid day. The contracting process is time-consuming and complex. It often takes weeks into months to get a contract agreement with public agencies. On a public project, there will be anywhere from 20 to 30 subcontracts that must be issued. That process is a significant hurdle to get over. Some of the contractors

Core Construction contracts with will not have labor on the job for months and months after the job begins. Achieving that guarantee that our subcontract partners will be able to accomplish the goals established in this bill sounds like a good idea, but I am afraid it is virtually impossible.

FRANK LEPORI (President, Frank Lepori Construction, Inc.):

I have been in business for 34 years. I started out with two employees. We have about 70 people in the company now. We train every day, and we have been training for 34 years. If this bill goes through, all our training goes out the window. It will not count.

I use union and nonunion subcontractors all the time. Some of my best subcontractors are union. I also have great nonunion subcontractors. We are not going to solve the problem with our labor force with apprenticeships. We are surprised with the younger people we are getting in our company right now. We probably have the best crews we have had to date. We have worked hard over the last few years recruiting people. We want good people. If they have had some tough luck, we will give them a break. We will help them out. It is great to see the success people have. They come in, they might be having a bout with a bad decision, you help them out a little bit and a couple of years later, they have a house and family. It is wonderful to see that happen.

I am against the bill as written. It puts nonunion companies at a disadvantage.

TYRE GRAY (Las Vegas Metro Chamber of Commerce):

We would like to thank the bill's sponsor. We know an amendment has been proposed. We will continue to review it and see if there is an opportunity to remove our opposition to the bill. The Las Vegas Metro Chamber of Commerce is opposed to S.B. 207 as written.

CHRIS FERRARI (Nevada Contractors Association):

The Nevada Contractors Association (NCA) represents more than 700 general contractors, subcontractors and supplier firms in southern Nevada.

One hundred percent of the firms in horizontal construction are members of NCA, and a large amount of our members are engaged in vertical construction as well. We support the growth and responsible development of apprentices, but, as previous speakers have indicated, we are concerned about the percentages. We have spoken with the bill's sponsor and are committed to

working with him on this project as we have been for the last several Legislative Sessions.

WARREN HARDY (Associated Builders and Contractors Nevada Chapter; Nevada League of Cities and Municipalities):

Most of what I would say on behalf of ABC has already been discussed. There is nothing more important than training to the construction industry as a whole—craft, apprenticeship and journeyworker training.

We are back to where we were when I was running the ABC. I stopped asking our members what I could do for them because the answer was always find us more people. We are in desperate need of trained individuals to fill these jobs. I thank Senator Brooks for continuing to keep this bill alive and bringing it forward.

The ABC recognizes the importance of these programs. As part of its strategic plan, ABC is moving forward with getting apprenticeship plans in place. Labor unions set the standards for training, and they do an outstanding job. We have programs that rival theirs, but we have work to do in many areas. My only concern with this bill is we need time to put these programs together to be able to offer them to nonunion contractors. Nevada is a right-to-work state. Some people wish to affiliate with unions and some do not. It is incumbent upon us to get these programs together. We are moving in that direction.

I understand there is a proposed amendment coming that would allow us to access other apprenticeship programs. That is logistically difficult, and we are not sure we can do that under our arrangements. As has been testified to previously, we are also concerned about the ratios.

The Nevada League of Cities and Municipalities' (NLCM) primary concern is the availability of workers. In public works projects where there is bidding and all sorts of hoops to jump through, when that gets too onerous and there is plenty of other work, contractors generally flee to the private sector. When that happens, it becomes difficult for the public sector to attract individuals to construct public projects because of the additional regulatory burdens.

The NLCM is concerned the bill, as drafted, will limit its ability to contract immediately because of the nature of the economy and how well construction is doing. We will have a difficult time attracting workers because nonunion

companies will flee to the private sector and stop bidding on public works projects.

SENATOR GOICOECHEA:

When a public entity bids a project, is it on the hook for also certifying payroll in the end?

MR. HARDY:

It is required to certify the payroll. That is one of the regulatory burdens I talk about that causes the nonunion sector contractors to flee to the private sector, if possible, rather than jump through all those hoops. They are still required to submit those even on private sector jobs. All wages have to be submitted. That is one of the regulations affecting both union and nonunion contractors. They have to report everything to the Division of Industrial Relations.

SENATOR GOICOECHEA:

They would also be required to audit the 15 percent of apprentice workers' hours on a project.

MR. HARDY:

As I understand it, this would only apply to public works projects.

SENATOR GOICOECHEA:

But as a public entity, if it is over the new \$100,000 threshold, it would be a public works project.

MR. HARDY:

I am not sure I understand the question.

SENATOR GOICOECHEA:

Payroll must be certified on any public works project. In the end, the government entity is liable if an audit shows the contractor did not pay his employees prevailing wage or whatever. I assume the public entity would also be liable if the contractor did not meet the 15 percent requirement for apprentice hours.

MR. HARDY:

I am not sure that is defined in the bill. However, when there are labor employment violations, that is correct. The complaint would go to the Labor

Commissioner who would notify the local governing body it needs to determine what happened.

SENATOR GOICOECHEA:
It can work that way, I know.

JESSICA FERRATO (Granite Construction):
I would like to echo the comments stated by previous speakers. Granite Construction is a union contractor and continues to hire apprentices through apprenticeship programs.

It has concerns, especially in the northern part of the State where workforce development is a significant challenge. It does not always have access to apprentices in the program.

The other concern is a logistical issue with completing some of these requirements.

I want to thank Senator Brooks for being willing to work with us, and we will continue to do so.

DARREN SCHULZ (Director, Public Works Department, Carson City):
I am opposed to this bill. My comments echo what I have heard so far. I agree with Mr. Hardy's comments. Carson City's goal is to produce projects for our taxpayers as cheaply and as quickly as possible. The way this bill is written, both of those will suffer.

This bill could create an unfair bidding situation. One contractor using apprentices, the other one not with the idea he or she is going to get a variance which would not occur until the final numbers are in. The City would then be looking at a delay of up to 40 days or longer before it knows what is happening. The City is already accused of projects taking way too long and not getting things done on the streets. Anything we can do to not slow down the process, the better.

As has been mentioned regarding the administration requirements put on agencies, this is another layer of administration the City will have to do to make sure it is being done correctly and the numbers are counted. As it is, we are talking with the Labor Commissioner every week, and this will just add to that.

The City is not against training apprentices, but let the market dictate how apprentices are used. If possible, perhaps some sort of project size requirement could be added to the bill that would apply to projects on one threshold and/or higher and not to all of the smaller projects, which would provide relief to the smaller agencies.

ALBERT DEVITA (Laborers' Union Local 169):

On the whole, we support this bill, but we have a few concerns. We are obviously in a tight labor market. One of the goals of my job is recruiting people. It is not easy. Yes, we get hundreds of applicants, but not all of them get into the program. As someone said earlier, out of 1,000 applicants, there might be only 24 apprentices. My experience is not that extreme. About 5 percent of applicants actually get into our program. Our concern is we would have to ramp up. We are not at 15 percent of total hours on public works right now. However, I do not have those numbers. I am just guessing, but I do not think we are there. We would have to ramp up quickly in a tight labor market.

We were more comfortable with 3 percent than we are with 15 percent. Maybe over time, that would be the way to go. Some other states, for example Washington and Oregon, were looking at it. To start at 15 percent in Nevada without the infrastructure in place to enforce this might be a problem. We are in favor of starting at a lower number.

Someone mentioned a threshold. We have contractors who send people out on small jobs all the time. It would be difficult to get to 15 percent apprenticeship hours with a crew of 2 or 5. We would be in favor of some kind of threshold. We had a \$100,000 threshold in the first go-round, so we would be in favor of going in that direction.

Most of our hours are in horizontal construction. We would also like to see an hour requirement by craft as on vertical construction.

Implementing this by October of this year is too soon.

SENATOR GOICOECHEA:

You mentioned 3 percent. Is that the existing requirement?

MR. DEVITA:

Three percent was in the original bill.

BILL WELLMAN (Las Vegas Paving Corporation):

I am neutral, but I started off in being in support of the bill as introduced. I have many concerns with the bill as amended, but at the same time, I am here to work with the bill's sponsor to make this work. I support apprenticeship programs and workforce development. I have for many years.

I have worked with former Senator Kelvin Atkinson on this issue since 2013. This is the fourth Session. I met with him a few times in the early stages of this Session about this and how we could move this forward.

When I was testifying before you in a previous Session about fuel revenue indexing, this Committee challenged me with workforce development, apprentices and so forth. In 2013, we were at about 2 percent total apprenticeship participation. In 2017, I was pleased to come back and report that increased to 4.2 percent which I thought was significant, over 100 percent. Today, we are at 4.8 percent across the board. On 2.3 million man-hours in 2018, 1.2 million of that was on prevailing wage jobs. We are a union contractor so it is somewhat irrelevant, but apprentices on prevailing wage projects are only at 1.8 percent. That is because apprenticeship is a training program. We cannot and will not put apprentices on highway projects such as I-80 or I-15. We refuse to do it. It is a matter of safety. We do not want to be responsible for those people's lives or them getting hurt because their knowledge is just not there yet. It is the same thing as putting them on bigger projects with a lot of large equipment. Three percent of the 1.8 percent work in our asphalt and gravel plants. They work in our shop. They work and learn how to be around equipment and around people. It also gives us an opportunity to learn about them. Some of them do not make it. They cannot make it. They are not safe.

We support the apprentice bill and thank Senator Brooks for bringing it. We have met with him. But the form it is in—especially the 5 percent requirement on horizontal construction, I cannot speak on vertical—is too much. I supported 3 percent. We do not want this to fail. We would have to change the dynamics of how we operate and start putting more apprentices on job sites in which we are not comfortable because this is for every prevailing wage job. The bill as introduced had the total number of hours and gave us the latitude and flexibility to not use apprentices on certain projects when it is not safe to have them there. We could put them on other projects and add a few extra apprentices.

The other thing is we still need the work. As it is, about 150 employees are sitting at home. None of them are apprentices. When we bring in apprentices, we offer them a job and we keep them busy. We rotate. We actually brought in seven apprentices to work today. Every Monday we start projects, sometimes one project, sometimes ten. We rotate all of our craft labor as needed. When we start a project, the employees sitting at home come to that project first. It is the luck of the draw. It could be a project for a week or for a year and one-half. We have been able to maintain our work force astutely doing that. We have some attrition, but we do not have attrition in this number—5 percent in horizontal construction.

DANNY THOMPSON (International Union of Operating Engineers Local 3, Local 12): We thank Senator Brooks for bringing this important bill forward. We support the concept of the bill; however, we have similar concerns expressed by Mr. Wellman. We vow to work with the sponsor of the bill to come to a solution to our problems.

SENATOR BROOKS:

I heard many things brought up by those who support, oppose and were neutral on this bill. One of the things I heard was this bill makes apprenticeship inaccessible for those who do not have a high school diploma or may have made some mistakes. This bill is not the easiest path for them.

I was kicked out of high school. I was a teenage father. I was going nowhere fast. The building trades, specifically the IBEW and the electrical industry, turned my life around. It gave me the opportunity to be successful, start a company and employ thousands of Nevadans. I did that through the years by using apprenticeship. I want to make sure we offer the same opportunities given to me to all Nevadans. I want to give them the opportunity to enter into the building trades, make a career and contribute to our State. I have worked horizontal, pipeline, transmission line, solar, vertical and all aspects of the electrical and construction trade. I have been a general contractor and an electrical contractor. I cannot think of one horizontal project in which I did not have more than 5 percent apprentices with no one telling us to do it. It made sense. I cannot think of a single project I worked on in the horizontal building trade in which there was not at least 15 percent apprentices. It makes good sense. We want to encourage that through policy in Nevada to build the workforce for tomorrow.

Senate Committee on Government Affairs
April 8, 2019
Page 44

SENATOR OHRENSCHALL:

We will close the hearing on S.B. 207.

CHAIR PARKS:

We will open the hearing on S.B. 231.

SENATE BILL 231: Revises provisions relating to certain construction. (BDR 28-910)

SENATOR CHRIS BROOKS (Senatorial District No. 3):

In the Seventy-eighth Session, a number of measures were implemented that were designed to restrict the presence of unionized workers on public projects. Senate Bill 231 is intended to return the construction industry to a place in which it had been effective for public agencies and Nevada's workers for many years.

Under NRS 338, public bodies and the bidder awarded the project cannot include in any contract a requirement to enter into or adhere to agreements with any labor organizations. Senate Bill 231 would repeal these unfair provisions and allow all workers, including those who are unionized, to be entitled to fair consideration when it comes to public works projects. Public agencies should have all the tools necessary to build their projects in a way that best suits their needs—project labor agreements (PLAs) do that.

Senate Bill 231 repeals the declarations that prohibited PLAs for public agencies. It does not tell or suggest to the State it must use them. It just repeals the prohibition.

I am presenting the proposed amended version of the bill which does not address sections 1 through 6 and just addresses sections 7 and 8 ([Exhibit H](#)). It also adds a provision directing the Labor Commissioner to create regulations making electronic filing on prevailing wage projects more efficient.

It is a simple bill which repeals prohibitions on PLAs and adds a direction to the Labor Commissioner to create regulations on electronic filing for prevailing wage projects.

MR. STANLEY:

Project labor agreements are legal documents. They are legal contracts upheld by the U.S. Supreme Court in the 1993 case known as Boston Harbor—*Building and Const. Trades Council of Metropolitan Dist. v. Associated Builders and Contractors of Massachusetts/Rhode Island, Inc.* 507 U.S. 218 (1993). In the 1999, Southern Nevada Water Authority case, the Nevada Supreme Court—*Associated Builders and Contractors v. Southern Nevada Water Authority*, 115 Nev. 151, 979 P.2d 224 (Nev. 1999)—upheld the PLA as being a legal contract. It is not a matter of arguing if something is legal or illegal; clearly, PLAs are legal. This is a political discussion. We are trying to say public agencies could benefit from this tool. It has benefited them in the past, and it is not a requirement.

If a public agency does not want to engage in this process, it does not have to. But it is clear, for over 20 years we have had PLAs in southern Nevada for the Southern Nevada Water Authority. Forty percent of the contractors working on that project were open-shop contractors. In similar contracts at McCarran International Airport, PLAs have been in place for 20-plus years. People from both union and nonunion sectors have worked under PLAs for years.

A couple of contracts were negotiated recently using PLAs—one covering the Stadium for the Las Vegas Raiders and the other covering the Las Vegas Convention Center and Cashman Center. I mention those two projects specifically because you will probably hear from those who are opposed that somehow PLAs preclude contractors from bringing certain people to the job site who otherwise work for them. Those provisions that will be talked about are from those contracts at McCarran International Airport and the Southern Nevada Water Authority that were negotiated over 20 years ago. We have matured since then. We have all grown and PLAs have too.

Project labor agreements are now known as community workforce agreements or community benefits agreements. We have built workforce development mechanisms into these agreements in order to address workforce development needs or underemployment needs in certain communities. That is what we have done in the two most recent agreements I spoke about, the Stadium and the Convention Center.

In both of those agreements, a 15 percent apprenticeship utilization was negotiated with the general contractors. Five percent of that 15 percent have to

be first-year apprentices. In the private sector, we are doing exactly what we are asking the public sector to do which is to stimulate hiring apprentices. Those two jobs alone have caused the Sheet Metal Workers Union and the IBEW in southern Nevada to take on a second apprenticeship class this year. That is what we need. We need to stimulate the use of apprentices. We are doing it in the private sector; we want the public sector to come along with us.

Provisions we had in agreements 20-plus years ago are not in agreements today. Certain bedrock provisions need to be in all of these agreements in order to meet the legal requirements created by the U.S. Supreme Court and the Nevada Supreme Court. It is a tool in the toolbox as Senator Brooks stated. It is not mandatory but in many projects like the Stadium or the Convention Center, the public agency feels it is in its best interests to enter into these types of agreements in order to facilitate the goals of the communities from which those agreements are being instituted.

MR. MCKENZIE:

The portion of the bill I am going to speak on is the Labor Commissioner's regulations for electronic filing. Over the last several years, we have gone from a paper file to an electronic format to file certified payrolls from most public agencies. It reduces paperwork and makes it easier for everyone. The problem is the system can be manipulated. The manipulation is done by a public agency when it sets the parameters by which certified payrolls are submitted. The program allows the public agency to set different parameters based upon the checks and balances it wants for information.

Public agencies set up a process by which once the classification is entered, the wage is automatically populated. It does not matter what the person is actually paid, the system enters what must be on the certified payroll. I spoke with the Labor Commissioner, and she had some issues with the program she would like addressed by public agencies. This is an opportunity for her to sit down with the people who use the system and come up with a way that works so everyone is doing it the same and the system will be easier to use.

One issue is public access to certified payrolls. You have heard many bills about public information requests. Certified payrolls are one of those public information requests that could easily be done electronically. The public agency would never have to use any man-hours to allow the public to view those records.

SENATOR KIECKHEFER:

The idea would be for the Labor Commissioner to create a unified system in which all government agencies would participate when submitting certified payroll reports.

MR. MCKENZIE:

They are all using a program called LCPtracker. There may be other systems, but that is the only one with which I have had experience. That program has many different parameters the public agency can set regarding how data is compiled. This would unify everyone so information is submitted in the same manner.

SENATOR KIECKHEFER:

The Labor Commissioner would create the form everyone has to fill out rather than having everyone set their own.

MR. MCKENZIE:

Yes. The goal is to set up a uniform method for everyone to use the program.

SENATOR KIECKHEFER:

Is it a software program?

MR. MCKENZIE:

Yes, it is a software program the public agencies buy into. The contractor logs into LCPtracker and enters the certified payroll into the program for the public agency. Instead of submitting paper, the contractor submits it electronically.

SENATOR KIECKHEFER:

Does it take the local government out of the process?

MR. MCKENZIE:

The data goes to the local government. The agency is the custodian of the records. It has the records and reviews them; if there are any discrepancies, it is responsible to follow up on them. The bill does not change the statute regarding the public agency's responsibilities. It just replaces the paper filing with electronic filing which reduces the consumption of labor to review those and participate in the process.

Senate Committee on Government Affairs
April 8, 2019
Page 48

TOM MORLEY (Laborers International Union Local 872):
We support S.B. 231.

MR. PROFFITT:
The Sheet Metal Workers Union Local 88 supports S.B. 231.

THOMAS MEMMER (Teamsters Local 631):
We support this bill also.

MR. HARDY:
We support section 2.5, subsection 9 of Proposed Amendment 5525 in [Exhibit H](#) regarding electronic submission of certified payroll. With the proposed amendment, this is the only part of the bill we can support.

The proponents of PLAs always say PLAs are legal. I do not dispute their legality. The U.S. Supreme Court has acknowledged they are legal; however, it does not make them fair.

We have two concerns with the historical application of PLAs in Nevada. The first concern is PLAs do not allow open-shop nonunion contractors to use all of their employees on a construction project governed by a PLA.

Imagine you own a construction company and you decide, under the laws of the State, to be nonunion because it is a right-to-work state. You do not have to affiliate with unions. You get a job with a county requiring 20 workers. You have 25 workers so you have enough employees hired, vetted, trained and employed who pay taxes, live and work in Nevada. You tell your employees that you have a contract with the county. However, here is the bad news, only seven of your employees get to work on the project. In Nevada, a PLA requires you to use one employee from the union hall, one of your own, one from the union hall, one of your own, and so forth up to a total of seven workers. You have to use a total of 15 individuals on the project before you get to use your full seven.

There should not be a provision in statute that requires workers who are trying to feed their families and have prepared for their chosen profession to be eliminated from working on a project in favor of someone else. Of course we are free to bid these projects, but let me ask you to put yourselves in the position of a company owner. Would you allow someone to come onto your work site who

is not your employee but has also shown him or herself, on occasion, to be hostile to your company? Sure people bid these projects, but that is not the point. Sure PLAs are legal, but that is not the point. The point is should we have a policy in law in this State that puts workers out of work?

The second concern we have is the requirement under the application of PLAs for the company owner to make a difficult decision. Under Nevada's traditional application of PLAs, if a contractor signs onto a PLA, he or she is required to pay into the union trust fund. That is not an option. Depending on the duration of the job, it is unlikely the employee will ever vest and receive any benefits for those payments into the union trust fund.

The contractor is left with a choice. He or she can continue to pay benefits he or she provides as a nonunion company. However, that does excuse the contractor from the obligation of paying into the union trust fund. This results in the contractor paying double benefits. The contractor has to pay into the union trust fund in which the employee will never vest; if the contractor wants the employee to keep his or her health insurance and benefits, the contractor would have to pay that also. He or she would have to pay double benefits. The other choice is to discontinue paying benefits the employee may have been receiving for years that his or her family counts on for health insurance. Keep in mind, it is not a matter of one health insurance program over another. The employee is not vested in the union program and probably will not be. Where is the equity in that?

Nonunion contractors bid on public work projects in desperate times. It does not make it any easier on them to have to tell their employees not all of them will get to work on this project and, by the way, their benefits will be eliminated in order to work on this project. Where is the equity? Where is the fairness?

Nevada Revised Statutes 338 is the chapter that will be affected by this bill. Under the provisions of that chapter, two PLAs have been signed: one for the Las Vegas Convention and Visitors Authority (LVCVA) and one for the Raiders Stadium. Under the provisions of statute, contractors can still use PLAs if that is the best way for them to complete a project. Local governments can request their contractor to consider using a PLA. However, they cannot mandate a PLA as a condition of bidding. It is at the discretion of the contractor to decide to use a PLA. That is still legal.

It is my understanding the two PLAs signed in Las Vegas contain neither of the provisions that are objectionable to the Associated Builders and Contractors. The requirement to hire seven core employees from the union hall and the requirement to pay double benefits are not in those PLAs. All the other provisions the labor unions want, including apprenticeship ratios, safety rules and so forth, are still in the PLAs. That is a PLA my members would sign.

My members do not participate in PLAs because it forces them to disenfranchise and eliminate employees of their companies. They are forced to choose to either pay double benefits or eliminate the benefits for their employees.

I will be happy to work with the proponents of this bill if they want to amend it to accommodate a fair PLA as has been adopted on the Las Vegas Convention Center and the Raiders Stadium. Our only objection to this are the two provisions I pointed out. It has been shown we can adopt a fair PLA that will work for the purposes of the owner and the labor unions.

SENATOR KIECKHEFER:

Who sets the terms of a PLA?

MR. HARDY:

Our members have no say in how that is developed. They are not at the negotiating table. They are not allowed to be at the negotiating table. It is an agreement between the labor unions and the local government. That is my other rhetorical question. Would you subject your company to an agreement in which you had no say?

SENATOR KIECKHEFER:

When the LVCVA bid out the contract, it did not mandate that a PLA be implemented as part of that award. It awarded the project to a company and that company decided to execute a PLA with the trades.

MR. HARDY:

That is correct. That is how that works.

SENATOR KIECKHEFER:

If this bill passes and we rewind, the LVCVA could mandate the successful execution of a PLA.

MR. HARDY:

That is correct. For many years, although that is not how it is now, PLAs were boilerplate. Even the local government did not have much input. Technically, it was negotiated between the local government and the labor unions, but for many years every PLA looked the same. That has changed. There are some negotiations, which is a step in the right direction.

This bill will allow the government, on taxpayer-funded projects, to require a PLA which, ironically, will have the effect of stopping taxpaying Nevadans from working on those projects.

SENATOR KIECKHEFER:

Are PLAs issued on a project-by-project basis?

MR. HARDY:

Yes, that is correct.

SENATOR KIECKHEFER:

Is there a threshold in terms of the size of the project, or is it just all public works and anything that falls under that category?

MR. HARDY:

There were no limitations on dollar amount in statute. Most people do not use them on small projects. These are historically used on the larger projects.

Certain items in a PLA are valuable to a public owner and to a general contractor, including the guarantee of labor piece. The contractor, who has the obligation to fulfill the project, can decide to do a PLA; obviously, we do not like it, but that is the contractor's decision. Our only concern is on taxpayer-funded projects where local governments have the ability to implement and require those sorts of things of the contractor.

SENATOR KIECKHEFER:

If a PLA is negotiated between the bidder and labor, where are the two provisions you have concerns about in terms of the usage of employees mandated as a component of a PLA?

MR. HARDY:

It is not mandated. That has been historically used as part of the boilerplate agreement. We are moving away from that in the PLAs, which is why it would be great if we could put those limitations in law. We do not want any limitations. We are not even asking to be part of the negotiations on what the PLA looks like. It is an agreement between the contractor and the labor unions. We make a decision as to whether we want to be involved. Let us eliminate by statute the ability of any PLA to put someone out of work and we have no more problems. We will stand here in solidarity with our friends and speak in favor of the bill.

MR. BYBEE:

Statute is working as intended. It says that government is going to be neutral when putting out bid documents to get the best possible bid. There is no inequity in that. If a union contractor wins the bid, he or she can hire out of the union hall; a nonunion contractor can use his or her own employees. That is in the statute this bill would roll back.

Going back to prior versions of PLAs such as the now Greater Nevada Field for the Aces' ballpark, the project went over budget. They brought in out-of-state workers because of the way the PLA was written. They could not hire locally at the height of the Great Recession. There is much talk about putting Nevadans to work. We agree. We should put Nevadans to work. But the way PLAs are written, the vast majority of blue-collar construction workers in our State are not provided access or opportunities to those jobs.

Former testifiers brought up the Boston Harbor case. All it said was that Boston Harbor was allowable as a PLA under the National Labor Relations Act. It was not a landmark case. It did not define PLAs for the Country. In fact, a PLA was just struck down in Pennsylvania. It just applied to that particular court case.

MICHAEL PELHAM (Nevada Taxpayers Association):

We oppose this bill. The proposed changes will reduce the amount of money available for repair of and building facilities. I have not reviewed the proposed amendment, so we could possibly remove our opposition at a later date.

MR. RUTHERFORD:

I oppose this bill. Part of this bill takes away the level playing field from my company and my employees. It gives union shop contractors and unions unfair

advantage competing on public work jobs. It lessens competition and furthers labor unions and union shop contractors' ability to inflate labor costs paid by taxpayers of Nevada.

I support the portion of the bill regarding electronic filing. There definitely needs to be more work done on how prevailing wages are calculated. They have been manipulated for years, leading to actual wages that are much higher than the averages or prevailing wages paid in the State for doing those scopes of work.

Allowing agencies to enact PLAs will discriminate against companies like mine to compete on certain public works projects for no other reason than to give a public kickback to labor unions. Why would you want to decrease competition or force companies to go union in order to compete on public works projects? That is what has happened in most cases. Union labor accounts for approximately 13 percent of the construction workforce. Without companies like mine competing for projects and excluding approximately 87 percent of the available construction workers, there are no market forces preventing wages and prices to skyrocket.

SENATOR BROOKS:

I want to clarify. There was some confusion in some of the testimony in opposition. All this bill does is just in section 2.5 of Proposed Amendment 5525 in [Exhibit H](#) and sections 7 and 8, concerning the reporting regulations and the repeal of the prohibition on PLAs, respectively.

CHAIR PARKS:

We will close the hearing on [S.B. 231](#) and open the hearing on [S.B. 340](#).

[SENATE BILL 340](#): Revises provisions relating to public works. (BDR 28-808)

SENATOR MARILYN DONDERO LOOP, (Senatorial District No. 8):

This is a short bill, but it will generate significant interest since it expands the definitions of workers who are subject to prevailing wage on a public project.

Section 1, subsection 2 provides that "a worker who delivers or removes material, structures or equipment to or from the site of a public work shall be deemed to be employed on the public work."

Section 2 provides that any regulations adopted by the Labor Commissioner that conflict with section 1 are void, and section 3 sets forth the effective date of July 1.

This issue has been decided by the courts for too long. We must provide clear statutory direction. The Office of the Attorney General issued Opinion No. 93-1 Labor; Public Works; Prevailing Wage on March 16, 1993, to address the issue of whether certain truck drivers who deliver materials to the site of Nevada public works projects should be paid the prevailing wage. The opinion provided that under certain circumstances some material delivery truck drivers were entitled to receive the prevailing wage. This opinion was later rescinded based on certain court decisions.

Then on May 30, 1995, the Office of the Attorney General issued Opinion No. 95-07 Labor; Public Works; Wages on the subject providing that a truck driver who delivers materials to a Nevada public work does not need to be paid the prevailing wage.

I am not an attorney so I am not prepared to talk at any length on the numerous court decisions related to the classifications of employees. However, S.B. 340 will provide the clarity needed for NRS 338.040 to ensure these workers are paid the prevailing wage for their labor on a public work. A truck driver delivering and removing material from a public work is just as essential to the project as other employees working continuously on the site.

RANDY SOLTERO:

We have worked for the last several weeks listening to stakeholders, talking with people from the construction industry, to the counties and to water authorities. We have listened to everyone. We wanted to have an opportunity to talk to everyone and to listen to everyone's concerns.

As expected, not everyone is happy, but this is what the majority of the people have agreed to. The proposed amendment to S.B. 340 ([Exhibit I](#)) deletes the language in subsection 2 of section 1 and replaces it with "A worker, as defined in NRS 338.010, who delivers or removes construction material, to and from a site necessary in the execution of a contract for the public work shall be deemed to be employed on the public work."

That is the amendment. We are asking for your consideration for this, and that is how this bill should be moved forward.

SENATOR KIECKHEFER:

Worker is clearly defined in NRS 338. Is construction material defined anywhere? Is that also in NRS 338?

MR. SOLTERO:

I do not believe that construction material is: however, it would be considered material necessary for the execution of a contract for a public work. For example, ready-mix concrete would be used for the foundation, the curbs and gutters or any of the foundational parts of the project. What would not be included in the execution of the contract would be a porta-potty. Those would come and go. They are a convenience for the workers on the job and not necessarily going to be a fixed part of the project. It is for the material necessary to execute the contract which is to build the particular building.

SENATOR KIECKHEFER:

It ultimately will become part of the physical structure.

MR. SOLTERO:

Yes, that is correct.

SENATOR GOICOECHEA:

Let us talk about the rebar that is going in the concrete. You might go to Long Beach, California, or Salt Lake City, Utah, to get that rebar. That would be part of the physical structure.

MR. SOLTERO:

When deliveries are made onto the project site, a bill of lading tracks that worker from the time of arrival at the gate to the time the worker unloads the materials and to the time he or she leaves the gate of that public work. That is how we understand that would work. It is only on the site necessary for the execution of that contract.

SENATOR GOICOECHEA:

According to the amendment, it is only for materials so that takes equipment out of it.

MR. SOLTERO:

Yes, we took equipment out at the desire of those who were interested in this bill.

SENATOR GOICOECHEA:

With a rebar delivery, the driver would be considered on the clock for prevailing wages from the time he or she enters the gate, off-loads the rebar and then exits the gate.

MR. SOLTERO:

Yes, that is correct.

CHAIR PARKS:

Would you repeat the example you just gave?

MR. SOLTERO:

All truck drivers have to operate with a bill of lading. It is federal law. It would be prevailing wage from the time they got to the work site as defined in NRS 338, off-loaded the materials and left the site.

CHAIR PARKS:

I see that we have several documents in our backup. I am assuming they are exhibits.

MR. MEMMER:

That is a bill of lading from Nevada Ready Mix, showing the time the Ready Mix truck was loaded and the time the load is due at the project ([Exhibit J](#)).

SENATOR GOICOECHEA:

The prevailing wage on that particular load commences when the driver enters the gate, not when he or she leaves the batch plant.

MR. MEMMER:

Under the provisions in the bill, it would be from the time the driver gets loaded to go to that project, the time spent driving to the project, the time unloading and the time driving back to the batch plant.

SENATOR GOICOECHEA:

That would all be considered prevailing wage.

MR. MEMMER:

Yes, that is the provision.

SENATOR GOICOECHEA:

You realize that in rural Nevada, many times those loads come from Fallon and go to Eureka or from Elko to Eureka.

MR. MEMMER:

I am the construction and ready-mix business agent for International Brotherhood of Teamsters Local 631 in Las Vegas. I have held this position for almost four years. Prior to that, I spent 20 years working as a construction driver hauling material and heavy equipment to and from job sites all over southern Nevada.

As everyone knows, NRS 338 defines public work as "any project for the new construction, repair or reconstruction of a project financed in whole or in part from public money."

Nevada Revised Statutes 338 has an unfair and illogical scope of work absent from the application of prevailing wage that is necessary and required in the execution of a public works construction project. That aspect is trucking for the delivery and removal of construction material to and from a public work site. This shortcoming is a large scope of work that fails to provide the benefits of prevailing wage that exist for all other scopes of work associated with construction of a public works project.

The purpose for the changes to NRS 338.040 is to address two shortfalls in the provision which are to more clearly define the term "work" that "is necessary in the execution of a contract" and to cover all the work necessary "for the new construction, repair or reconstruction of a project."

Everyone is aware the purpose of prevailing wage is to protect compensation standards from distortion associated with public construction. Without prevailing wage applying to this aspect, the law allows for trucking to be excluded which directly contradicts the purpose and intent of prevailing wage. At the heart of prevailing wage is the conviction that governments should not act to drive down wages. Without this fix, that is exactly what occurs in regard to trucking.

The changes are also designed for the creation of a uniform and fair application of Nevada's prevailing wage law to all parties involved in all processes in the execution of a public works contract.

As written and applied, without a standard rate of pay like every other scope of construction work, the statute has created an unfair bidding process. By including this scope of work in the statute, a complete, fair and impartial bidding process would finally be established. All contractors would not be able to bid on construction projects with a standardized rate of pay covering all scopes of work.

Construction contractors who use their own trucks for the delivery or removal of construction materials are disadvantaged because they compensate their own drivers on an already established rate of pay instead of subcontracting the work out. Construction contractors without trucks have no choice but to subcontract out the work to outside trucking entities. Since the work is not covered under the statute, the trucking entities themselves constantly underbid one another in order to secure the work. These construction contractors then use the lowest subcontractor underbid rates they can find and then place their construction bids on the project in hopes of being awarded the work by the governing body. Most of the time, these subcontractors pay only wages and provide no health coverage and no retirement benefits. Most workers are forced to subsidize their own healthcare costs or just go without healthcare benefits altogether. In many cases, the work is subcontracted out to entities that have no community interests. The work is funded by Nevada taxpayers for the purpose of Nevada taxpayers to do the work. Making these changes helps secure the work for Nevada contractors and construction workers.

How is a bidding process that is inherently flawed by design fair to Nevada contractors who desire to secure work for their Nevada taxpaying workers? These changes must be made and maintained in order to equalize the bidding process and establish a standard rate of pay, just as the existing statute does for all other scopes of construction work. Just imagine how chaotic, inefficient and unproductive the bidding process would be if there were no standardized rates of pay. How is one scope of work any less or any more important than another scope of work when it comes to the construction and completion of a public works project?

The determining factor of the issue is whether the added language to the provision is necessary for the execution of the contract to build a project to the point of completion. Are the delivery and removal of construction materials an integrated aspect and functionally related to the construction of the project? If they are not, try building the construction project without this scope of work. It simply cannot be done. The locations of the source of the construction materials are irrelevant when asked those questions. Whether the load of concrete comes from an on-site batch plant or from an off-site batch plant is irrelevant because the load itself is the product that is absolutely necessary to build the project. The same standards apply to aggregate materials as well as asphalt products. The loads themselves are essential to the project's construction. Each of these products have specific design mixes for each independent job; sometimes, each individual job requires multiple design specifications to construct the project. Structural concrete is different than sidewalk and curbing concrete. The design mixes are completely separate and can never be transported together in the same truck at the same time.

Contractors and entities representing themselves have claimed throughout many Legislative Sessions that they are not opposed to prevailing wage and the standards it sets. The purpose of the bill is to establish a construction process that is complete for all scopes of work needed when building these projects.

This scope of work has been omitted from Nevada's prevailing wage for some time. In 2015, California passed similar legislation in Assembly Bill 219, Public Works: concrete delivery. Contractors in California have tracked prevailing wage hours since its implementation. Nevada contractors already track hours for all construction projects whether public or private for payroll purposes. This includes the hours for the classification of delivery and removal of materials. Contractors track all hours for each job independently of one another for each and every scope of work. Daily time cards break down hours per job per day. The Federal Motor Carrier Safety Administration has a mandate that certain trucks be equipped with electronic log devices for the purpose of tracking and managing service hours for the trucking industry. Most contractors who use a fleet of trucks already have GPS monitoring devices on trucks in order to track driver movements. All loads of concrete, asphalt and aggregate use some type of invoice or bill of lading.

All time spent loading, unloading and driving can easily be tracked and monitored for employers, contractors and subcontractors for the purpose of

certified payroll for public works projects through employee time cards. Adding this scope of work for public work projects creates no new hardship on any contractors as they are already tracking hours on all onsite work.

It is time to equalize all aspects of work for prevailing wage. These workers deserve the same standards in wages as everyone else associated with the construction project. The drivers, in the performance of their duties, work directly alongside construction workers. *Nevada Revised Statutes* 338 already defines contractors and subcontractors as entities that provide labor, materials and services for a construction project. Failure to incorporate this standard into statute denies the benefits of prevailing wage to the workers who perform the work, to the contractors who bid and build these projects and to Nevada taxpayers whose money funds these projects. The provision needs to be expanded to include this classification of work that is absolutely integral, essential, required and necessary for the execution of the project.

SENATOR GOICOECHEA:

I understood that if we are talking about rebar or some other component, prevailing wage does not start until the truck enters the gate at the job site. Is that correct?

MR. MEMMER:

No, it depends on where the load originates. If a load of rebar originates out of Long Beach, California, whoever purchased the rebar subcontracts the work out to a company to haul it. As soon as the driver connects to the load and straps it down, whether an owner-operator or a company driver, the time would start. He or she would be paid prevailing wage from that point all the way to the gate of the project. The driver would enter the project and unload. We call them over-the-road, long-haul drivers. They make their money by going to the next place to pick up the next load. Generally, they would find a load in Las Vegas to haul back to Long Beach, California, or to the next destination. In that case, prevailing wage would stop at the gate when the driver exits the job site.

SENATOR GOICOECHEA:

Prevailing wage would stop at the gate. But from the point he or she loaded in Long Beach and tied the load down, that driver would be on the clock as prevailing wage.

MR. MEMMER:

Correct. As soon as the driver unloaded in Las Vegas and pulled off the project, he or she makes a phone call to get the next load from the source. That is how long-haul drivers operate.

Loads that generate in town, like ready-mix, have a continuous pour. A ready-mix driver would go back to the batch plant, grab another load and then come back to the same job.

SENATOR GOICOECHEA:

Yes, depending on the jurisdiction and the travel time. It would be the same thing on a road job with asphalt trucks or tankers. They would load at the tank farm; they might go to Wendover before they actually hit the hot mix plant. That would be covered under prevailing wage all the way.

MR. MEMMER:

Yes, it depends on where the load originates and how it is structured. Contractors have the freedom of how to bid the job. Why would you bid a load coming out of North Carolina when a local contractor could bid the load, use local entities and use the load here?

SENATOR GOICOECHEA:

Typically, they would load in Reno and go to where ever the road job and the plant is and off-load. We are not in Clark County or Las Vegas where the plant is located and can go around the block to the job. This is going to impact northern Nevada and the rural areas. Teamsters make good money but not prevailing wage. I am concerned about that and what it could drive those costs to.

MR. MORLEY:

Laborers Union Local 872 supports S.B. 340.

MR. STANLEY:

Southern Nevada Building Trades Unions support S.B. 340.

MR. MURILLO:

The Nevada State Education Association also supports S.B. 340.

MR. VASSILIADIS:

The Southwest Regional Council of Carpenters supports this bill also.

MR. PROFFITT:

The Sheet Metal Workers Union Local 88 supports S.B. 340. I understand Senator Goicoechea's concerns with loads coming out of Reno and Fallon and the concerns when they come out of Salt Lake City and St. George, Utah. For too long we have been funding most of Utah with our prevailing wage jobs and it needs to stop. Therefore, I support this bill.

MR. THOMPSON:

The International Union of Operating Engineers Locals 3 and 12 support this bill.

RUSTY McALLISTER (Nevada State AFL-CIO):

The Nevada State AFL-CIO also supports this legislation.

MR. MADOLE:

Senator Goicoechea identified many of our concerns about this bill, particularly trying to enforce Nevada prevailing wage laws in other states. No one has discussed the administrative burden this would create for the public owners, contractors and truck drivers who are performing on these projects. If you backhaul your grindings off the job site and take them to your pit, trying to figure out how to calculate that and ensure your certified payroll report is correct is complex to say the least.

However, many materials deliveries occur where a truck may get loaded up with different types of pipe, leave the yard in Sparks, drive to a prevailing wage job then to a private job, drop off some pipe there and go to another prevailing wage job. It may make 10 or 12 stops in a single day. Only a handful may be prevailing wage job sites. This bill does not contemplate that. I am concerned about how complex that would be. There is no de minimus amount of time spent on any job site.

MR. MARKWELL:

I see a few problems with this bill. It is overly broad. It expands to any type of material in the construction project. I want to focus on the smaller suppliers and vendors that provide materials to a job. They could be truck drivers, pipe suppliers or electrical equipment suppliers.

The problem with this scenario is many of these companies are not familiar with prevailing wage. They are not familiar with how to submit it and what that looks like. It is complicated. For many of us who have been in the business for a while, it is still complicated and things pop up.

Being a fairly large contractor, we have to help our suppliers, subcontractors, vendors and trucking companies do this. I am worried about the small owner-operators, the mom-and-pop operations that do not have the resources to hire someone to help them figure it out, track it and submit it to LCPtracker. While LCPtracker has been great for the industry, there are still many people who do not know how to use it.

I struggle with the bill being overly broad. There are many unintended consequences. I do not read it the same way regarding prevailing wage starting from wherever the load is picked up. There are issues there with some loads bouncing around from public jobs to private jobs. How do you determine when the public job is to be counted for prevailing wage? Often, these truck drivers have three or four different loads for one job. How do they keep track of that if they are going to four or five different jobs?

MR. SCHULZ:

I understand what this bill is trying to do. On several occasions, this agency has gone to the Labor Commissioner for clarification on hauling. I understand the background of the need to fix this, but I have to agree with the previous two speakers that this bill is oversimplified. By doing so, the administrative burden this is going to put on us to regulate and monitor prevailing wage will be unreasonable.

The issues from the discussion today are whether you start tracking prevailing wage at the gate or at the supplier. All of that information comes back to the agency that is managing the contract. It has to verify the prevailing wage before it goes to the State. It is going to be difficult to keep track of where that truck was and what part of its trip during that day should be charged to the project. As much as I understand the need for clarifying language and/or truck drivers being paid prevailing wage, we have many concerns with the administrative burden this would create.

PAUL ENOS (CEO, Nevada Trucking Association):

We oppose S.B. 340, although we agree with one thing the proponents stated: trucks are absolutely essential in making sure these jobs get done. Trucking is as diverse as the economy we serve. Less-than-truckload carriers, such as UPS or Fedex, may be delivering a couple buckets of polymer to a job site. A bill of lading on that delivery looks much different than one from a truckload carrier delivering prestressed beams from Phoenix, Arizona, to Project NEON in Las Vegas, as happened on that project.

Trying to determine when the prevailing wage clock starts is going to be extremely difficult. That polymer will go through various terminals. It is going to have various drivers taking it and delivering it to the job site. That is still considered a construction material. I am not sure how you would do it with less-than-truckload shipping. Truckload drivers with that beam will be easier. The clock is going to start when the truck is loaded. If the material comes from Phoenix, Long Beach or Salt Lake City or if it is concrete or cement from Victorville, that is where the clock is going to start, and that entire drive is now going to be covered under prevailing wage. This is going to make it difficult for small trucking companies, especially those under the Disadvantaged Business Enterprise (DBE) program.

That program was started by U.S. Department of Transportation (USDOT) in 1980. It was an offshoot of the Civil Rights Act of 1964 that gives those who have historically been discriminated against because of race, national origin or gender the ability to take part in public jobs. Many of these companies are small businesses that do not have the resources to go through and comply with certified payroll and all the things required by prevailing wage. We have problems with that.

I am afraid this will hurt not just those in the DBE program but also Nevada businesses. We could see many of these loads being brokered to owner-operators. Owner-operators are not covered under the Davis-Bacon Act. They are not covered under prevailing wage. The Davis-Bacon Act rules on prevailing wage for truck drivers state they are not covered if the materials are driven off-site. Under the Davis-Bacon Act, the job would not start at Long Beach when rebar is coming to Las Vegas. It would start at the time the truck gets to the job site. It does not cover drivers who are delivering to the public work site between a private source and the public work site. If they are delivering from a privately owned gravel pit or batch plant not on the public

work site, they are not covered by prevailing wage. It also says de minimus time. That is squishy, but it is almost as squishy as construction materials and how we put that together.

This is going to be a big challenge for industry. Not everyone has the resources. You heard Mr. Memmer talk about electronic logging devices. People who are interstate drivers have electronic logging devices, but the local people who are functioning within a 100 air mile radius usually do not. Many of those are going to be retailers who are serving a metro area, dropping off a load of pipe, cinder blocks or whatever it is from a private site to a public site, to a private site, to a public site. They are going to plan their deliveries however works best for them.

This bill has unfortunate consequences. It not only increases compliance costs and taxpayer burden by making these jobs more expensive, but at its worst, it could be hurting many of those DBE companies. The DBE program from 1980 and every transportation act Congress has passed since then recognizes them as companies that should be able to take advantage of these projects.

MATT KLAINER (Public Works Department, City of Las Vegas):

The speakers before me have expressed many of my concerns. Senator Goicoechea has expressed them as well.

The delivery and removal of materials or structures from a public work site has been a point of discussion for many years. We agree we have to establish finite definitions or terms to define what those materials are and how they are to be delivered in order to effectively support prevailing wages. For example, workers delivering materials, structures or equipment to a public work site have numerous starting points. Of concern to the City of Las Vegas is whether prevailing wages are paid from a starting point out of state or just from local areas. Are we talking about from a fabrication shop, an owner's laydown yard or even a project laydown yard? What if they are long hauls, have multiple project materials and make multiple stops along the way? How does that get factored into accommodating prevailing wages?

We also have concerns about things like insulation for projects where you may have a local delivery. It leaves a shop and makes four different stops before it gets to a public work project. These are things that have to be taken into account.

Coupling that with commercial carriers such as Fedex or UPS makes it difficult for an owner to determine where prevailing wages will be applicable, when they will not be applicable and what parts of the project are associated with it.

I will highlight those points and defer to previous speakers because they have done a good job elaborating on the concerns of the City of Las Vegas. I will be happy to work with the sponsor of the bill to address our concerns.

TERESA HERRERA (H&R Trucking):

H&R Trucking has four trucks and three employees. We have a DBE certification which is a for-profit small business that is a socially and economically disadvantaged company regulated by each state through the USDOT. This was established by regulations under the authority of Title VI of the Civil Rights Act of 1964 and other nondiscriminative statutes that apply to USDOT financial assistance programs.

The DBE program has strengthened the opportunity for our and other DBE companies to compete with larger trucking companies or brokers on federal, state and public projects on a more level bidding field.

Each federal project in Nevada has a 3 percent to 4 percent DBE goal. The bidders are in any industry that may be on the project to cover the DBE goal: electricians, engineers, barricade strippers, oil suppliers, retaining wall contractors and trucking companies.

If S.B. 340 is approved, small trucking companies will once again become disadvantaged in the bidding process because a truck broker can supply that truck for \$115 with the owner and the truck. However, the small trucking company that owns three trucks will be required to pay the prevailing wage at all times, even when delivering from a private or commercial pit.

The Davis-Bacon Act wage for a truck driver in Clark County is \$56.66 per hour. The zone rate is applied for any truck that is 21 miles past the city hall which increases it to \$58.16 per hour. Adding workers' compensation, unemployment insurance, social security and Medicare, the price of that driver increases to \$74.23 per hour. Overtime would be \$111.33 for the truck driver alone. Then you have to add in the truck. It costs me \$80 to run that truck. That would put me at \$156 per hour. But the truck broker can provide that

same truck for \$115. The trucker broker keeps 10 percent to 20 percent of the driver's wage.

Not all materials are in-state. Asphalt oil may come from Arizona or California, and the rebar may come from Colorado where the prevailing wage rates begin and when the truck leaves the yard in Nevada. Ultimately, these costs will be passed on to the taxpayers. We should all care.

The burden on a truck owner is already excessive. In Clark County, insurance is tripled for trucking companies. Our registrations are due on December 31, and they seem to increase annually. By January 1, the overlength and overweight permits are required for each truck. That is \$2,968 per truck. The International Fuel Tax Agreement is due every quarter. That is reported on the fuel tax we pay for our fuel. The Unified Carrier Registration is required to be paid on March 31. On June 1, the IRS Form 1099-MISC is required to be paid to the federal government at \$550 per truck. The cost of truck tires has increased by 50 percent because of the tariffs on China's imports. Each truck with a double-belly dump has 36 tires.

We cannot absorb any more financial burdens resulting from provisions laid down by laws, regulations and administrative actions. This bill would have a negative impact and a financial burden on all small trucking companies and taxpayers. We would no longer be able to bid on public work jobs.

MR. WELLMAN:

We oppose this bill. While we appreciate Senator Dondero Loop's intent, it is too broad and subjective.

Most of it has probably been said, and I do not want to repeat it again. However, it would be cumbersome to know where and when prevailing wage is effective. These people delivering materials to these projects are not in minimum wage jobs in the first place. They are good-paying jobs. They may not be prevailing wage, but we also do many private work jobs that are not prevailing wage as well. People have to make a living. We have fought hard and long to get more revenue so we can create more jobs. Doing something like this in a system that is not broken is going to take away many tax dollars, and projects will be put on the shelf again for long periods of time. We have no idea what the financial burden is going to be for out-of-state, cross-country truck drivers and where prevailing wage starts and stops. That is still confusing to me. I

thought maybe I would understand it. Certainly ready-mix is obvious because it is local, maybe asphalt as well if it is made locally.

I have a project starting in two months for which the pipe is coming from South America. It is not made in the United States. It will come in containers by ship to Long Beach, California, get loaded onto a truck and shipped to Las Vegas. Where does prevailing wage start and stop in that case? It is too cumbersome. We welcome the opportunity to work with the sponsor because the bill needs work if it is going to move forward.

CHASE WHITTEMORE (Nevada Builders Alliance):

Nevada Builders Alliance opposes S.B. 340. I thank Senator Dondero Loop for having an open door and an open mind as we work through some of our concerns.

One thing to point out is Nevada already has a broad application of prevailing wage. In 2002, in the Nevada Supreme Court case *State, Dept. of Bus. & Indus., Office of Labor Com'r v. Granite Const. Co.*, 118 Nev. 83, 40 P.3d 423 (2002), the Court concluded ([Exhibit K](#)) that "truck drivers transporting materials from one part of the construction site to another, where the materials were immediately incorporated into the project, are entitled to received prevailing wages."

We already have an extensive and broad application of prevailing wage in Nevada. This would be a massive expansion of prevailing wage law that adds costs and complexity to those laws unnecessarily. That is why we oppose this measure.

MR. WACHTER:

We want to underscore how complicated this will be and the amount of bookkeeping and records that will have to be kept by our small retailers that choose or previously chose to provide materials to these jobs. You have heard from trucking and now from retail. If someone has multiple deliveries that day and one of them happens to be to a public works project, that is going to exacerbate the amount of paperwork and record-keeping. We are not sure traditional retailers were ever meant to be captured by a public work. This is going to make small businesses and retailers choose whether they are able to service those customers given their business models. Please oppose this bill.

MR. FERRARI:

The members of Nevada Contractors Association do the bulk of the public works mentioned. Knowing this measure is sponsored by Senator Dondero Loop, who has a continuous open door policy, we are committed to working with her on it. However, we are here today to oppose the bill for reasons previously mentioned, specifically by Mr. Wellman.

MR. BYBEE:

Prevailing wage is complicated; therefore, not all contractors participate in it because they choose not to invest the time or invest in their office infrastructures to chase that type of work. Some of these companies may have a 15-minute drop-off or it might just be a stop by. It does not seem there is a path forward for an easy administration or for compliance.

MR. GRAY:

The Las Vegas Metro Chamber of Commerce would like to thank the bill's sponsor, Senator Dondero Loop, for keeping an open door and working through this. The Las Vegas Metro Chamber of Commerce is opposed to the bill, and we hope to continue working on it.

MS. FERRATO:

I would like to echo the comments made by previous testifiers opposed to this bill.

MR. HARDY:

The Nevada League of Cities and Municipalities is concerned about the bill. There is another complex situation regarding how someone might get drawn into this who is not paid by the hour but paid by the mile. That is prominent in the trucking industry. I look forward to working with Senator Dondero Loop to find a resolution.

JOHN DAVIS (Quality Transportation, Inc.; 3D Concrete):

We are here in opposition to this bill. Everything has been said, and I do not want to repeat it. To Senator Goicoechea's comments earlier, this is going to put a huge cost burden on the cities and counties in rural Nevada.

We supply concrete from our plants to projects hundreds of miles away. Sometimes, those trucks will be dispatched from a plant in Battle Mountain or Carlin and would return to Reno or Sparks. This creates a huge problem on

when prevailing wage starts and stops. It would create a clerical nightmare for businesses such as ours. It will be overly burdensome. This is not the right way to spend taxpayers' money.

MR. RUTHERFORD:

As has been said before, there is much public work to be done in Nevada. Prevailing wage is paid using the LCPtracker. Expecting out-of-state suppliers to do this is unrealistic. It will lead to shuffling loads around, dropping them off closer to the job site and then picking up there.

Fifty-six dollars an hour is the prevailing wage on one of my jobs here in northern Nevada. That is the wage previously talked about. The hourly wage for the average truck driver in northern Nevada is in the mid-\$20 range. How are we paying \$56 an hour as a prevailing wage in Nevada? It is because our system is broken on how these wages are calculated. If we enact bills like this, we are going to get more of the same of paying double of what the actual wages are in an area. That will increase the costs of public work construction.

SHANNON CHAMBERS (Labor Commissioner):

I submitted a statement that is neutral concerning this bill ([Exhibit L](#)).

In fiscal year 2018, the Office of Labor Commissioner issued 646 public works project numbers. On an average project, there are five deliveries. I am estimating low. That is an additional 3,000 potential certified payroll reports, and an additional 3,000 employees would now be subject to prevailing wage.

I appreciate the sponsor's position, but from the perspective of the Labor Commissioner who will be charged with enforcing this if approved, we would not have sufficient staff to handle the potential wage claims from those 3,000 new individuals who have to be paid prevailing wage. We see unintended consequences with this bill.

One of the goals of the Labor Commissioner is to have clear lines of enforcement and tell the awarding bodies, the contractors and the subcontractors this is the rule, this is the law.

I do not know how some of these deliveries that could be 5, 10 or 20 minutes would affect us. From a regulator's perspective, this creates some definite concerns.

Senate Committee on Government Affairs
April 8, 2019
Page 71

I will work with the sponsors, and I have represented that to them.

SENATOR DONDERO LOOP:

We will continue to work with the stakeholders. While I recognize all of the issues surrounding this, I was asked to coordinate this.

Remainder of page intentionally left blank; signature page to follow.

Senate Committee on Government Affairs
April 8, 2019
Page 72

CHAIR PARKS:

We will close the hearing on S.B. 340. Having no further business, the Senate Committee on Government Affairs is adjourned at 5:17 p.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	15		Attendance Roster
S.B. 495	C	2	Lieutenant Governor Kate Marshall	Office of the Small Business Advocate
S.B. 495	D	2	Lieutenant Governor Kate Marshall	Creating a State of Nevada Small Business Ecosystem Handout
S.B. 495	E	2	Lieutenant Governor Kate Marshall	2018 The State of Small Business Annual Report
S.B. 495	F	1	Winnie Dowling / Nevada Small Business Development Center	Letter of Support
S.B. 207	G	3	Senator Chris Brooks	Proposed Amendment
S.B. 231	H	9	Senator Chris Brooks	Proposed Amendment 5525
S.B. 340	I	1	Teamsters Local 631	Proposed Amendment
S.B. 340	J	3	Thomas Memmer / Teamsters Local 631	Nevada Ready Mix Bill of Lading
S.B. 340	K	8	Thomas Memmer / Teamsters Local 631	Labor Commissioner v. Granite Construction
S.B. 340	L	2	Shannon Chambers / Office of Labor Commissioner	Neutral Testimony