MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

Eighty-First Session
May 7, 2021

The Committee on Commerce and Labor was called to order by Chair Sandra Jauregui at 1:13 p.m. on Friday, May 7, 2021, Online and in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Sandra Jauregui, Chair
Assemblywoman Maggie Carlton, Vice Chair
Assemblywoman Venicia Considine
Assemblywoman Jill Dickman
Assemblywoman Bea Duran
Assemblyman Edgar Flores
Assemblyman Jason Frierson
Assemblywoman Melissa Hardy
Assemblywoman Heidi Kasama
Assemblywoman Susie Martinez
Assemblywoman Elaine Marzola
Assemblyman P.K. O'Neill
Assemblywoman Jill Tolles

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Chris Brooks, Senate District No. 3
Senator Marilyn Dondero Loop, Senate District No. 8

STAFF MEMBERS PRESENT:

Marjorie Paslov-Thomas, Committee Policy Analyst
Sam Quast, Committee Counsel
Terri McBride, Committee Manager
Paris Smallwood, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Brian Reeder, representing Nevada Contractors Association
Lori Bagwell, Mayor, City of Carson City
Alexis Motarex, Government Affairs, Nevada Chapter, Associated General Contractors
Warren Hardy, representing Urban Consortium
Lindsay Anderson, Director, Government Affairs, Washoe County School District
Justin Harrison, Principal Management Analyst, Administrative Services, Clark County
Kathy Flanagan, Management Analyst, Southern Nevada Water Authority
Jessica Ferrato, representing Granite Construction
Michael Flores, Director, Government Relations and Community Engagement, University of Nevada, Reno
Aileen Pastor, Coordinator, Marketing and Communications, Regional Transportation Commission of Southern Nevada
David Frommer, Associate Vice President, Planning, Construction and Real Estate, and University Architecture, University of Nevada, Las Vegas
Mary Pierczynski, representing Nevada Association of School Superintendents
Kanani Espinoza, representing American Council of Engineering Companies of Nevada
Patty Charlton, Vice President and Provost, Henderson Campus, College of Southern Nevada
William H. Stanley, Executive Secretary-Treasurer, Southern Nevada Building Construction Trades Unions
Rob Benner, Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada
Greg Dye, General Manager, Briggs Electric, Inc., Carson City, Nevada
Vince Saavedra, Council Representative, District Council of Ironworkers of the State of California and Vicinity
Wendi Newman, Executive Director, Unified Construction Industry Council
Mac Bybee, President/CEO, Nevada Chapter, Associated Builders and Contractors
Chris Ferrari, representing Nevada Contractors Association
Jeffrey Frischmann, Acting Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation
David Schmidt, Chief Economist, Research and Analysis Bureau, Department of Employment, Training and Rehabilitation

Jason D. Mills, Treasurer, Nevada Justice Association
Erica Tosh, representing Nevada Justice Association
Robert Ostrovsky, representing Nevada Resort Association; and Employers Insurance Company of Nevada
Sarah Adler, representing Nevada Advanced Practice Nurses Association
Dalton Hooks, representing Nevada Self Insurers Association

Chair Jauregui:
[Roll was called. Committee protocols were explained.] We do have a pretty lengthy agenda today. For those of you who are listening in, I just want to let you know now that we had five bills listing for bill hearing. We will be rolling Senate Bill 75 (1st Reprint) until next week, so we are pulling Senate Bill 75 (1st Reprint) from the agenda.

Senate Bill 75 (1st Reprint): Revises provisions relating to unemployment compensation. (BDR 53-349)

[Senate Bill 75 (1st Reprint) was agendized but not heard.]

We will also be taking the bills out of order today. We will be starting with Senate Bill 141 (1st Reprint), followed by Senate Bill 247 (1st Reprint), Senate Bill 308 (1st Reprint), and ending with Senate Bill 289 (1st Reprint). We can go ahead and get started with our agenda. I am going to start by opening the hearing on Senate Bill 141 (1st Reprint). Senator Brooks, welcome to the Assembly Committee on Commerce and Labor.

Senate Bill 141 (1st Reprint): Revises provisions relating to public works. (BDR 28-44)

Senator Chris Brooks, Senate District No. 3:
Today, I am here to present Senate Bill 141 (1st Reprint). Senate Bill 141 (1st Reprint) will remove the statutory expiration and allow for the continued use of construction manager at risk (CMAR) by our state's public entities. This is an important bill because CMAR has proved to be a valuable construction management method, allowing public entities to control costs and budgets on some of our most unique and complex public projects. Recent CMAR projects include the Las Vegas Convention Center expansion, the National Guard Speedway Readiness Center, and the William N. Pennington Engineering Building at the University of Nevada, Reno. Upcoming projects include the University of Nevada, Las Vegas Engineering Building, the Clark County Water Reclamation District Flamingo Water Resources Center, and the Grant Sawyer State Office Building remodel, just to name a few.

Construction manager at risk allows the builder to collaborate with the designer and public agency early in the project-design state to help avoid costly missteps or unforeseen design challenges. The process also requires the builder to agree to construct a project for a guaranteed maximum price, lessening the risk of cost overruns to the taxpayers. Construction manager at risk is just one tool available to the public entities to deliver construction projects. When we invest in public infrastructure, it is critical that we apply the best, most efficient, and effective method of delivering a project. By allowing public entities

the ability to continue to use CMAR in addition to our other delivery methods, we are giving them the tools that they need to plan, design, and build projects as efficiently as possible. I also have with me today Brian Reeder from Ferrari Public Affairs to answer any questions that the Committee might have that I cannot answer.

With that, I would like to walk through the bill very quickly, and then I can answer some questions. The bill only does two things. First, it removes the sunset of CMAR. It does not change the mechanisms of CMAR; it does not redefine CMAR; it just removes the sunset. The sunset was there because we put it in place to see if we were successful in using this methodology, and it turned out to be incredibly successful for the taxpayer, for the public entity, and for the contracting community. Therefore, the bill is here to remove the sunset.

The second thing it does is it clarifies horizontal construction and vertical construction by adding just a few things that those two definitions would cover. It makes the two of them conform with each other in how they are defined. That is it; that is all the bill does. It is a little confusing because it looks like we delete "horizontal construction," "vertical construction," and some of the CMAR language. That was necessary for the mechanics of the bill. You have to delete part of it to be able to preserve it in another portion of the statute. Practically, the only thing this does is it removes the sunset and clarifies two of those definitions, "horizontal construction" and "vertical construction." With that, I could answer any questions, and Mr. Brian Reeder is here to help me as well.

Chair Jauregui:
Are there any questions?

Assemblywoman Kasama:
You gave a great overview. I have looked at this. Can you further clarify why there are so many deleted sections? Some of the definitions are in the deleted sections, and they are put back in the new one, but so much of the section is completely deleted. I am just wondering about the implications of that much.

Senator Brooks:
It is incredibly confusing, and at my last bill hearing, I had our legal counsel write me a script that explained why we did that. I failed to bring that script with me, and I am wondering if the legal counsel of this Committee might be available to bail me out on exactly why we had to do that, from the mechanics of taking it out and putting it in.

Sam Quast, Committee Counsel:
In 2013, when the expiration was put on these provisions, the Legislature had to enact new provisions to account for those deleted sections. That is why you see all those sections in the repealed sections. They are not repealing the sections from *Nevada Revised Statutes* because those have not been enacted yet; they are due to be enacted when these provisions expire.

In order to remove that expiration, the bill has to reach back into the original bill that passed which added the expirations and delete those sections that were meant to account for the sections that were going to be repealed, but will no longer be repealed. I hope that was clarifying.

Assemblywoman Kasama:
Yes, that was clear, thank you.

Senator Brooks:
Assemblywoman Kasama, that was far better than what I did last time I tried to explain that. I appreciate that, Mr. Quast.

Chair Jauregui:
Members, are there any other questions for our presenter? [There were none.] Thank you so much, Senator Brooks. At this time, I am going to move into testimony in support of Senate Bill 141 (1st Reprint). Is there anyone wishing to testify in support?

Brian Reeder, representing Nevada Contractors Association:
Nevada Contractors Association represents general contractors, subcontractors, and businesses affiliated with the commercial construction industry throughout southern Nevada. I can be really brief. We brought the stakeholders together once again during the interim to discuss CMAR. Those stakeholders include our friends in labor, our public entities, and subcontractor groups to discuss what we wanted to do with CMAR. There was unanimous agreement that the method is working. We wanted to seek legislation to remove the sunset. I want to thank the bill's sponsor for working with us on the issue and thank the Committee for hearing the bill. I urge your support.

Lori Bagwell, Mayor, City of Carson City:
I want to thank you for the opportunity this afternoon to be here in person and speak with you all. I just want to lend my support and ask for your support on this legislation. Carson City has used it successfully over the last few years. One of the best projects I can describe to you is right out your front door. If you look at our Main Street improvements, for those of you who have been here before, it is a wonderful project that we used with CMAR.

I want to add that one of the benefits that I do not think I have seen in prior testimony is how wonderful it is for the businesses that are impacted by large projects. When you have a CMAR, they are in the front end of the project and can meet with the businesses and help schedule it so that it has the least impact. When you do a major project, it really hurts the businesses when you are going to do a road. We all need it, but it hurts their business. They were able to work together to design the schedule, when the timing is, when are you going to bring the water trucks through, when are you going to do the thing. I just wanted to lend support and tell you that it actually opens up so much more than just having a CMAR project. It is about working as a community together to get the best you can with the money that we have. I would be happy to answer any questions; this was way too easy.

Alexis Motarex, Government Affairs, Nevada Chapter, Associated General Contractors:
We are here in support of S.B. 141 (R1) and appreciate Senator Brooks for bringing it forward. Everybody has already said the reasons why it is fabulous. It is time for it to become a permanent part of statute.

Warren Hardy, representing Urban Consortium:
I am here today in support of this legislation. At the risk of sounding like an old-timer, this is a piece of legislation that I actually helped bring forward at the request of Associated General Contractors during my tenure at the Legislature. This is a process that works very well in the private sector; it is a preferred process in the private sector. We were not sure at the time how this was going to translate to the public sector, so that is why we put the limitations and the things we did on it. I am pleased to report that this is a process that is working very well for the public sector as a tool in their toolbox to use in appropriate cases. On behalf of the Urban Consortium, which is made up of the cities of Las Vegas, Henderson, Reno, and Sparks, we are here in support of this and thank Senator Brooks for bringing it forward. We are pleased to see that this process will continue on.

Lindsay Anderson, Director, Government Affairs, Washoe County School District:
We are here in strong support of S.B. 141 (R1). Thank you, Senator Brooks, for bringing it forward. Fortunately, the Washoe County School District has engaged in one of the largest construction programs since 2017: building three new middle schools, a new high school, and several elementary schools, along with major renovations, expansions, and remodels of our existing schools. Construction manager at risk has been an important part of using our taxpayer dollars in the most efficient way for our new school prototype designs, complicated remodels during the school year, and other central services projects, like our food production facility that requires special considerations. We continue to use design-build and other project delivery methods when it makes sense, but CMAR is an important option for us as we continue our substantial school construction projects.

Justin Harrison, Principal Management Analyst, Administrative Services, Clark County:
I am here today in support of S.B. 141 (R1). I would like to thank Senator Brooks for bringing the measure forward. This is a project delivery method that we have seen used successfully in Clark County, specifically through our Clark County Department of Aviation and through the Clark County Regional Flood Control District. We believe this is an important step in making CMAR a permanent part of statute and a successful project delivery method going forward.

Kathy Flanagan, Management Analyst, Southern Nevada Water Authority:
We are in support of this measure, and we thank Senator Brooks for sponsoring this bill.

Jessica Ferrato, representing Granite Construction:
We are in strong support of S.B. 141 (R1). Construction manager at risk is another helpful tool for the construction industry to use. We want to thank Senator Brooks and all of the involved stakeholders for their work on this important issue.

Michael Flores, Director, Government Relations and Community Engagement, University of Nevada, Reno:
I will be very brief. I want to thank the sponsor, Senator Brooks, for this bill. We are in strong support of this bill.

Aileen Pastor, Coordinator, Marketing and Communications, Regional Transportation Commission of Southern Nevada:
The Regional Transportation Commission of Southern Nevada is in strong support of S.B. 141 (R1). We thank Senator Brooks for bringing this bill forward and the Committee for hearing this bill.

David Frommer, Associate Vice President, Planning, Construction and Real Estate, and University Architecture, University of Nevada, Las Vegas:
I am here to speak in support of S.B. 141 (R1). Having CMAR continue to be available as a construction delivery method is very important to the University of Nevada, Las Vegas, and we use all construction delivery methods, CMAR and design-build. It is especially helpful where there are complex projects with unique operating parameters and other complexities during the construction process. We thank Senator Brooks for his efforts on this and appreciate your hearing us.

Mary Pierczynski, representing Nevada Association of School Superintendents:
We are in strong support of this bill. It helps both urban and rural school districts.

Kanani Espinoza, representing American Council of Engineering Companies of Nevada:
American Council of Engineering Companies of Nevada represents our state's design and engineering communities. We would like to thank Senator Brooks for bringing this legislation forward. We stand in support of S.B. 141 (R1).

Patty Charlton, Vice President and Provost, Henderson Campus, College of Southern Nevada:
I wanted to thank Senator Brooks for bringing this sunset provision lifting to the Legislature. On behalf of the College of Southern Nevada, we support this revision wholeheartedly.

Chair Jauregui:
Is there anyone else wishing to testify in support? [There was no one.] We will now go to those in opposition of S. B. 141 (R1). Is there anyone wishing to provide testimony in opposition? [There was no one.] We will move to testimony in neutral. Is there anyone wishing to testify in the neutral position? [There was no one.] Senator Brooks, would you like to give closing remarks?

Senator Brooks:
Thank you so much for hearing this bill this afternoon, and I hope you support it.

Chair Jauregui:
Actually, Senator Brooks, you should have said no. We now have a question for you.

Assemblyman Flores:
I am kidding, Senator Brooks. I am not throwing a rock at this one. I was just going to say thank you for working with all the stakeholders. I know there were a whole host of folks who always have concerns with CMAR. Having had an opportunity to work with that, I just wanted to say thank you for working with everybody and kudos to you, brother. Virtual hug right now, great job.

Chair Jauregui:
I will close the hearing on S.B. 141 (R1). The next item on our agenda is Senate Bill 247 (1st Reprint). I do see that we have Senator Dondero Loop here. Senator Dondero Loop, when you are ready, you can get started. I am going to open the hearing on Senate Bill 247 (1st Reprint). Welcome Senator, and welcome Mr. Stanley.

Senate Bill 247 (1st Reprint): Revises provisions relating to apprenticeships. (BDR 53-575)

Senator Marilyn Dondero Loop, Senate District No. 8:
Today, I would like to thank you for the opportunity to present Senate Bill 247 (1st Reprint), which relates to apprentices and the apprenticeship program in Nevada. An apprenticeship is an industry-driven, high-quality career pathway where employers can develop and prepare any future workforce, and individuals can obtain paid work experience, classroom instruction, and a portable nationally recognized credential.

The National Apprenticeship Act of 1937 directs the United States Department of Labor (DOL) to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices. The DOL has carried out these provisions for developing a system in which the DOL or a DOL-recognized state apprenticeship agency registers several individual programs as meeting federal and or state standards. In Nevada, the apprenticeship program is administered by the state apprenticeship director under the direction of the Office of Workforce Innovation in the Office of the Governor and with the advice and guidance of the State Apprenticeship Council. The Council has the authority to approve and register or reject proposed programs of apprenticeship. Registered apprenticeships are apprenticeship programs that are registered with the DOL and governed by regulations laid out under the National Apprenticeship Act. Senate Bill 247 (1st Reprint) ensures that the apprenticeship programs in Nevada train individuals in skills and knowledge that are applicable to the industry and not just specific to one company or employer.

I would like to provide a brief summary of the bill before I turn it over to Mr. Stanley. The provisions of this bill generally revise existing state requirements regarding registered apprenticeships to more closely conform with federal regulations. I will also highlight the amendments made to the bill. Section 1 of the bill revises the definition of "program" to more closely conform to federal regulation.

Section 2 of the bill revises existing statutory requirements for the approval and registration of such programs in conformity with federal regulations to enable them, with one exception, to be structured as a time-based program which preserves the existing requirement that an apprentice acquire at least 2,000 hours of on-the-job training, a competency-based program that measures skill acquisition through an apprentice's successful demonstration of acquired skills and knowledge, or a hybrid approach that combines elements of both. An apprenticeship program in the construction trades must be structured as a time-based program.

Section 2 of the bill also prohibits the State Apprenticeship Council from approving a program that is proposed in a skilled trade when there is already a program that has been approved and registered by the Council, unless the program requires the completion of at least as many hours of on-the-job learning—or at least the same number and quality of skills as all existing programs. The bill also prescribes the elements the Council is required to consider in order to determine whether to approve or reject such program.

We amended the bill to clarify that a proposed apprenticeship program must provide training for the development of skills to allow the apprentice to practice the skilled trade generally rather than for a particular employer. Next, page 4, lines 18 to 22, clarifies that a proposed apprenticeship program must include a schedule of wages which are not less than a minimum wage allowed by federal or state laws, a collective bargaining agreement or the minimum apprenticeship wages established by the Council. We also clarified that the Council may condition approval of the proposed program on the payment of compensation to apprentices instead of wages and benefits. With that Madam Chair, I would like to turn it over to Mr. Stanley for further information and clarification on the bill.

William H. Stanley, Executive Secretary-Treasurer, Southern Nevada Building Construction Trades Unions:

Senate Bill 247 (1st Reprint) was introduced by Senator Dondero Loop at the request of the Southern Nevada Building Trades Unions along with the Building and Construction Trades Council of Northern Nevada. We thank her for her leadership on this issue. I have with me today to introduce this bill, three individuals. Rob Benner is from the Northern Nevada Building Trades, and Archie Walden is the Apprenticeship Coordinator for the Southern Nevada Laborers-Employers Cooperation and Education Trust. He is also the chairman of the State Apprenticeship Council. Additionally, I have Randy Canali, Apprenticeship Coordinator for United Association Local 350 Plumbers, Pipefitters and Service Technicians here in northern Nevada, and he is also a member of the State Apprenticeship Council. They will deliver their remarks, hopefully briefly, and are here to answer any questions that this Committee may have.

We have worked with the stakeholders from the Nevada System of Higher Education and other registered apprenticeship programs to ensure both the expansion of apprenticeship opportunities in Nevada and the preservation of the building trades apprenticeship program model. We are seeking the passage of S.B. 247 (R1) to ensure the following: that only work-based learning should be registered as an apprenticeship program and are registered in Nevada; that emerging industries have the statutory structure to create career pathways through apprenticeship; and to ensure that building trades apprenticeship programs, recognized as the gold standard of work-based learning, remain and maintain their proven delivery method. This bill is that straightforward.

The statutory scheme as it currently exists in *Nevada Revised Statutes* (NRS) Chapter 610 was, from its inception, created to regulate building trades apprenticeship programs. No other programs existed or were contemplated at the time the statutes were created. As nontraditional programs have been introduced, their approval by the State Apprenticeship Council has been difficult to say the least. The statute that is presently constructed is based on the building trades model and does not contemplate any other delivery method.

In section 2, subsection 1, of the bill, we are seeking these changes to facilitate the approval of these nontraditional programs and their delivery methods by recognizing other apprenticeship delivery models and methods. In section 2, subsection 2, of the bill, we are clarifying when and how a parallel program is to be approved and how the State Apprenticeship Council should consider them. In section 2, subsection 3, paragraph (h), of the bill, we are providing the State Apprenticeship Council with guidance when considering such parallel programs for approval.

We have had numerous conversations with interested parties on the compensation issue addressed in the last sentence of the bill. I want to say first, this language is permissive. It says the Council "may." It does not say they "shall." It is permissive in nature. Second, that the State Apprenticeship Council requires the establishment of the apprenticeship wage rate annually when they submit their Form 5910 as required by the federal government. There have been a lot of conversations about whether or not the State Apprenticeship Council has the authority to create the minimum apprenticeship wage. I can tell you they have been doing it for decades, and it is a requirement of 29 *Code of Federal Regulations* (CFR) Part 29 and the Form 5910 that is required to be submitted by each apprenticeship program on an annual basis. It is a federal form that does just that, establishes the minimum wage rate for apprentices.

The State Apprenticeship Council sets the minimum apprenticeship wage annually, and we have recently done it. It is somewhere short of $15 an hour. It is $14.87, I believe. It is in that ballpark. The minimum apprentice wage in any particular craft should be consistent across all programs. In other words, an electrical apprentice, no matter what program that electrician apprenticeship comes from, it should be comparable. If he is a carpenter apprentice and he is in one program or another program, his wages should be comparable. The apprentice wages required should demonstrate that.

There has also been some conversation about the word "compensation." We amended the bill. The bill originally had "wages and benefits," and we amended the bill and put "compensation" at the request of stakeholders who had asked us that they believe that "wages and benefits" may have led the State Apprenticeship Council to assume that the benefits schedule for any one apprentice had to be the same. Meaning, if one apprentice had vacation pay, they all had to have vacation pay. Or if one apprentice had a defined benefit pension plan, then all apprentices had to have a defined benefit pension plan. I am here to tell you that was never the intent; therefore, we agreed to change "wages and benefits" to "compensation." Compensation does not mean that an individual has to have the same schedule of benefits, if they have any benefits at all. It could all be paid in wages, just as we do currently under NRS Chapter 338 in the prevailing wage statute. Compensation does not dictate what type of benefits schedule and combination thereof with wages an individual must earn; only that the total shall be equal. I was asked to give that explanation outside the room, so I am trying to ad lib to give it to you here, so bear with me here.

I thank you for your time this morning, Chair Jauregui and members of the Committee. I have Mr. Rob Benner for the Northern Nevada Building Trades. I see him onscreen. He may want to add a few comments; only if there are questions for the two individuals who serve on the State Apprenticeship Council, will we go to them.

Rob Benner, Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada:
The intent of this bill is to remove the conflict between traditional apprenticeship programs and nontraditional programs and bring Nevada's law in line with the federal regulations. Current Nevada law only provides for traditional apprenticeship programs to develop and register by the building trades. Now, nontraditional programs want to develop other delivery methods for their industries. Senate Bill 247 (1st Reprint) would let the building trades maintain apprenticeship programs while allowing others to develop new ones that fit their particular industries without affecting the building trades model. This bill will protect apprentices from low-quality programs, preserve valuable taxpayer money, and maintain the integrity of the existing registered apprenticeship system.

Chair Jauregui:
Committee members, do you have any questions for our presenters?

Assemblywoman Tolles:
It is good to see you both. It is great to see you on video, Mr. Benner. I have been so impressed over the years with the apprenticeship process, and I have talked to so many individuals who really just beamed with pride over it. I appreciate everything that we do to try and continue to improve upon it. I also really appreciate your answers to some of the questions—even if you were doing it freestyle, you said it really well. In terms of the area of concern here, it may be on that last sentence where a program could be rejected. Could you just walk us through a little bit more on how it would be determined that a program would be rejected? I think that is where most of the concern lies.

William Stanley:
That last sentence, which is on page 6, line 28, is:

> The Council may condition approval of the proposed program on the payment of compensation to apprentices that is equal to or greater than the compensation provided by the approved and registered apprenticeship program.

We already had a program in place for—and I am just going to pick on my own trade because it is easier and you do not get in trouble. I am an elevator constructor by trade. If the elevator constructors already have a program that is established and approved by the State Apprenticeship Council and someone brings another program that was to train apprentices as elevator constructors, we would look at the compensation for those elevator constructors. If it is $40 an hour, then the new program would have to have a base rate of $40 an hour, however they got there, through whatever mechanism of benefits that they supplied, so long as they accrue to the benefit of the apprentice. It could be vacation pay, it could be a pension, a 401(k), a defined benefit, a defined contribution, or it could be sick leave. All of those things that go into a compensation package could be considered to determine if the two programs are equal in nature for the total compensation package.

What we are trying to avoid here is pitting one apprenticeship program against the other. For instance, as many of you know, in the last legislative session, we passed Senate Bill 207 of the 80th Session, which was the Apprenticeship Utilization Act where we now have a requirement to use a number of apprentices, 10 percent on vertical construction and 3 percent on horizontal construction. If you have a contractor who is required to use apprentices on a prevailing wage job, we do not want folks choosing one program over the other one, for the sake of using apprentices, because one has a more favorable wage rate than the other program. We would like them considered the same and that individuals could go out and work and have that opportunity to train the next generation of construction workers.

That is really what we are getting at here. There is no hidden agenda. I told the folks who sat in this room two years ago, I come from the union side of this, and I do not apologize for it. I want everyone in the apprenticeship business. I want the nonunion in the apprenticeship business, and I want the union folks to stay in the apprenticeship business. We have a need to train the next generation of construction workers, and we know that the best methodology that has been proven over the last 70 years to train them is through work-based learning that is an apprenticeship program and it turns out the best skilled workforce in the world.

I want everybody in the game. I will be honest with you, the selfish part of me is this: if only the union companies are in the apprenticeship program or in the apprenticeship business, then contractors that are training apprentices have a higher labor burden than those that are not. We are more competitive when more people get into the apprenticeship business. I think it is better for the industry. I am being as frank as I can be. Assemblywoman Tolles, I hope you appreciate it. I said that two years ago on Senate Bill 207 of the 80th Session, and I say that here.

Assemblywoman Tolles:
I love your passion and thank you for that. I think part of this is just getting the record clear, and I appreciate that you are answering the questions just so that those concerns can be addressed. In that example that you gave, let us say there are two different programs that have different rates, and then a third program is rejected because we are using one rate versus the other. Is that a scenario that might happen? How do we reconcile that? Or how do we avoid a stepping ladder of all of a sudden everybody is moving up and up and up in those wage scales? Maybe clarifying some of those on the implementation side would be helpful.

William Stanley:
I think I have to take a step back. When an apprenticeship program moves forward to be registered by the State Apprenticeship Council, they have to bring a set of standards forward and those standards are reviewed. In those standards, they have the curriculum and they also have the scale of wages, because an apprenticeship program is required to escalate the wages as you become more competent in the trade. For instance, a first-year, or a first-term apprentice versus the second-term apprentice: When he moves from first year to second year, he will have a corresponding raise in his wages. Let us say you have a four-year apprenticeship program. By the time an individual goes from the first year to the fourth year of an apprenticeship program, their wages will have changed significantly, because we understand that their ability to perform the work has gone up, their understanding of the craft has increased, and they can do more of the work. That is a provision that is in the federal regulations that we have to escalate.

The wage schedule is in the standards as they are submitted to the State Apprenticeship Council. When the State Apprenticeship Council is looking at the standard and the State Apprenticeship Director works with a new program, we should not have that situation because the State Apprenticeship Director is charged in statute with working with new programs and they—he at this point, Mr. Richard Williams, the State Apprenticeship Director—should work with that new sponsor and those standards to assure that when they get before the State Apprenticeship Council, those wage schedules are the same. There should be no rejection of any apprenticeship program at that point, because while the curriculum may be a little different or written by somebody else, you still have the same required hours; you still have the same classroom hours required. By the way, in statute, that is a minimum of 144 classroom hours per year and 2,000 on-the-job training hours per year. That is not only in our statutes in Nevada, those are in the federal statutes that we are required to follow under 29 CFR Part 29. That scenario, if it is done correctly, Assemblywoman Tolles, should never happen.

Chair Jauregui:
Members, are there any other questions? [There were none.] At this time, we are going to move into the testimony portion of the bill hearing. Is there anyone wishing to testify in support?

Greg Dye, General Manager, Briggs Electric, Inc., Carson City, Nevada:
I am also the representative for the National Electrical Contractors Association for the Greater Sacramento Chapter and the Reno Division. We are very thankful for Senator Dondero Loop for sponsoring this bill. This is very essential to the safety and health of our construction trades. The difference between a job and a career is a registered apprenticeship program. There are low-value programs out there that represent themselves as creating journeymen who have skills that are not transferable to other trades, journeys, or companies. This levels the playing field, raises the bar on apprenticeship, and it is a great bill. I thank you for supporting it.

Vince Saavedra, Council Representative, District Council of Ironworkers of the State of California and Vicinity:
I just want to echo the remarks of the gentleman before me and Mr. Stanley and let you know that we are in support of this bill.

Wendi Newman, Executive Director, Unified Construction Industry Council:
We absolutely support S.B. 247 (R1).

Chair Jauregui:
Is there anyone else wishing to testify in support? [There was no one.] Is there anyone wishing to testify in opposition to S.B. 247 (R1)?

Mac Bybee, President/CEO, Nevada Chapter, Associated Builders and Contractors:
My organization is the only association in the state that offers open-shop apprenticeship programs in multiple trades. We are currently training more than 300 apprentices. My organization has been committed to apprenticeship and workforce development in the construction industry for decades. In fact, Associated Builders and Contractors, Nevada Chapter is the reason open-shop apprenticeship is even available, not just in Nevada but in the entire country. We have worked in a bipartisan manner on a variety of different workforce development efforts, including the rewrite of the laws governing apprenticeship when it was moved from the Office of the Labor Commissioner, Department of Business and Industry, to the Office of Workforce Innovation under Governor Sandoval.

Most of S.B. 247 (R1) includes reasonable changes; however, the last sentence of S.B. 247 (R1), specifically section 2, subsection 3, authorizes the State Apprenticeship Council to condition approval of new programs on whether apprentice wages are the same as existing programs in the trade. Currently the State Apprenticeship Council establishes minimum wage requirements for apprentices. This line creates a conflicting wage requirement that can be applied arbitrarily and without consistency. One program could be approved with the Apprenticeship Council's promulgated wage standard and the next program could be rejected because it does not meet a wage scale established by an existing program. This inconsistency will undoubtedly hurt efforts to get new programs approved. The legislation can stand alone without this provision.

We are already facing a massive shortage in skilled labor in the construction industry. Setting up additional barriers to training is not what our state or the construction industry needs to succeed. I am requesting this one sentence be removed from S.B. 247 (R1).

Chris Ferrari, representing Nevada Contractors Association:
I am echoing the comments of Mr. Bybee. We are also here in opposition.

[Exhibit C was submitted but not discussed and will become part of the record.]

Chair Jauregui:
Is there anyone else wishing to testify in opposition? [There was no one.] We will now go to those in the neutral position of S.B. 247 (R1). Is there anyone wishing to testify in neutral? [There was no one.] Senator Dondero Loop, would you like to give closing remarks?

Senator Dondero Loop:
I thank you for your time today, and I would just urge your support of this piece of legislation. Thank you very much.

Chair Jauregui:
Thank you, Senator Dondero Loop. I will close the hearing on Senate Bill 247 (1st Reprint). Senator, do not go too far because we have you up next. At this time, I would like to open the hearing on Senate Bill 308 (1st Reprint). Welcome back, Senator Dondero Loop.

Senate Bill 308 (1st Reprint): Provides for the establishment of a worksharing program. (BDR 53-716)

Senator Marilyn Dondero Loop, Senate District No. 8:
I am pleased to present Senate Bill 308 (1st Reprint), a bill that seeks to establish a worksharing program as an alternative to layoffs for employers experiencing reduction in available work. The COVID-19 recession abruptly displaced millions of workers in the United States who were threatened with the loss of stable housing and imminent risk of financial ruin. In Nevada, there have been more than 878,000 new claims for unemployment since March 14, 2020. Unemployment insurance is the most important fiscal response the state and the federal government have during a recession because it sends timely targeted and temporary financial assistance to those directly affected by the economic downturn. However, what these workers need most is to know they will be able to return to their previous jobs as the pandemic recedes and business returns.

Workers who believe that they are likely to be called back to a steady job can relieve workers' anxiety, which can bolster morale and increase consumer spending. Workshare programs benefit businesses, workers, and states. Businesses retain their trained workforce for easy recall to full-time work when economic conditions improve. Workers keep their jobs instead of being laid off and collect reduced unemployment benefits to partially replace their lost wages. States save money by paying only partial unemployment claims instead of paying full benefits to laid off workers.

Under approved workshare programs, employees qualify for a percentage of unemployment benefits equal to the percentage by which their hours have been reduced. For example, an employee whose hours are cut by 10 percent would qualify for 10 percent of the state's established weekly unemployment benefit amount. While that does not fully replace the lost wages, the amount supplements a worker's income until they are recalled to full-time work. Currently, 27 states have workshare programs established in law. Some of the states are Arizona, California, Colorado, Connecticut, Kansas, Maine, Minnesota, Nebraska, Ohio, Oregon, Pennsylvania, Vermont, Washington, and Wisconsin.

The bill is quite long, but I will provide you with an overview of some of the sections, and then I will turn it over to some of the Department of Employment, Training and Rehabilitation (DETR) experts who are with me today. Section 11 will require the administrator of the Employment Security Division of DETR, to the extent funding is available, to establish a workshare program to authorize payments for worksharing benefits to establish employees whose usual weekly hours have been reduced by a worksharing employer. The administrator is authorized to adopt regulations for administering a worksharing program.

Section 12 requires an employer who wishes to participate in a worksharing program to submit a worksharing plan to the administrator for approval. Some of this information includes identification information of the affected unit; identification of usual weekly hours of work; certification that if the employer provides health and retirement benefits to employees in affected units, such benefits will continue under the same terms and conditions; the written approval of the bargaining agent designated in a collective bargaining agreement, if the employees' affected units are part of such collective bargaining agreement; an agreement to provide the administrator with certain reports concerning the worksharing plan; and allow the administrator or his or her designee to access all records necessary to approve, deny, or if approved, continue to evaluate the plan any other provisions added to the worksharing plan by the administrator that the United States Secretary of Labor determines to be appropriate for a worksharing plan.

Section 13 requires a worksharing employer who provides health and retirement benefits to an employee under the defined plan to credit the hours that are reduced under the worksharing plan for the purposes of participation, vesting, and accrual of benefits as though the usual hours have not been reduced. However, the dollar amount of the employer contributions may be less due to the reduction in the compensation of the employee.

Section 14 requires the administrator to approve or disapprove a worksharing plan submitted by an employer within 15 days of receipt and promptly give written notice of the approval or disapproval. Section 15 requires the notice to include an agreed-upon effective date and expiration date. Section 14 also provides for certain circumstances when the administrator must not approve a plan. Section 15 additionally provides that the worksharing employer may terminate the plan at any time by submitting a notice to the administrator, and authorizes the employer to submit a new application at any time after expiration or termination.

Section 16 includes provisions when the administrator may revoke approval of the worksharing plan. Section 17 authorizes a workshare employer to request a modification of an approved plan which the administrator must approve or disapprove within 15 days.

Section 18 provides that a person is eligible to receive worksharing benefits with respect to any week only if the person is monetarily eligible for unemployment compensation and is employed as a member of an affected unit under an approved plan. The person must be available to work the usual hours of work while collecting the unemployment benefit. Section 18 also provides that the person is deemed unemployed in any week during the duration of such worksharing plan if his or her compensation is reduced based on a reduction of usual hours of work.

Section 19 prescribes the manner in which the weekly benefit amount for worksharing benefits is calculated, which is proportional to the reduction in hours for the employee under the worksharing plan. This section also provides that a person may be eligible for unemployment compensation and worksharing benefits as appropriate, but prohibits a person from receiving combined benefits in a benefit year that are more than the maximum entitlement established for regular unemployment compensation.

Section 20 requires worksharing benefits to be treated in the same manner as regular unemployment compensation with respect to the charges to the experience rating account of an employer and the determination of the amount of reimbursement in lieu of contributions due from an employer who elects to make reimbursement in lieu of contributions.

Finally, section 21 provides that a person who has exhausted benefits from regular unemployment compensation and the worksharing plan may be eligible for state extended benefits. I would turn this over to DETR if they have any additional comments right now. If not, we can go to questions.

Chair Jauregui:
Do they have prepared remarks, Senator Dondero Loop?

Jeffrey Frischmann, Acting Administrator, Employment Security Division, Department of Employment, Training and Rehabilitation:
Yes, we do. On May 10, 2020, the U.S. Department of Labor issued a news release announcing the availability of up to $100 million in grants to support the implementation, promotion, and proved administration of workshare programs. The deadline to apply for these grants is December 31, 2023. It is important to understand that participation in a workshare program is voluntary and is contingent upon the employer deciding to opt into the program. It provides an additional tool in the employer's toolbox allowing the employer to make a business decision on what is best for their individual business needs.

Currently, as Senator Dondero Loop mentioned, there are approximately 27 states that have enacted state laws allowing them to access federal grant monies for implementation of short-term compensation programs. That is all I have.

Senator Dondero Loop:
With that, I will stand for questions.

Chair Jauregui:
Are there any questions?

Assemblywoman Carlton:
I have a couple of questions, so whoever is best to address them, that would be great. Everybody knows where I come from, so of course my first question is going to be about collective bargaining agreements (CBAs). In section 12, subsection 8, it says any employee who is effectively "covered by a collective bargaining agreement, the written approval of the bargaining agent is designated." Basically, you are saying if this is not in your CBA, it cannot happen. Sometimes statute will trump a collective bargaining agreement. We understand law is stronger than a union contract. I do not necessarily agree with that all the time. If there is a collective bargaining agreement in place, will that be the guiding force behind this decision?

Senator Dondero Loop:
I am going to ask the people on Zoom to jump in there.

Jeffrey Frischmann:
As you stated, that is my understanding of it as well.

Assemblywoman Carlton:
Eventually, I am going to need something more than "it is my understanding." A yes or no would be really great. I am going to go to the other side of the coin before I had a union job and was waiting tables. I am going to use the example, I am working at a family restaurant—let us say it was a Marie Callender's—and a downturn happened, and Marie Callender's came forward to say, We would like to do a worksharing agreement. The employer would make that decision, and the employees would not be involved in it at all. With that decision made, that employer could share that job between two servers. The servers will be compensated for the lost hours and possibly the benefits. How do the tips get taken care of in this scheme? That is great for the employer because the employee is getting that DETR component, but in a lot of jobs, it is the tips. How do you deal with that, and how will that be made up to that employee?

Senator Dondero Loop:
I am going to let DETR answer. I think I know the answer, but I prefer to have my friends above me on the screen answer that.

Jeffrey Frischmann:
When an employer reports an employee's wages to the Employment Security Division, those wages would include the amount they would have earned in tips. Those tip monies would be reflected in the calculation for the total weekly benefit amount that the waitress would be entitled to.

Assemblywoman Carlton:
Would that be the allocated tip system that the federal government has set up? Or, I have an allocated tip amount that is applied every hour that I work because that is the amount I pay taxes on? Or would it be the actual amount of tips the server makes declared, or would it be like the credit card tips? There are three different ways to record tips.

Jeffrey Frischmann:
It would be based on the amount of tips that were reported by the employer, so it would be however the employer calculates the tip pool. That would be the calculation we would use in order to determine that weekly benefit amount.

Assemblywoman Carlton:
The employee would not have a voice in that at all, just the employer.

Jeffrey Frischmann:
That is true, yes.

Assemblywoman Carlton:
I just wanted to make sure we get that on the record because a lot of people live off of their tips. If the employer is reporting it, it may not actually reflect the amount of money that the tipped person is making. We know the service industry in Las Vegas is huge, and we know those restaurants have been hit really hard, and we want to do everything we can to get them back up on their feet. We want to help employers. I am actually supportive of a restaurant association bill this year for the first time in 24 years. I do not want to see the tipped folks end up losing money in the long run because that is the biggest part of their wages. It is the tips, not the hourly wage. Not every server in Las Vegas makes a good hourly wage.

Assemblywoman Tolles:
I have two questions. One is in section 12, subsection 3, where it talks about the reduction must not be less than 10 percent and not more than 60 percent. How did we come up with those percentages? I would think that at 10 percent, you would trigger a lot more applicants, if we are just reducing somebody's hours by 10 percent. I know a lot of other states—I looked it up quickly—are more in that 20 percent to 40 percent range. There are a good portion that are 10 percent, but I just wondered how we came up with that number. Does that expand the region?

My second question is in regard to DETR capacity to be able to implement this program. We know DETR has had a pretty busy year.

Senator Dondero Loop:
This is really great because I can see a reflection, and it is almost like they are my brain. I am going to let them go ahead and keep answering.

Jeffrey Frischmann:
As far as our capacity, there is an amendment to this that would mean that we would not have to implement this until July 2022. It is our belief that we would be able to implement and get this off the ground since it is 13 to 14 months from now. We believe we could accomplish that.

Regarding the 10 percent, to be very honest, I am not sure on the bill as it was written as to why the 10 percent and 60 percent. I honestly just do not know the answer.

Senator Dondero Loop:
If you see at the very end, the 2022 he is referring to is in the first reprint. When we crafted the bill, I think we looked at other states and what they had done, and there is where the 10 percent to 60 percent was assigned.

Chair Jauregui:
Is there an additional amendment, or was he referring to the past amendment?

Senator Dondero Loop:
He was referring to the past amendment that is reflected in the first reprint.

Assemblywoman Tolles:
I know it is voluntary, so it may be hard to make an estimate, but do we have an estimate, if this were enacted in July 2022, of how many businesses and employees might participate, maybe based on the track record of those 27 other states that have also implemented this?

Senator Dondero Loop:
I will let DETR jump in. You are absolutely right; this is a "may," not a "have to." It would be really hard to come up with a standard number because if there are two small businesses right next to each other, one may do it and the other may not.

Jeffrey Frischmann:
I can add more to that answer. When we first saw this bill, we did contact several other states to understand just how many employers actually utilized this or opted in to the program. One of the states we contacted was the state of Oregon, and the state of Oregon indicated that they had been receiving less than 150 per year prior to the pandemic. After the pandemic hit, that grew to over 2,000. Oregon also has approximately double the number of employers that we have here in Nevada. We would assume it would be about half of that 150. That is an assumption based on the numbers from Oregon. While touching with other states, I believe it was the state of Oklahoma who said they had fewer than five employers in a year using it prior to the pandemic. It is not necessarily a program that is highly used and a lot of employers seem to opt into, but it certainly was there at the beginning of the pandemic for some of those states that had implemented early.

Chair Jauregui:
Mr. Frischmann, I think this question would be directed to you, since you have spoken with other states. Do you have any figures on the states that have implemented these worksharing programs? Have full unemployment numbers gone down?

Jeffrey Frischmann:
I am sorry, but I do not have that information. I am going to defer to our Chief Economist, David Schmidt. I believe he could probably shed some light on that.

David Schmidt, Chief Economist, Research and Analysis Bureau, Department of Employment, Training and Rehabilitation:
Because of the relatively low overall numbers of participation, the volume is not really there to have a really big impact on unemployment rates. We can certainly take a look. I would expect that we would probably be pretty much marginal in normal times. Trying to assess what impact it had during COVID-19 would be really challenging because of everything else that was happening at that time. Because people are working instead of being unemployed, in all of our official measures that would count them as employed and not unemployed, so it would reduce unemployment, but I do not think it would be to a significant degree.

Chair Jauregui:
Will this just be federal grant money, or will there be an expectation on the small business side as well?

Jeffrey Frischmann:
We would anticipate that we could receive grant money in order to implement it to the necessary program in our information technology. From what we learned from Oregon, they had approximately three full-time equivalents (FTEs) who were assigned to this particular program during normal times. We are looking at about one and a half FTEs to roughly two FTEs who will probably be needed to be devoted to this program and to the operation of the program.

As far as the employers contributing, again, this is an opt-in program and no employers are forced. It is a choice and a tool in their toolbox. I cannot think of where this is going to cost an employer more money, except for the fact that they would continue to be responsible to pay for the benefits of those employees who would be participating in this program. For instance, if they were offering a pension, compensation for health insurance, and those types of things, they would choose to continue to pay those benefits while a claimant or employee is in this program. Of course, they are going to be making a business decision that if I have to lay this employee off for five months, what would be the cost of my bringing in a new employee and retraining the new employee for five months because I know that my business is going to go back up for whatever reason? Or is it more economical to pay the benefits? Those are choices the employer will be allowed to make, and that would probably be the basis of their choosing to opt in or not. As far as cost, there is really no additional cost.

Assemblywoman Carlton:
I might have misheard at the beginning. This is a federal program that is sending dollars to the state to do this. Am I correct?

Jeffrey Frischmann:
The dollars that are being sent, as I stated earlier, were for the purposes of implementation, promotion—which means promotion to the employers to let them know that this is in their toolbox—and for improved administration. Those are what the federal dollars will fund.

Assemblywoman Carlton:
The actual unemployment benefits will be funded through our current unemployment scheme, which means we would be drawing down more federal dollars, and the repayment of all of that would be spread across all employers in the state. Is that correct?

Jeffrey Frischmann:
I do not believe that is totally correct. The dollars that would be coming in would in effect be the experience rating of the employer. You are right, it is funded from the trust fund [Unemployment Compensation Fund], but for the employers who are laying folks off, their experience rating would be affected. A larger part of that burden would be placed on those particular employers.

Assemblywoman Carlton:
I want to get to the very bottom of this. Currently, all employers in the state will be responsible in our system for the money we have had to borrow from the federal government, and that will end up on all of our tax bills as we pay our unemployment insurance premium tax to the state. Yes, the experience rating of those particular employers will change, but in the repayment of these dollars, will that be applied to all employers across the state who pay the unemployment insurance premium tax?

Jeffrey Frischmann:
I am going to ask David Schmidt to respond to that. He has a better understanding of the repayment and the trust fund.

David Schmidt:
I think you definitely have the broad strokes correct because the benefit is being paid out, so that obligation would have to be repaid. All contributory employers would be participating in the repayment of those benefits. There would be a slightly higher burden on any employer who has participated in workshare instead of keeping people employed. Because the amount of benefits obtained under the workshare are potentially less, it would cost them less to be in workshare than to fire a person, potentially, if they end up having fewer benefits paid out overall.

In addition, because of one of the provisions in the bill which states that employers who have a negative reserve ratio cannot participate, there is less opportunity for an employer who is already underwater and at the maximum rate. They cannot participate in this. Only employers who could potentially see higher contribution rates will be eligible to participate, so there is no way for them to escape the charging of those benefits.

Assemblywoman Carlton:
I am sorry it took me a while. We are doing this long distance, and sometimes we do not get our point across as well. It has been a long day, so I may not be talking as clearly as I need to. From what I have heard is that in order to repay the trust fund—this will impact the trust fund—those payments are spread across all employers. We know they are going to have rate increases because we know we have been pulling money down from the trust fund. It is a given there will be a rate increase, but this will be applied across all employers is what I was hearing.

Jeffrey Frischmann:
Maybe if I explain it this way, it may bring some more clarity. I am sorry, I am trying to be as clear as I can. As an example, if you have an employer who has two employees in this workshare—to make it very simple—each one of those employees earns $500 a week. Each one of those employees would have, for instance, $400 from unemployment insurance benefits they would be entitled to per week. If each one's hours are cut to 20 hours a week, or cut in half, they would earn from their job $250 in wages, and they would be entitled to half of what they would have been entitled to for their unemployment insurance benefits, so $200 a week. They would take home $450 each. If you think about it, if the employer had just laid off one employee with $400 a week coming out of the unemployment insurance trust fund anyway, and this way there are two people drawing out of the unemployment insurance trust fund, but they are drawing $200 apiece, which of course, equals $400.

Chair Jauregui:
Mr. Frischmann, I am going to encourage you to maybe chat offline with Assemblywoman Carlton because I do not think that is an answer to a question she asked. I think she was asking a different type of question; not in regard to the benefits received but in regard to how many employers will help contribute to the repayment of the trust fund. I am going to move on because we have other questions from the Committee.

Assemblywoman Duran:
For a person who has two jobs because there are times when they are laid off of one job and can collect, how is this going to affect them? A person is laid off of one job, and that employer participates in that workshare program. How does that affect the employee with his other position, if that makes sense?

David Schmidt:
In section 19 of the bill, for someone who has multiple employers, the general answer is they would have their total reduction in hours considered, not just the reduction from the worksharing employer. There are a couple of exceptions. If the total reduction across all of

their jobs is less than 10 percent, then they do not qualify for workshare in accordance with the 10 percent to 60 percent rule. Also, if they do not work at all for the second employer, that employment is not considered, and only the reduction from the worksharing employer is considered. For example, someone who works 40 hours a week at two different jobs and has one of those cut in half to participate in workshare, their overall reduction in hours would go from 80 hours to 60 hours and have seen a 25 percent reduction, so that is the amount that would be applied to their workshare. They do not get the whole credit for their hours just with their workshare employer; it is proportional to a total amount of hours.

Assemblywoman Tolles:
Earlier, I failed to clarify. When you talked about Oregon, that was 150 employers who had taken advantage of this before COVID-19 and 2,000 employers during COVID-19, correct? I just wanted to clarify that was correct. My second question is, how many employees are there? Do we happen to have that number? If it is 150 employers, are we talking a few employees at each of those, or are we talking thousands? I am just wondering what the scope of impact was.

Jeffrey Frischmann:
We do not have the number of employees. However, Mr. Schmidt has said that he could dig that up. We can certainly provide that information for you.

Chair Jauregui:
Mr. Frischmann, if you could provide that to my committee manager, she can share it with the entire Committee.

Assemblywoman Dickman:
How difficult is it to set up these worksharing plans? How complicated is it? Is it geared to large or small businesses? Would it apply to a small business with ten employees? I see you have to get the plan approved.

Jeffrey Frischmann:
It is my understanding—since we have never done it and cannot answer this firsthand—but from what the other states have indicated to us, it is a relatively straightforward, simple process, but I cannot answer that firsthand because we have never done it.

Assemblywoman Dickman:
Would you have to set up this process, the application and everything?

Jeffrey Frischmann:
Yes. The administrator would establish what that process is. We have gotten some indication from other states that they have some specialists. They provide staff to help the employers walk through the application process, and I would anticipate that we would model our program along those lines.

Assemblyman O'Neill:
I have a relatively simple question. I think I like the bill. I feel fairly certain I like the bill. This is a yes or no answer. If this bill became instituted in the state, are the projections then that it will save money in our unemployment insurance, in the programs, keep people partially working, and keep our unemployment rates down? That is the way I understand it. Is that a fair understanding of the bill proposal?

Jeffrey Frischmann:
Yes.

Chair Jauregui:
Are there any other questions? [There were none.] At this point, we will move to testimony in support of S.B. 308 (R1). Is there anyone wishing to testify in support? [There was no one.] Is there anyone wishing to testify in opposition? [There was no one.] Is there anyone wishing to testify in neutral? [There was no one.] Senator Dondero Loop, would you like to give any closing remarks?

Senator Dondero Loop:
Thank you very much. I know it has been a long day, so I appreciate your time.

Chair Jauregui:
I will close the hearing on S.B. 308 (R1). That brings us to our last bill hearing for the day. It is Senate Bill 289 (1st Reprint). I will open the hearing on Senate Bill 289 (1st Reprint). Senator Harris has instructed me that she will not be present for the bill presentation and said the bill is in good hands with her friends Jason Mills and Erica Tosh, who I believe are with us on Zoom.

Senate Bill 289 (1st Reprint): Revises provisions relating to workers' compensation. (BDR 53-713)

Jason D. Mills, Treasurer, Nevada Justice Association:
I have Erica Tosh with me today, who is also from the Nevada Justice Association. We worked closely with Senator Harris on this bill, as well as all the various stakeholders in the field, including our friends in organized labor, Nevada Resort Association, Nevada Self Insurers Association, and Employers Insurance Company of Nevada. Nevada Resort Association and Employers Insurance Company of Nevada indicated that I could represent today, and they are in support of this bill moving forward.

Because I know this is a long day, in the interest of time, I am going to go through and explain. Senate Bill 289 (1st Reprint) has various sections to it. The way the Legislative Counsel Bureau has drafted it, because it touches so many different areas of law, it causes the sections to jump around a little bit, but the issues are the same. I am going to address them by issues and then reference the sections, if that would help.

First and foremost is that sections 1 and 7 are dealing with what is called the apportionment of permanent partial disability (PPD) and forced installments. Permanent partial disability awards are at the end of cases. Current case law basically says if you have prior injury or prior award, if the same body part is indicated, then the reward would be apportioned or reduced. That is existing law. What we are looking to do in sections 1 and 7 is to further clarify exactly how apportionment should be done. Specifically, how the apportionment should be done, through prior PPDs, or if there are existing medical records that would show that a person had an actual impairment prior to the injury. Finally, if there were no medical records available, there is a section in the bill, namely section 1, subsections 4 and 5, that indicates evidence of a prior surgery would allow for apportionment.

The next issue to be addressed is found in sections 2, 4, 6, and 10. That has to do with the proof of service and determinations by insurers on claimants. What we do, if requested, would require an insurer—when they issue one of their determinations to a claimant—they would have to send it either by fax or through other electronic transmission with proof of sending and receipt that is readily verifiable. This is to address the issue of determinations that sometimes are questioned whether or not they have actually been served on the parties. All it does, if there is no proof of service, is to simply toll the statute until the parties have acknowledged their receipt or are able to prove their receipt and they did deliver it.

The next issue to be addressed is in section 3. It introduces lien language into the Industrial Insurance Act that is essentially in complement to Senate Bill 33 of the 80th Session to carry out the intent of the 2019 Session to allow the lien language that was created there to also exist inside of the act and, therefore, be internally consistent.

The next issue is in section 5. That is with regard to the recoverable costs that can be incurred in the workers' compensation plan. Currently, there is no mechanism for an injured worker to recover any costs from having to fight or defend an industrial insurance claim. Particularly, these costs sections would allow for recovery if they are successful on a litigated matter, such as deposition costs, clerk of the court costs, expert witness costs, postage, copies, and travel to the deposition costs. It would only apply to the costs that were generated as a matter from the issue that we are actually litigating. It is not the cost of the entire claim, but only those issues that incur costs that are actually litigated. It would then be supplied to the insurer, so the insurer has the right to review it. If the parties do not agree on those costs, then the appeals officer would then adjudicate that.

The next issue has to do with the effect of signing lump sum or award payments—what we call PPD awards—and the implication of what that does to your claim. That is found in section 8. Currently, the law says when a claimant signs those election papers in workers' compensation awards, it extinguishes all issues that are pending on a case, except for the right to reopen, vocational rehabilitation benefits, and penalties that the Division of Industrial Relations, Department of Business and Industry has levied. This section would make an amendment that if there is any pending contested matter at the time of signing the PPD or award documents, those too are preserved. The exception would be that the scope of claim could no longer be fought over, whether or not the claimant was stable and ratable could no

longer be fought over, and the average monthly wage could no longer be fought over. However, such issues like out-of-pocket expenses that are often left hanging at the time when the award needs to be signed by the claimant, if they are in pending litigation, then they would be able to continue on that issue; or, for example, retroactive benefits that were still owed that they would otherwise lose if they signed the award, even though the parties already agreed what the award is.

I think it is important to point out that the intent and meaning of the phrase that has to do with when any contested matter is pending at the time of the signing of the PPD documents essentially means it has been filed in front of the hearing office, appeals office, district court, court of appeals, Supreme Court, or any other court of competent jurisdiction. Those are the five issues that I am addressing today. My colleague, Ms. Tosh, will address the other three issues that are in this bill.

Erica Tosh, representing Nevada Justice Association:
I will be discussing those sections that have not already been covered by my colleague. Specifically, under S.B. 289 (R1), nurse practitioners and physician assistants have been added as medical professionals who will be able to provide initial treatments and examinations to industrial claimants. It allows the nurse practitioners and physician assistants to also complete C-4 forms, which are a necessary requirement for an injured worker to initiate a workers' compensation claim. These medical providers can also be required to testify and have their opinion now considered and relied upon by appeals officers, hearing officers, and parties. They can be held in the same standard for filing as the physicians who are currently treating injured workers. Further, by having nurse practitioners and physician assistants assist in helping injured workers, they are able to obtain medical attention more quickly in rural areas of Nevada where medical doctors are often not as readily accessible as they are in urban areas.

The language dealing with nurse practitioners and physician assistants is kind of spread out throughout the bill, but you can most readily find it under sections 1.2, 1.4, 1.6, 1.8, 2.2, 2.4, 2.6, 2.8, 3.3, 3.7, 4.5, 6.3, 6.7, and 9.5.

Next, dealing with sections 2, 4, 6, and 10, this bill will allow for electronic transmission of determinations, medical signatures, and the providing of proof of service by electronic means should the claimant or a person acting on behalf of the claimant choose this method of service. This section goes both to the expediency and ease of delivery of documents in industrial claims and allows the time in filing of appeals as needed. In addition, proof of service by electronic means must be maintained and made readily available if requested.

Lastly, section 9 pertains to the location of rehabilitation counselors and selection process that we use for those counselors. During the last legislative session, Assembly Bill 128 of the 80th Session passed, allowing claimants to choose between three vocational rehabilitation counselors when they were eligible for those benefits. What occurred after the passage of A.B. 128 of the 80th Session was that the insurers and third-party administrators would provide three counselors from the same company, thereby, in essence, eliminating the

choice aspect for the claimant. Section 9 of S.B. 289 (R1) is intended to rectify that situation by requiring that three counselors be from different entities or companies, thus reinstating the choice that was originally intended under A.B. 128 of the 80th Session.

In short, these sections here provide additional medical professions that can be available to claimants' industrial claims; it modernizes the service of documents; and it clarifies requirements for vocational rehabilitation counselor assignments. With that, I will give it back to my colleague, Mr. Mills.

Jason Mills:
Madam Chair, that concludes our presentation. We wanted to leave as much time as possible for any questions that you or any of the members of the Committee may have. We are available for any of your questions.

Chair Jauregui:
Are there any questions?

Assemblywoman Carlton:
In all my years in this building doing workers' compensation bills, thank you for having such a concise presentation. It is my impression with talking with the folks who were involved in this particular bill—which is always really great for workers' compensation—is that there were a lot of people at the table, and this was a very highly negotiated bill. Everyone found a way to get where they needed to be to address the issues in this bill. Am I correct?

Jason Mills:
Yes, that is correct. We spoke with all of the major stakeholders, as I said, including the Nevada Resort Association, Nevada Self Insurers Association, and Employers Insurance Company of Nevada. In fact, much of this bill contained language from a bill that Nevada Self Insurers Association had pending under Senate Bill 266, and we incorporated much of the language from their bill into this bill to achieve such a wide consensus on this matter.

Assemblywoman Carlton:
It is always good when the opposition stuff is in your bill, too, so that way you both have just as much to lose. Thank you very much for all of your hard work on this. I think this will benefit the folks you are trying to take care of. The goal in this state has always been to get injured workers back to work. That is our main goal, but we know if that does not happen, there are a lot of other things that need to work through the system in order to take care of that injured worker.

Assemblyman Flores:
Thank you for that presentation. I think you did a great job walking us through that. I think it would be great for the Committee and for the record to understand some of the really bad practices that are out there, and how some members in Nevada are disproportionately impacted when we talk about workers' compensation. Say we were comparing an injured employee from our rurals versus maybe Las Vegas or Reno. I laid that foundation so we

can talk a little bit about inserting the language of nurses and physician assistants. My understanding is that at times, there is paperwork that is completed by nurses and physician assistants, and later it results in those claims being denied because the medical doctors did not sign off on those. Obviously, there are a whole host of issues behind that. I think if you could provide some context to that and really explain to folks what is happening out there, I think they will see why this is so important.

Erica Tosh:
Just to address a few of those issues, what we see on a pretty regular basis is that individuals seek out medical attention quickly after an injury. However, there may not be medical providers available to them in the rural areas; therefore, there is a delay in getting that type of C-4 document we need to initiate a claim. Providing nurse practitioners and physician assistants in those areas—which are more readily available—will allow injured workers to get the necessary documents they need to pursue their claim and, ideally, get treatment a lot quicker than they often are. Here in urban areas, we have general facilities, like a central medical center, which is pretty readily available for people to seek medical attention, and they offer 24-hour care. But you do not see that in other areas of the state. The bill was designed in order to accommodate those areas that are underserved, so injured workers can reap the benefits of getting the attention they need when they are injured on the job.

Assemblyman Flores:
I appreciate your putting that language in there. I had an opportunity to reach out to a bunch of folks ahead of this hearing, and they were very appreciative. I wanted to put that on the record for all that work you have put in.

Chair Jauregui:
Are there any other questions? [There were none.] We will move into testimony in support of S.B. 289 (R1). Is there anyone wishing to testify in support?

Robert Ostrovsky, representing Nevada Resort Association; and Employers Insurance Company of Nevada:
The Employers Insurance Company of Nevada is the company that was developed from the old State Industrial Insurance System. I would just like to thank the members of both the Nevada Justice Association—Jason Mills in particular—and the Nevada Self Insurers Association. We worked our way through many issues in this bill. We think we reached a very good balance and brought clarity to a number of areas in the law, which will assist employees and allow employers and their administrators a reasonable opportunity to bring forward their cases at the same time. We think this is a very balanced bill, and we wholeheartedly support it and ask the Committee's support.

Sarah Adler, representing Nevada Advanced Practice Nurses Association:
The evaluations required for assessing injured workers are within the scope of practice of nurse practitioners. As Ms. Tosh has detailed, S.B. 289 (R1) recognizes the full practice authority, accountability, and confidence of advanced practice registered nurses (APRNs).

As Assemblyman Flores just pointed out, APRNs are fully trained in completing the C-4 claims and other responsibilities. The passage of S.B. 289 (R1) will streamline delivery of medical care to injured workers. The Nevada Advanced Practice Nurses Association appreciates Senator Harris bringing this forward.

Chair Jauregui:
Is there anyone else wishing to testify in support? [There was no one.] Is there anyone wishing to testify in opposition?

Dalton Hooks, representing Nevada Self Insurers Association:
I apologize, I did not get in the queue under support. I am calling in support of this bill. We want to thank Mr. Mills as well as the other stakeholders for their work in getting this very important bill together. I apologize for being under the opposition call. I am having some phone problems.

Chair Jauregui:
Is there anyone else wishing to testify in opposition? [There was no one.] Is there anyone wishing to testify in neutral? [There was no one.] Presenters, would you like to give any closing remarks?

Jason Mills:
I would like to say thanks to Senator Harris for bringing together this much-needed legislation. I would like to thank this Committee for taking this bill into consideration. I ask for your support. I would also like to thank the stakeholders that we worked with: Nevada Resort Association, Nevada Self Insurers Association, Employers Insurance Company of Nevada, and other stakeholders. We really appreciate them.

If I may, Madam Chair, address Assemblywoman Carlton and say that I truly have enjoyed working with you over the years and appearing before you on these issues of workers' compensation. Your dedication and understanding of these topics have always been refreshing to me, and I wanted to say, you will be missed.

Chair Jauregui:
With that, I will close the hearing on S.B. 289 (R1). We have one item left on our agenda, which is public comment. Is there anyone wishing to give public comment? [There was no one.] Are there any other comments from Committee members before we adjourn? [There were none.] At this time, I do want to wish all of our mothers on the Committee and all of our mothers who are Committee staff a very happy Mother's Day this weekend. Please go home and enjoy a wonderful time with your family.

We are adjourned [at 3:13 p.m.].

RESPECTFULLY SUBMITTED:

Paris Smallwood
Recording Secretary

RESPECTFULLY SUBMITTED:

Julie Axelson
Transcribing Secretary

APPROVED BY:

Assemblywoman Sandra Jauregui, Chair

DATE:

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a collection of letters in opposition to Senate Bill 247 (1st Reprint).