

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

**Eighty-Second Session
March 2, 2023**

The Committee on Government Affairs was called to order by Chair Selena Torres at 9:06 a.m. on Thursday, March 2, 2023, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda [[Exhibit A](#)], the Attendance Roster [[Exhibit B](#)], and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/82nd2023.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Selena Torres, Chair
Assemblywoman Bea Duran, Vice Chair
Assemblyman Max Carter
Assemblyman Rich DeLong
Assemblyman Reuben D'Silva
Assemblywoman Cecelia González
Assemblyman Bert Gurr
Assemblyman Brian Hibbetts
Assemblyman Gregory Koenig
Assemblyman Richard McArthur
Assemblyman Duy Nguyen
Assemblywoman Angie Taylor
Assemblywoman Clara Thomas

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Natha C. Anderson, Assembly District No. 30
Assemblyman Ken Gray, Assembly District No. 39

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Committee Policy Analyst
Judi Bishop, Committee Manager

Minutes ID: 311



Diane Abbott, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Brett K. Harris, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry
Brian Lee, Executive Director, Nevada State Education Association
Kent M. Ervin, State President, Nevada Faculty Alliance
Thomas Morley, representing Laborers' Union Local 872; and Laborers' Union Local 169
Annette Magnus, Executive Director, Battle Born Progress
Greg Esposito, representing Plumbers, Pipefitters and Service Technicians Local 525
Jennifer Berthiaume, Government Affairs Manager, Nevada Association of Counties
Steve Walker, representing Lyon County
David Cherry, Government Affairs Manager, City of Henderson
Leonardo R. Benavides, Government Affairs Manager, City of North Las Vegas
Dylan Keith, Assistant Director of Government Affairs, Vegas Chamber
Bruce K. Snyder, Commissioner, Government Employee-Management Relations Board, Department of Business and Industry
Alexis Motarex, Government Affairs, Associated General Contractors, Nevada Chapter
Marc Markwell, Chief Financial Officer/Secretary, Sierra Nevada Construction, Sparks, Nevada
Dave Backman, Senior Vice President, KG Walters Construction, Reno, Nevada
Bill Wellman, Division Manager, Las Vegas Paving, Henderson, Nevada
Brian Reeder, representing Nevada Contractors Association
Kelly Crompton, Government Affairs Manager, Government and Community Affairs, City of Las Vegas
Vince Saavedra, Executive Secretary/Treasurer, Southern Nevada Building Trades Union
Thomas Morley, representing Laborer's Union Local 872; and Laborer's Union Local 169
Matt Klainer, Quality Assurance Administrator, Department of Public Works, City of Las Vegas
Rob Benner, Business Representative, Building and Construction Trades Council of Northern Nevada

Chair Torres:

Welcome to the hardest-working Committee on Government Affairs. [Roll was taken. Committee rules and protocols were explained.] I will let Committee members know that we do have a bill draft request (BDR) to introduce today.

BDR 23-896—Makes various changes relating to government administration.
(Later introduced as [Assembly Bill 239](#).)

This measure is sponsored by the Assembly Committee on Government Affairs, and it makes various changes relating to government administration. It seems that I have a motion to introduce the BDR.

ASSEMBLYMAN NGUYEN MADE A MOTION TO INTRODUCE
BDR 23-896.

ASSEMBLYWOMAN TAYLOR SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We are going to be following the agenda in order today. We will begin with the presentation from the Office of Labor Commissioner, Department of Business and Industry. That will be presented in Las Vegas from Labor Commissioner Brett Harris.

Brett K. Harris, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry:

This is my very first time doing something like this, so I really appreciate being here in front of you. I became the Labor Commissioner in September of last year. I am from southern Nevada. Originally, I grew up in Boulder City. I went to Las Vegas Academy and the Boyd School of Law. I came over to the Office of Labor Commissioner from private practice, and I also served on the Government Employee-Management Relations Board from 2019 until I became the Labor Commissioner. A little about this office: everybody who works there has been a beacon of knowledge and is passionate about what they do.

Our office is small, but we have significant responsibilities [page 2, [Exhibit C](#)]. We are a staff of 22 when fully staffed. We are currently at 19 staff and without a deputy labor commissioner. We are down two assistants, but we have myself, as the labor commissioner, a chief investigator, a chief assistant, an auditor who is here next to me, Alexandra Cano, nine investigators across the state, seven administrative staff when we are fully staffed, and the state apprenticeship director is in our office. We are small, but we are mighty.

Our major responsibilities are to regulate private sector employment [page 3]. Anything that is not otherwise sent somewhere else is our responsibility. The most prominent type of regulation we do is in the wage and hour space. Our office did over 4,000 wage and hour claims last fiscal year. We also regulate general employment, employment of minors, public works projects which is prevailing wage, certified payroll reports, and the Apprenticeship Utilization Act. This is a road map of where we are going. I am going to break down more specifically what we do. As mentioned earlier, we are the state apprenticeship agency, so the Nevada State Apprenticeship Council is under our jurisdiction. We write licenses and regulate private employment agencies and professional employer organizations.

If you would like to do some light reading [page 4, [Exhibit C](#)], these are all the statutes and regulations that touch on the responsibilities of the Office of Labor Commissioner. As you can see, we have a wide range of duties and statutes that we enforce and make sure that Nevada employers are in compliance with.

As I spoke about before [page 5], our primary type of cases are wage and hour cases. We are talking about enforcing Nevada's minimum wage. As I am sure most of you know, we currently operate under a two-tier system in Nevada. That means that the lower tier is for employers that provide qualified health plans, and the higher tier is for employers that do not provide qualified health plans. We are currently at \$9.50 an hour for the lower tier and \$10.50 for the higher tier. That will go up 75 cents on July 1 of this year. Nevada voters passed Ballot Question 2 this past November, which will eliminate the two-tier system entirely as of 2024 making Nevada's minimum wage \$12 an hour.

The primary basis of our wage and hour claims [page 6] is that an employee must be paid for every hour that they have worked in Nevada. That is by far our most common type of claim. As I said, we did over 4,000 of those types of claims in 2022. They usually occur when somebody leaves their job, whether they are terminated or resign, and those have different standards for when the wages are due. Wages are considered [page 7] an hourly rate, a salary, a commission, piecework, or shift work. What they are not is bonuses, profits, or fringe benefits. When we are talking about that two-tier system, even if you do offer a qualified health plan and you pay the lower tier of minimum wage, that does not reduce the actual wage due to the employee, which is a little bit different than prevailing wage, which is something we will talk about later in the presentation.

The process for these claims [page 8] is very straightforward. We try and make it as easy as possible to access. Our office claims are primarily filed online. We encourage everyone to file online if they can, but we also accept claims in person at both our Las Vegas and Carson City offices. The process of a claim is that we get a complaint, it is set up in our case management system and assigned to an investigator who sends out a notice of claim. After that, they engage in an informal discovery period. There is an investigation where the investigator will collect documentation from the party's pay stubs, text messages, whatever might substantiate or defend against the claim. After they assess all of that, they will go forward into a determination if a violation is found. If no violation is found, they will close the claim. They also try to negotiate settlements between the parties to resolve the claim. If a party is found in violation and there is a determination issued which they disagree with, we also have a hearing process. They can ask for a hearing in front of me and then we will do a sort of mini trial or informal hearing process. We will then turn whatever the result of that hearing is into the final order. This order can be appealed. You can file a petition for judicial review and go to the district court. You can appeal their decision and go all the way up to the Supreme Court if you want to, but generally the vast majority of those claims get taken care of long before even the determination. They get settled quite often.

You have that same process for general employment complaints [page 9]. Those are a little bit different because generally we are assessing administrative penalties for things like failing

to give mealtimes or rest breaks, not paying the correct overtime, failure to keep records, or misclassifying employees. The same complaint process that I just described applies, but it is a bit different as to what kind of damages or resolutions we can come up with.

The other big area that we regulate is public works projects [page 10, [Exhibit C](#)]. Those are primarily going to be three different types of claims. A public works project [page 11] is a public project or public construction completed with public money. It is generally sponsored by or otherwise overseen by a public body who will award the project to contractors and monitor the work being done on that project to make sure that it is in compliance with *Nevada Revised Statutes* Chapter 338.

When a claim comes to us, we have three different types of claims. The first type is prevailing wage [page 12]. Prevailing wage is something that our office also has the responsibility to survey for. The public survey for the prevailing wage will begin soon here in Nevada. Surveys are conducted mostly in July of odd-numbered years, but the process opens up in April. What that involves is that we ask all contractors to submit all hours for all their classifications of workers on all the commercial construction projects they have done for the past two years. That is a big project. We analyze a lot of data. Out of the last survey there were approximately 17.6 million hours-plus that were reviewed, classified, and then divided by jurisdiction to set prevailing wage for each type of classification of worker on a public works project. That is something that we will be doing here soon, and we publish those rates by October 1.

A claim comes to us under prevailing wage [page 13] when a classification of worker has not been paid the prevailing wage. Generally, for each type of these claims that I am about to discuss, the process is the same. An awarding body, a public body, a third party, or a worker on the project will submit a complaint indicating they were not paid prevailing wage. The awarding body will then perform an investigation and determine if that is true. Then we would receive their determination, similar to what our investigators do, and reduce that to a final order. We do that on, not only prevailing wage which is, again, surveyed for and then set a little bit different than minimum wage. It can be the base rate of pay plus bona fide fringe benefits offered to the worker. That means that if the workers are being offered at least a monthly benefit that is for their sole benefit and paid to an independent third party on their behalf, that can reduce the base wage a little bit. That is what I meant in terms of the difference between the prevailing wage and traditional minimum wage.

All workers on a public works project who are employed on the side of the project must be paid prevailing wage [page 14]. There are other types of regulation that occur on a public works project, including certified payroll reporting [page 15]. Certified payroll reporting must be done by the fifteenth day after the end of the month. If not, then penalties can accrue, and a case can be opened with our office. We also do public works projects and apprenticeship utilization enforcement [page 16]. Currently, the statutes require the contractors on public works projects to engage apprentices to work if there are three or more of their classification working on the project. The requirement is dependent upon whether you are performing vertical or horizontal construction. It is again a place for enforcement

when there is an insufficient number of apprentice hours on a project. The awarding body will submit a determination to us. We will review their documentation, determine whether a violation has occurred, and reduce that determination to a final order if necessary.

You can get a waiver for apprentices from our office. That is another compliance aspect that we regulate. We process waivers. If someone requests an apprentice on a project and they are unable to get one because they do not exist in that jurisdiction or the union does not answer them or whatever it might be, they can apply or tell the awarding body to apply to our office for a good-cause waiver. As long as they get that waiver, they do not have to complete their apprenticeship hours. They would not be in any danger of any sort of enforcement action. These types of cases [page 17, [Exhibit C](#)], as I mentioned before, are generally initiated outside of our office, the same as the wage and hour complaints. We usually get them either from third parties that perform their own investigations, such as unions or the awarding body notices they are not getting their certified payroll reports in on time, or they are reviewing their certified payroll reporting and they realize prevailing wage was not paid or apprentices were not utilized. They will then issue a notice to not only our office but also to the alleged violator that an investigation is occurring. They have 30 days to perform that investigation and submit a determination to our office, which we then review and allow the alleged violator to submit any opposition to. They can request a hearing. That process is similar to how it works for wage and hour claims. They come in front of me where we have a prehearing. We try to resolve what we can. If not, it goes to a full hearing with evidence and argument and all the briefing, then we issue a final order. If that final order is disagreed with, they can always appeal it and file a petition for judicial review.

As I mentioned before, the State Apprenticeship Council [page 18] is currently under the Office of Labor Commissioner. That was moved from the Governor's Office of Workforce Innovation in July 2021. The full governing statutes for the State Apprenticeship Council are found in *Nevada Revised Statutes* (NRS) Chapter 610, and in November Toni Giddens came on board as our new State Apprenticeship Director. The numbers that you see are for the 2022 registered apprenticeship programs—6,198 apprentices, 747 employers, and 62 registered programs. Thanks to Director Toni Giddens, those numbers are all higher now. She is doing a great job helping the trades build those programs out and get people enrolled in them. I apologize, the slide says there are five voting members. That was me doing bad math because it is two plus two plus two plus one voting member, and I have a lawyer brain, so I cannot add. It is actually seven voting members and four nonvoting members that are on the council. They have their own regulatory functions in registering those apprenticeship programs, making sure they comply. The council also has regulatory responsibilities like hearings if the programs are not compliant, such as not fulfilling the requirements of getting apprentices enrolled in the program. They will also do compliance for apprentices that are discharged from programs. They have big responsibilities.

Another one of our licensing responsibilities [page 19] is professional employer organizations and private employment agencies. We do all the licensing regulation and compliance for that. Those types of businesses will submit documentation applications to our office. We will make sure that they meet the statutory requirements for licensing for

those types of businesses in Nevada, and we will issue those licenses. If they do not meet the requirements, we will do the regulatory and compliance processes that need to be done should they fail to meet those requirements.

Next is a brief look at our office in terms of data numbers [page 20, [Exhibit C](#)] for wage claims and complaints. In fiscal year 2022, we had 4,534 claims. That is a lot. Our investigators right now are carrying a significant caseload. I would say they each have between 80 to 150 cases. That is an extremely large caseload, but in fiscal year 2022 they have managed to collect over \$1.2 million in wages for Nevadans. That is great. They collected an additional \$200,000 in penalties for those wage claims. Some of that goes to the claimant. Some of that goes to our State General Fund, depending upon the type of penalty it is. We processed 222 prevailing wage claims and collected almost \$300,000 in deficiencies from those NRS Chapter 338 apprenticeship and payroll reporting matters. We also issue public works project numbers in our office. When a new public works project is starting, they must request a number from us. We issued over 1,000 of those in fiscal year 2022. We are on track to do much more than that in this next year. We licensed 158 private employment agencies and 186 professional employer organizations. The apprenticeship numbers are higher now, but we have over 6,000 apprentices, over 747 employers participating in apprenticeship programs, and 62 registered programs. We are a little agency that does a lot.

We also provide bulletins, guides, and required postings [page 21] on our website in both English and Spanish for Nevadans to use or reference as they need.

We have some additional community guidance [page 22] or help you can request from our office including advisory opinions, petitions for declaratory orders, and training seminars for employers and employees. We do working groups with our contractors to make sure that they are comfortable with what our statutes say. We also help with handbooks and guidelines.

If you ever need to reach out, we are always available [page 23]. Our website was just redone by my wonderful assistant Irene Waltz. The website is www.labor.nv.gov. If you have general questions, we have a general email address. We also have specific email addresses that are a bit more pointed and targeted for the different functions that we do in the office. We have one for Public Works, one for Apprenticeship, and one for the Apprenticeship Council. We are trying to make ourselves as available in as many different avenues as possible. That is all for our general agency overview. Thank you so much for listening today.

Chair Torres:

Members of the Committee, do you have any questions?

Assemblyman Nguyen:

Of the private sector in Nevada, Clark County is one of the most diverse counties in the United States. I am wondering about language access. You mentioned Spanish earlier as

one of the languages that you have in terms of websites and in terms of printed out material and things like that. How about other languages? Do you encounter cases or claims from communities, especially the Asian Pacific Islander Americans community that I represent? They have a lot of language barriers and when they encounter state agencies, I want to make sure that, especially for the labor piece, they have resources to be able to contact and work with in your office.

Brett Harris:

We have a surprising number of languages spoken within our office because we have a very diverse staff, so that works out in our favor. We do obviously run into claimants who have languages that we do not speak. What normally happens is, they will usually have some sort of representative or have somebody who will translate for them. We do not have direct access to any sort of translation services.

Assemblyman Nguyen:

If you can provide us with that list of available languages, that would be helpful.

Assemblywoman Thomas:

My question has to do with NRS Chapter 608 wage claims. During your presentation, you said that claims that are mailed to employer respondents allow 15 days to respond to your office. I would like to know what the process is for the entire claim. Is it a year? Is it two years? Is it less than six months? What is the average?

Brett Harris:

We try to close wage claims out within 90 days. We have a pretty good average of doing that. We do that about 80 to 90 percent of the time. There are some that take a little bit longer.

Assemblywoman Taylor:

You spoke about a lot of the duties. There are wage claims and there are also some fees you mentioned. You get quite a bit back in fees so that is good for our General Fund. I am wondering if you ever make a decision and if they do not agree, is there an appeals process from either the employee side or even the employer side?

Brett Harris:

We do get appeals generally in the form of a petition for judicial review. If we reduce something to a final order, the next step is to take it to the district court. We do not get many, but we have a handful that are fairly active at all times in various stages. Some of those go all the way up to the Nevada Supreme Court. Yes, there is due process passed in our office.

Assemblyman D'Silva:

Post-2020 we have seen a change in the workforce working environment. A lot of folks are working from home. I was wondering, one, has this been something that the Office of Labor Commissioner has looked into? What sorts of complaints are now more pertinent being in a digital sort of workplace? Number two, have you seen an uptick in those sorts of

complaints coming specifically from virtual settings in both the public and the private sort of approaches that the Office of Labor Commissioner is interested in?

Brett Harris:

I would have to look at the data that we have to see if there is any sort of significant difference. I am not aware of any such as an argument, or defense, or type of claim based on remote work versus nonremote work. Claims in general, however, are up overall rather significantly. I do not know if that reflects the kind of varying workplaces or a post-2020 world, but claims are up across the board.

Assemblyman Carter:

Regarding the apprenticeship utilization, can we get a number of how many waivers are being processed and how many are being approved? Additionally, is there a mechanism to where a contractor could create a self-imposed hardship or an exploitive way to use apprentices causing harm to them? Is there a process to police situations such as working apprentices two hours a day then sending them home or putting them on remote locations and working them one day a week out towards Caliente, or whatever? Is there a process for policing these bad behaviors?

Brett Harris:

To answer your first question, yes, we do keep data on how many waivers are processed. In northern Nevada in fiscal year 2022, 177 waivers were received, processed, and granted. In southern Nevada, 126 waivers were received, processed, and granted. Regarding the second part of your question, we do not have any type of statutory or regulatory enforcement for that type of concern, but that is a concern I have heard from the people from the registered apprenticeship programs themselves. They want the apprentices to have meaningful experiences on job sites.

Assemblywoman Duran:

Is there a statute of limitation that a person has to file for back wages at any time?

Brett Harris:

Yes, it is a two-year statute of limitation.

Assemblywoman Duran:

Is there no mechanism for a person to prove they worked overtime? Is there some way they can do that? Can they keep their copy of their own hours of work, or how would that be considered if they have that documentation?

Brett Harris:

We work with both the claimant and the respondent to provide records and documentation. It is the employer's legal responsibility to maintain records so they cannot escape a claim just by having a lack of records. The employer should have that available.

Chair Torres:

Are there any more questions from the Committee? [There were none.] I will now open the hearing on A.B. 172

Assembly Bill 172: Revises provisions governing collective bargaining for local government employees. (BDR 23-700)

Assemblywoman Natha C. Anderson, Assembly District No. 30:

I am here today with Nevada State Education Association Executive Director Brian Lee to present Assembly Bill 172, a bill proposing legislation to require local government employers to provide recognized employee organizations the contact information of employees in the bargaining unit on whose behalf the employee organization represents. That list would be presented twice a year by January 1 and July 1. The information request includes the name—although that is not currently in the bill, that is assumed, so we should maybe make sure that that is clear—the work location, the work contact information, personal mailing address, and telephone numbers. This information would be requested for each employee of the bargaining unit represented by the employee organization, regardless of membership status of these employees for the public union.

As a local union and association leader myself, the organization that I represented was able to receive this information monthly. This was based upon both the professional and management relationship that we had with each other. There was a mutual respect. There was a feeling that we were all trying to help each other, and then there was also the feeling that sometimes the member who is a member of the bargaining unit might not actually be a member of the association. Yet we still wanted to make sure that they had the same contract information because as a contract member or as a union leader, I realized that I was defending the contract, not always the individual, and that is a very important thing to know. If I did not know if they were a member of my association, I would not know which contract I was supposed to be asked about.

Although this does not seem like a big deal, more than a few times as a teacher, I would be asked to represent somebody who was a support professional in my school site or a bus driver with the school district. Those are different contracts. Those are different needs, and those are different elements that are necessary. This bill is being proposed to both streamline the request as well as clarify that the information should not be based upon a relationship of mutual respect between the leadership of the union or association and the management. I would like to turn it over to Mr. Lee, who is able to explain a bit more background of the representation required and why this language is needed.

Brian Lee, Executive Director, Nevada State Education Association:

This legislation is necessary because under *Nevada Revised Statutes* (NRS) Chapter 288 and Government Employee-Management Relations Board (EMRB) precedent, the union has an obligation to all members of the bargaining unit in contract enforcement, bargaining, and legal obligations to ensure that they have appropriate information about the contract that is pending before them. Regardless of their membership, unions must have a duty to fairly

represent everyone in the bargaining unit. As of today, we do not have contact information for everyone in the bargaining unit, nor does the employer have an obligation to provide it. This is not an onerous requirement because under federal law, under the National Labor Relations Act, which applies to private employers, such information is required to be provided.

Since at least 1966 in the *Excelsior Underwear* case, which was done before the National Labor Relations Board (NLRB), the employer has had to provide full bargaining unit information any time there is a representational election. In the 1984 *Harco Industries* case, the NLRB also provided that private employers, everyone in the United States who has this obligation, must provide the same information for its employees. The federal courts have also continued to impose this obligation upon private employers. The *Prudential Insurance* case in 1969 did tie together the duty of fair representation that unions have to all members of the bargaining unit with the obligation to communicate and place a legal obligation in which the union can be fined, can be sued, and can be held legally liable for failure to communicate with its bargaining unit members. That information is within the realm of the employer and in order to carry out our legal duties—ones that are imposed upon us by the State of Nevada and the EMRB—we require this information. To date, we have traditionally asked the employer for such information, and many employers have either provided it or have threatened litigation.

Because we have this obligation to the bargaining unit and the members of the union, we would like to streamline this process, limiting it to no more than twice per year. Under the National Labor Relations Act (NLRA), private employers can be asked for this information as often as necessary, but we would like to streamline it to only twice per year to limit the administrative burden on public employers and to ensure that we received the information necessary to carry out our legal obligations. [[Exhibit D](#) was also submitted in support of [Assembly Bill 172](#).]

Assemblywoman Anderson:

As you can see, it is deceptively simple, but that is the kiss of death whenever we say something like that. However, the information that we are requesting is found in [Assembly Bill 172](#), section 1. Thank you so much for this opportunity to present the information in a quick, succinct way, and we are more than happy to answer any questions that you might have. I know this is not a budget committee; this is the policy committee. However, if you take a look at the fiscal note, where county governments have put in something, I made a statement that this is already happening and so it would not cause an extra burden.

Chair Torres:

Committee members, are there any questions?

Assemblywoman Taylor:

Other than contract information, as you mentioned, what other reasons would you anticipate needing the contact information for?

Assemblywoman Anderson:

Going back to when I was the local president, I would always do an invitation for people to join our association, if they wished to. At the beginning of the school year, I would include invitations to events that we might have or information about discounts that I was aware of for educators. Many of these people could find the information on their own. There is no question in my mind, however, having that one little letter saying this place offers us a discount, did you know that, or did you know what this company does because of our profession? That again was just something to celebrate the profession, but then also stand up for what we are doing as an association. That was one element. I am sure that Mr. Lee might have some others.

Brian Lee:

In the processing of grievances, contractual obligations, and a variety of other things that come up before us, we commonly see that these items go across classes of workers. For instance, if there are wage and hour violations among bus drivers, we have an obligation to track down the other bus drivers that might be affected by the same wage and hour violations. Without the contact information for nonmembers, we are unable to contact them and vindicate their rights. There are some employers who have attempted to argue that because you can contact them at the workplace, that should be sufficient. However, there are legal obligations and meetings that you do not wish to have over the employer's email system or at the employer's workplace. There are reasons that we would need to be able to send a letter or to place a phone call to an individual who is in the bargaining unit but not one of our members to effectively uphold our contract. Old contractual violations that are brought by a union are brought in the union's name. However, there are people that are affected by those that we need to have the ability to contact. Those issues would be what I would be most concerned about because that is where our legal obligation to our members and members of the bargaining unit come into conflict with the lack of information.

Assemblywoman Thomas:

This sounds like a violation here for those nonmembers. Not everyone respects or wants to be listed or to be bothered by unions, so some of those nonmembers would object to giving their information to the union.

Brian Lee:

First, the issue that we have here is that whenever a member of the bargaining unit wishes to not have communications with us, we opt them out of our communications. I am unaware of any union that wishes to communicate with people that do not want to be communicated with. Second, there is the legal obligation. We are under an affirmative duty to communicate with these individuals concerning contracts, bargaining, and a variety of other issues that are imposed upon us by NRS Chapter 288 and EMRB regulations. We do not have the ability to say no. We do not wish to do that anymore because these are members of the bargaining unit. We cannot say, We are not going to file your grievance because you are not a member of the union, only a member of the bargaining unit. That is not an obligation that we are allowed to ignore. Therefore, once that duty has been placed upon us by the state via NRS Chapter 288 or EMRB, we need this information to do so. We do so

respectfully when members of the bargaining unit wish to no longer receive communications. All our communications allow people to opt out and we move on.

Assemblywoman Anderson:

As a local leader for my organization, one time I did have to be in a position of defending the contract for an individual that was not part of our organization. Based upon the letter that I had sent earlier in the year, that individual found out where to find that information. However, I respect where you are coming from, Assemblywoman Thomas, and would like to be able to continue the discussion with you offline, if possible.

Assemblywoman Duran:

The statement I would like to make is in the collective bargaining agreement world in which I am a grievance specialist and I represent workers for the Culinary Union. We do negotiate that information, which basically has new hires, terminations, date of hire, classifications, address, phone number. It is not used to harass people as Mr. Lee said. It is legally mandated that we must represent everybody fairly and give them the information that the union is acquiring or negotiations to keep them updated as well.

Chair Torres:

Is it standard procedure that within even workplaces such as in the private sector, that unions would have access to this information so that they can communicate with the individuals in which they represent?

Brian Lee:

Yes. As I stated before, under the National Labor Relations Act, which is on all private employers that have unions, the information that must be provided is presumptively relevant under the Harco Industries case. This is a common practice. It is enforced by the National Labor Relations Board. If an employer refuses, it is so well-enforced that I have never actually seen an employer in my private union employment ever reject the information for all members of the bargaining unit because under the NLRA and the NLRB precedents, that is binding. Those precedents are not binding on the states or local government employers because the NLRA does not reach that far, but in your question for private employers, everywhere in the United States, this is information that must be provided, and I have never seen a situation in which it has not been.

Chair Torres:

Any additional questions from the Committee? [There were none.] We will go ahead and go to those wishing to testify in support of A.B. 172.

Kent M. Ervin, State President, Nevada Faculty Alliance:

We support A.B. 172 and the concept of authorizing a public employer to provide contact information for bargaining unit members. This bill does not directly affect us because it applies to local governments, but there is a similar provision in Assembly Bill 224, which applies collective bargaining for professional employees of the Nevada System of Higher Education. Facilitating the employee association's duty of fair representation for members of

the bargaining unit has already been described. In addition, because they represent members nationally at both public and private colleges and universities, they mandate that we follow the National Labor Relations Board rules for using home addresses for certain communications such as election notices, and that could also apply to some local government associations. As a practical matter, the employer is most likely to have the most up-to-date contact information, especially for employees in the bargaining unit who choose not to be members of the association. Unavailable or old addresses could deprive those employees of receiving important updates from the association regarding collective bargaining agreements that apply to them.

Thomas Morley, representing Laborers' Union Local 872; and Laborers' Union Local 169:

We are in support, and as a former member and vice president of Nevada State AFL-CIO, we are in strong support.

Annette Magnus, Executive Director, Battle Born Progress:

We are in strong support of Assembly Bill 172, and we thank Assemblywoman Anderson and the rest of the sponsors for bringing this forward. Labor unions should have access to workers in the bargaining units they represent because when this information is readily available, the unions can focus their efforts on outreach and representation of those workers as soon as possible so they can represent the contracts in the best way possible. We urge your support of Assembly Bill 172.

Greg Esposito, representing Plumbers, Pipefitters and Service Technicians Local 525:

We agree with what has been presented here and cannot imagine not being able to communicate with the workers that we are legally bound to represent. The bill makes perfect sense.

Chair Torres:

Is there anyone else in Carson City wishing to testify in support of A.B. 172? [There was no one.] We will go ahead and invite the audience in Las Vegas wishing to testify in support of A.B. 172. [There was no one.] Is there anyone on the phone wishing to testify in support of A.B. 172? [There was no one.] Is there anyone wishing to testify in opposition to A.B. 172?

Jennifer Berthiaume, Government Affairs Manager, Nevada Association of Counties:

We oppose A.B. 172 as drafted. We do thank the bill sponsor for her willingness to work with us on our concern of local governments providing employee home addresses and phone numbers. This disclosure of private information conflicts with privacy rights that Clark County has codified for their employees and in *Clark County Code of Ordinances* 2.40.150. While basic employee information such as job title, salary information, employment history, department assignment, and duties may and have been provided, personal information including the employee's address and telephone number cannot be released except by written approval from the employee pursuant to subpoena or court order compelling release. We believe that this information can be discussed as part of the collective bargaining and contract negotiations.

Steve Walker, representing Lyon County:

The opposition to the bill is strictly that we do not want to give them home addresses and telephone numbers. It is part of our human resource management system in Lyon County. That is private information and not accessible. If that were removed from the bill, then Lyon County would be neutral.

David Cherry, Government Affairs Manager, City of Henderson:

The City of Henderson values its employees, and we value employee privacy as well. We would like to echo the comments that have been shared with you by the previous two commenters this morning. Most importantly, we want to thank the bill sponsor for having the willingness to continue to work with us on this concern.

Leonardo R. Benavides, Government Affairs Manager, City of North Las Vegas:

I want to echo the sentiments from my fellow cities and fellow counties as well. We have the privacy concerns, but we appreciate Assemblywoman Anderson for working with us to try to resolve these issues.

Dylan Keith, Assistant Director of Government Affairs, Vegas Chamber:

We have strong concerns specifically with the violation of privacy rights for public employees releasing very personal information including their home address, phone number, and personal emails. We also specifically have concerns with this bill that there is no opt out for these employees and that they will have to send this information out. We believe that this will become a barrier when we are recruiting new public employees.

Chair Torres:

Is there any opposition in Las Vegas to A.B. 172? [There was none.] Is there anyone on the phone line wishing to testify in opposition to A.B. 172? [There was no one.] Is there anyone wishing to testify in neutral to A.B. 172 here in Carson City? [There was no one.] Is there anyone wishing to testify in neutral to A.B. 172 in Las Vegas?

Bruce K. Snyder, Commissioner, Government Employee-Management Relations Board, Department of Business and Industry:

We are neutral on this bill. I want to offer two comments. There was talk about it being Employee-Management Relations Board precedent about having to represent nonmembers in contractual issues. That is true. It is also true that the Nevada Supreme Court has ruled that nonmembers must be represented by a union. The Nevada Supreme Court ruled on three things. One, you must represent nonmembers. You cannot discriminate against nonmembers simply because they are nonmembers. Two, you cannot charge nonmembers dues. Three, you can charge them a fee for any services rendered for that particular representation.

My second comment is on a personal experience. As a former union lawyer representing employees who worked for large government in Nevada, we had issues within our union contract as to what information was needed to be provided and how often. In fact, that information was provided electronically to make it an easy transfer to the system that the

union had. Those are my only comments. I am here to answer any questions should you have any.

Chair Torres:

Are there questions from Committee members? [There were none.] Is there anyone else in Las Vegas wishing to testify in neutral? [There was no one.] Is there anyone on the phone line wishing to testify in neutral to A.B. 172? [There was no one.] I would like to invite Assemblywoman Anderson to give any additional closing remarks.

Assemblywoman Anderson:

I look forward to further conversations with our city and county individuals who have brought forward these items they are having concerns with so we can find some middle ground.

Chair Torres:

We will close the hearing on A.B. 172, and we will open the hearing on Assembly Bill 173.

Assembly Bill 173: Revises provisions governing public works. (BDR 28-735)

Assemblyman Ken Gray, Assembly District No. 39:

I am pleased to sponsor and present Assembly Bill 173 today to the Assembly Committee on Government Affairs. I brought forth this legislation because Nevada's current bidding process for public works is deficient. As my copresenters will detail, this bill clarifies when certain subcontractors are required to be listed on general contractors' bids. The current requirements for properly identifying these subcontractors are ambiguous at best and may lead to bid submissions being deemed as nonresponsive because certain required information was not provided along with the bid. This bill seeks to remedy this problem and others by simplifying the governing law. I will now turn it over to Alexis Motarex to continue the presentation.

Alexis Motarex, Government Affairs, Associated General Contractors, Nevada Chapter:

Associated General Contractors represent the commercial construction industry in northern Nevada. I am pleased to be here today to help present A.B. 173 and want to thank Assemblyman Gray for sponsoring the bill. The purpose of the bill is quite simple. We want to standardize the way every public owner requires the listing of subcontractors for public works. Current law is confusing, contains seldom used provisions, and is inconsistent when smaller subcontractors are required to be listed. We want to make it easier for both contractors and public bodies to comply with the law, maintain transparency, and minimize the number of bid protests or the bids being deemed nonresponsive because they did not get the numbers right as the formula currently requires.

As amended [page 1, Exhibit E], A.B. 173 maintains that contractors must submit any first-tier subcontractor on a public work bid being paid an amount exceeding 5 percent of the total bid price at the time of bid opening, but deletes the 3 percent listing requirement as it is

seldom used and when it is used, it is most often used incorrectly. It is confusing for both contractors and the public body and leads to those bids being disputed or deemed nonresponsive. Additionally, as amended, A.B. 173 eliminates the language requiring the listing of subcontractors who will complete work greater than \$250,000, but if not greater than \$250,000, then \$50,000, or 1 percent of the total bid price, whichever is greater. Instead, this language will simply require contractors who submitted the three lowest bids, a bid opening to submit a list of first-tier subcontractors providing any work totaling \$50,000 or 1 percent of the prime contractors total bid, whichever is greater within two hours of completion of opening bids.

There were some concerns with the original bill and our first attempt at an amendment, but we are happy to say that we have worked with stakeholders and we have reached a compromise with which everyone is happy. I do have some contractors here as subject matter experts to speak to their experience with the current system and why it is due for a change.

Marc Markwell, Chief Financial Officer/Secretary, Sierra Nevada Construction, Sparks, Nevada:

We are a heavy civil contractor based out of Sparks, Nevada. We have worked with Ms. Motarex and appreciate everybody's help on this to try to simplify the bidding process. It gets very cumbersome and complex, and there are times where we have eight, nine, ten bids a week, so we are trying to simplify the process. This bill does a couple of things. It removes the 3 percent listing option, which obviously leads to some confusion, and even some bid protests which ultimately cause the taxpayers to pay more for a project. The current requirements are out of date; \$50,000 is not what it used to be. We are trying to make it a little bit more current with inflation and everything else. The current requirements have not changed since 2013, but inflation and the market conditions have changed. By standardizing this, we are requiring all owners, regardless of the project, to be consistent with the same information at bid opening to be required.

Dave Backman, Senior Vice President, KG Walters Construction, Reno, Nevada:

Thank you for at least hearing our side of it and especially on the heels of that presentation from the Labor Commissioner. It is exhausting when you are a public works contractor. I was subject to the 3 percent listing years ago. I had forgotten about it until someone called on me to testify. It was painful. I had blocked it out. The point that we are trying to make here is if you could simplify things and make it a level playing field for wherever we are bidding work, which is all over the state, and sometimes there are these one-offs with the 3 percent and you are caught off guard. It does create room for issues with those listings. We lost out on a project over in Fernley because of this. It would be nice to see this as a little housekeeping, and it would be very nice to put everybody on the same level. It is quite simple. As Mr. Markwell alluded to, contract prices have gone up tremendously, especially since 2013 when this was last addressed. We recently finished a \$55 million wastewater plant up in Reno. We are working on a little under \$100 million project in Washoe County, so you can imagine the logistics required to get down in the weeds on bid day when you are doing a lot. We want to protect the interests of contractors, but this is a small ask, simply

a cleanup of the current requirements is all we are asking for here. I will answer any questions if anybody wants to know more.

Chair Torres:

Are there any questions from the Committee? [There were none.] Could you talk about the bidding process and how this change is going to make the bidding process look like? If we could start there, because I do not know that that was explained in the presentation.

Marc Markwell:

At bid time, we must submit a list of all the subcontractors that are 1 percent. What this change does is it may reduce the amount of work that goes into it so that we are not scrambling. What happens quite often at bid time is that you do not receive the other contractors' numbers until 20 minutes before the job bids, so you are scrambling to see who is the lowest and make sure that the entire scope is covered, that they are not missing something, and then you put all that list together before you submit. Then there is also a two-hour list, but this will help simplify that. At bid time there is not as many logistics involved. You might have 20 to 30 subcontractors, so it really helps the contractors out so they can identify what are the importance of contractors to list. Does that help?

Alexis Motarex:

If I may, I can answer that by demonstrating how confusing it is. The way the law currently reads is that a bid must include the names of each first-tier subcontractor. If a public body provides a list of the labor, or a portion of the public work, which is estimated by the public body to exceed 3 percent of the estimated cost of the public work, or if the public body does not provide that 3 percent list, the prime contractor must provide the name of each first-tier subcontractor who will provide labor or a portion of the labor in an amount exceeding 5 percent of the total bid. Then within two hours after the completion of the opening of bids, contractors who submitted the three lowest bids must submit a list containing names of each of their first-tier subcontractors being paid an amount exceeding \$250,000. If the amount does not exceed \$250,000, then the names of each subcontractor who will provide the work and is either being paid 1 percent of the total price or \$50,000, whichever is greater.

That is what current law says. I think in trying to read it and demonstrate it explains why it can be confusing. The 3 percent list the public body needs to provide is often used incorrectly, resulting in bid protests and lost jobs. We are trying to clarify that and keep it at the \$50,000. It was a compromise with some stakeholders that we kept it at \$50,000. We wanted originally to do it at \$100,000, but there was some concern. That \$50,000 was put into statute in 1993 and has not been adjusted since. If we calculate it in today's dollars, I believe that is about \$103,000. That would create that level playing field, but we will keep it at \$50,000 or 1 percent of the total bid price, whichever is greater. That should address some of the issues with the building contractors.

Chair Torres:

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

Assemblyman Gray:

As Ms. Motarex demonstrated, it is a very confusing process. Some of the smaller companies get lost in the minutiae. This really streamlines the process while maintaining the spirit and the intent. We want to clean it up so more people can understand it and abide by it.

Chair Torres:

I do not believe there are any additional questions. We will now invite anyone wishing to testify in support of A.B. 173.

Bill Wellman, Division Manager, Las Vegas Paving, Henderson, Nevada:

This has been a challenge for many, many years with the law being a bit ambiguous. We need some consistency and that is what this new language will do. It helps protect the subcontractors that we are listing. They will get to understand it better as we move forward in the bidding process on all our public works projects. We highly support this and hope that you will as well.

Brian Reeder, representing Nevada Contractor Association:

I want to thank the sponsor, and I urge your support.

Chair Torres:

Is there anyone else wishing to testify in support of A.B. 173 here in Carson City? [There was no one.] I will invite anyone in Las Vegas wishing to testify in support of A.B. 173. [There was no one.] Is there anyone on the line wishing to testify in support of A.B. 173? [There was no one.] I will now invite anyone in Carson City wishing to testify in opposition to A.B. 173. [There was no one.] Is there anyone wishing to testify in opposition to A.B. 173 in Las Vegas? [There was no one.] Is there anyone on the phone line wishing to testify in opposition of A.B. 173? [There was no one.] Is there anyone wishing to testify in neutral to A.B. 173 here in Carson City?

Kelly Crompton, Government Affairs Manager, Government and Community Affairs, City of Las Vegas:

Our public works employee was in opposition, but we received the amendment late in the Committee hearing room. He is now neutral with the new language.

Chair Torres:

Committee Secretary, if we could put that testimony under neutral, we would appreciate that. Is there anyone wishing to testify neutral to A.B. 173 here in Carson City?

Vince Saavedra, Executive Secretary/Treasurer, Southern Nevada Building Trades Union:

We are in neutral support of this bill.

Chair Torres:

For clarification, you are neutral on the bill, correct? Thank you. I appreciate that.

Thomas Morley, representing Laborers' Union Local 872; and Laborers' Union Local 169:

We are in the neutral position.

Chair Torres:

Is there anyone else wishing to testify neutral in Las Vegas?

Matt Klainer, Quality Assurance Administrator, Department of Public Works, City of Las Vegas:

We want to clarify that with the amendment, the city is neutral on this bill.

Chair Torres:

Is there anybody else in neutral in Las Vegas? [There was no one.] Is there anyone on the phone line wishing to testify neutral to A.B. 173?

Rob Benner, Business Representative, Building and Construction Trades Council of Northern Nevada:

We were opposed to this bill, but with new amendment we are now neutral.

Chair Torres:

Is there anyone else on the phone line to testify in neutral on A.B. 173? Do you have any closing remarks, Assemblyman Gray?

Assemblyman Gray:

I do urge your support of this. It will be a cleanup and assist our contractors and folks out there that are taking on our public projects.

Chair Torres:

At this time, we will close the hearing on A.B. 173, and we will go ahead and go to the last item on the agenda today which is public comment. Is there anyone wishing to provide public comment? [There was no one.] At this time, the meeting is adjourned [at 10:27 a.m.].

RESPECTFULLY SUBMITTED:

Diane Abbott
Committee Secretary

APPROVED BY:

Assemblywoman Selena Torres, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is a copy of a PowerPoint presentation titled "State of Nevada, Department of Business and Industry, Office of Labor Commissioner, Agency Overview 2023," presented by Brett K. Harris, Commissioner, Office of Labor Commissioner, Department of Business and Industry.

[Exhibit D](#) is written testimony submitted by Chris Daly, Deputy Executive Director, Government Relations, Nevada State Education Association; in support of [Assembly Bill 172](#).

[Exhibit E](#) is a proposed amendment to [Assembly Bill 173](#), submitted and presented by Alexis Motarex, Government Affairs, Associated General Contractors, Nevada Chapter.