

1 STATE OF NEVADA

2 OFFICE OF THE LABOR COMMISSIONER

3 MAY 30, 2018

4 PUBLIC HEARING ON REGULATION PACKAGE R18-18

5
6 COMMISSIONER: Good morning, we'll go ahead and
7 get started. So, good morning everybody. Thank you all
8 for attending today's Public Hearing. My name is Shannon
9 Chambers, the Labor Commissioner. I'll introduce my Deputy
10 Attorney General, Melissa Flatley and my Auditor, Jennafer
11 Jenkins up in Carson City. Then, down in Las Vegas, if you
12 could introduce yourself please?

13 LLETA BROWN: Lleta Brown, Investigator.

14 MARY HUCK: Mary Huck, Deputy Commissioner.

15 COMMISSIONER: And again, thank you all for being
16 here today. This is the Public Hearing on Regulation
17 Package R018-18. This involves some proposed regulations
18 from the Office of the Labor Commissioner. I'm just going
19 to kind of give some big highlights of the Regulation
20 Package and then we'll go through topic by topic and I will
21 allow public comment. For those who wish to offer public
22 comment, I will also provide information on submitting
23 additional written comments after the hearing here today.
24 I would just ask that if you are going to offer public
25 comment, please state your name for the record and the

1 business or entity that you are representing, so we have
2 that for the record. If you haven't signed in, please sign
3 in so we have a complete record, depending on where this
4 Regulation Package ends up going.

5 As you are all aware, we started this process it seems
6 like an eternity ago but basically, almost a year ago now
7 asking for some comments, suggestions on some proposed
8 regulations to clean up some areas in Nevada Administrative
9 Code, Section 338. Some of these issues were brought to
10 the attention of our Office through requests for advisory
11 opinions and just through different claims and complaints
12 that our Office investigated and became involved in.

13 So, the attempt in moving this package forward was to
14 clarify some of those issues and to clean up some things
15 that quite frankly, have been on hold for many, many years.
16 That was the intent.

17 I stated from the start that if we got to the point
18 where we had a package that was not going to bring together
19 a great majority of the parties involved, I certainly don't
20 think we're all going to get something we like 100% but I
21 stated when we began this, if it's something where we're
22 just not going to have much agreement on, much of anything
23 then, we will see whether this package moves forward or
24 not. I'll just kind of outline the main topics that the
25 Package sought to address.

1 The first topic was a definition for Normal
2 Maintenance and Normal Operations. I will tell you that,
3 for those of you that saw the draft language that I
4 submitted to the Legislative Council Bureau, the language
5 that was returned to our Office as drafted by the
6 Legislative Council Bureau was not exactly what I intended
7 in mind for a definition of Normal Maintenance and Normal
8 Operations; but hopefully you've all had a chance to look
9 at that definition. When we go back through that section,
10 I will offer that open to public comment.

11 The other area that we attempted to clarify was a
12 situation where, it was a term called Service Providers or
13 people that were on the Public Works jobsite for a limited
14 period of time or for a limited scope and clarifying when
15 those people would actually be subject to the prevailing
16 wage requirement and when they would not.

17 We also sought to clarify when truck drivers would be
18 subject to the prevailing wage requirement. I did also
19 offer some language to the Legislative Counsel Bureau about
20 owner/operators and the certified payroll requirements for
21 that. I was told by the Legislative Counsel Bureau that
22 that requires a statutory change, so that is not why this
23 is in this packet.

24 The other area that we sought to clarify was the
25 definition of recognized class of workers. When the

1 prevailing wage rate is calculated for a recognized class
2 of workers, that the collective bargaining agreements would
3 be utilized in conjunction with the prevailing wage rates
4 and in conjunction with the group rates established through
5 those collective bargaining agreements.

6 We also cleaned up the process for determining the
7 prevailing wage and what type of information would be used
8 in calculating the prevailing wage. This is consistent
9 with what was passed in the 2015 Legislative Session in
10 Assembly Bill 172. It cleaned up the regulations to
11 reflect that.

12 We also included the job descriptions in the
13 Regulation Package. Again, what I had sent over to the
14 Legislative Counsel Bureau was—mainly, I intended a process
15 where we could update the job descriptions after a public
16 hearing, along with that, also maybe update the job
17 classifications after a public hearing and then provide
18 those updates to the Legislative Counsel Bureau. They went
19 in a little bit different direction by including the job
20 descriptions in the actual regulations, but I think it's
21 good to clarify the actual job descriptions in the
22 regulations with the requirement that if the Labor
23 Commissioner is going to change those it does require a
24 Public Hearing. This is consistent with the litigation
25 that went on for a number of years involving the job

1 descriptions that was resolved back in 2016.

2 The package also set to clarify the complaint filing
3 process and responding to complaints. Also, allowing the
4 Labor Commissioner or the awarding body to investigate
5 complaints.

6 The regulation package also clarified for late
7 certified payroll reports, what type of determinations
8 would or would not be required and then also, for the
9 certified payroll reports, the non-performance report and
10 requirement.

11 That's kind of the highlights of the regulation
12 package. Again, our office has already received some
13 public comment on some of these topics that we obviously
14 will be reviewing and considering in terms of what the
15 final package may or may not look like and how it will move
16 forward.

17 So, I'm going to go ahead and open up the Hearing on
18 the topic of Normal Maintenance and Normal Operations and
19 allow anybody, either in Carson City or Las Vegas, to come
20 forward and provide public comment on that topic, should
21 you choose.

22 Seeing none, we will move on then to—

23 LLETA BROWN: Commissioner Chambers.

24 COMMISSONER: Oh, sorry. There we go.

25 LLETA BROWN: We have someone here.

1 SHERRI PAYNE: Hi, good morning. My name is
2 Sherri Payne and I'm the Senior Associate, Vice President
3 of [inaudible] for the College of Southern Nevada. I
4 wanted to thank you for the opportunity to talk today about
5 the proposed regulations.

6 On Friday you received a letter from the Las Vegas
7 Valley Water District expressing some of their concerns of
8 the proposed regulations. CSN, along with some other
9 agencies, signed that letter because we felt that they had
10 some very strong points regarding the proposed changes.

11 As with other agencies, CSN, at times will hire a
12 vendor to preform work when our staff can't handle the work
13 load. According to this definition, the work is classified
14 as maintenance if our in-house staff perform the work
15 because we are exempt from the contractor's licensing
16 requirements. However, if we hire a vendor who does
17 require a contractor's license, it goes out of the
18 definition of maintenance and becomes a Public Works
19 project.

20 We feel that the definition of Maintenance should be
21 defined or be consistent with the type of work performed as
22 opposed to who does the work.

23 Another concern is the new definition of Maintenance
24 is reduced from what it was before, excluding work that
25 requires a permit or a contractor's license can affect the

1 maintenance work that we do. By limiting the—what is
2 identified as Maintenance, it may limit CSN's ability to
3 self-perform some of the work that we currently do.

4 We also had some clarifications regarding the
5 language. If Maintenance is going to be regulated as a
6 Public Works Project, we're unclear as to how to define
7 kind of the scope and cost of the project, which in turn
8 determines which rules apply.

9 For instance, maintenance is ongoing and it's
10 continuous. Projects tend to have a start and an end date.
11 If Maintenance is regulated as a project, it might be
12 difficult to determine what the start and the end date are
13 which is the scope and the cost, which then determine which
14 rules apply.

15 Finally, in terms of clarification, we also had
16 questions about our larger contracts. For instance, CSN
17 outsources our grounds. This contract is a combination of
18 work that both requires a contractor's license and work
19 that does not. A large percentage of it is picking up
20 trash and pruning trees which does not require a license;
21 but then we also have a portion of it, that's irrigation,
22 that does require a license. So, it's unclear or we would
23 like clarification as to how it would affect the larger
24 contract as a whole, is the larger contract, part of that
25 regulation or is it just the portion that is the work.

1 Those are our main concerns on this regulation. Once
2 again, I really wanted to thank you for letting us express
3 our concerns. We'd be happy to discuss anything further if
4 you need thank you.

5 COMMISSIONER: Thank you very much.

6 OMAR SAUCEDO: Good morning. My name is Omar
7 Saucedo and I'm here testifying on behalf of the Las Vegas
8 Valley Water District. We certainly appreciate the
9 opportunity to provide some comments on these proposed
10 regulations.

11 The Las Vegas Valley Water District opposes Section 2
12 of the proposed regulations. For more detail and
13 explanation of why we oppose that particular section,
14 please see the joint letter that was submitted on behalf of
15 16 public entities.

16 While we understand the desire to define Normal
17 Maintenance and Normal Operation, this is a term that has
18 been historically difficult to define because no definition
19 can be drafted that encompasses all the concerns of the
20 unique public bodies, spread across this state.

21 Furthermore, we are concerned by the lack of
22 participation of some of the [inaudible] in the process
23 with coming up with a definition to define this particular
24 term. If a definition is going to be proposed to define
25 Normal Maintenance and Normal Operation, then it must pass

1 a high bar that does not impact a public body's ability to
2 utilize exemptions found in NRS 338.

3 For the reasons and some of the other reasons outlined
4 in the joint letter that was submitted to your office, we
5 ask that Section 2 be stricken from the proposed
6 regulation. Thank you for the opportunity to provide
7 public comment, open to any questions if you have any.

8 COMMISSIONER: Thank you very much.

9 OMAR SAUCEDO: Thank you.

10 DANNY THOMPSON: Good morning. My name is Danny
11 Thompson. I'm here today representing Teamsters Local 14.
12 Teamsters Local 14 represents the employees at the City of
13 Henderson, City of North Las Vegas, City of Boulder City,
14 City of Mesquite, the Library District, the Southern Nevada
15 Water Authority.

16 We share the same concerns that the Las Vegas Valley
17 Water District has with the definition of Normal
18 Maintenance and Repair. That's something very difficult to
19 define. I can tell you over the years, there's been a lot
20 of attempts to define it.

21 We're very concerned that we represent many, hundreds
22 of skilled tradesmen that work and do normal maintenance
23 for those cities and those government entities. We would
24 like to see that changed to better reflect what we do and
25 without that we would like to see that section deleted.

1 Thank you.

2 COMMISSIONER: Thank you.

3 EVAN JAMES: Good morning Commissioner
4 Chambers. It's nice seeing you and everyone. Evan James.
5 I represent Southern Nevada Painters, Glazers, work covers
6 LMCC. I need to point out something from a legal
7 standpoint with regard to Section 2 of the proposed
8 regulation.

9 It reads: Routine repairs or maintenance which may be
10 performed without requiring a building [inaudible]
11 contractor's license. From a legal standpoint, I think
12 this has some significant problems. First, requiring a
13 building permit actually excludes a lot of trades. For
14 example, in Clark County, painting may not necessarily
15 require a building permit, nor does door covering. So, I
16 don't know and I don't want to put words in your mouth
17 because I appreciate all the work you've done on this, but
18 I don't know that that's the intent of the regulation is to
19 exclude particular trades from actually being able to enter
20 and perform work on a Public Works Project.

21 The second issue is with requiring a contractor's
22 license. Under NRS 624.031, public bodies are excluded
23 from requiring a contractor's license. It's arguable and
24 in fact, it might be probable that the regulation would
25 exclude all work that would be performed by the public body

1 from the prevailing wage issue. In other words, it would
2 be a Normal Maintenance.

3 So, any work that's done, any work that was brought in
4 as a vendor, all of those individuals can perform that work
5 without actually having the work qualifying as [inaudible]
6 wage under this definition.

7 In my view, having been involved in this issue for a
8 number of years and I think it's been supported by the
9 comments that have been previously made today—the public
10 entity's desire to perform this work at their schedule, at
11 their inclination and in reality, in their own definition.
12 That creates a problem because there's no uniform
13 application for which society can decide what normal
14 maintenance is and what isn't normal maintenance.

15 In effect, the public body gets to decide, on its own
16 whim, whether or not it wants to get something as Normal
17 Operation, Normal Maintenance or a prevailing wage project.

18 We do believe a definition is absolutely required, but
19 unfortunately Section 2 of this proposed definition has
20 some legal issues. We don't think that it serves the
21 intent of what the regulation is. Be happy to answer any
22 questions if you have any or hopefully there will be a
23 chance to submit some written comments afterwards as well.

24 COMMISSIONER: Thank you, Mr. James.

25 JACK MALLORY: Good afternoon Commissioner. Jack

1 Mallory, Assistant Business Manager, Secretary, Treasurer,
2 Painter's and Allied Trades District Council 15.

3 Under what is being proposed by the public bodies,
4 what would preclude them from staffing up, hiring
5 additional individuals to take on a larger project? An
6 example is, a project that was classified by Boulder City
7 as a maintenance project and subcontracted under Chapter
8 332, as a maintenance project for bid number \$400,000.
9 What would preclude them from just hiring a number of
10 painters and sub-performing that project under the grant
11 scope of maintenance as is being proposed.

12 I think that if all the people in this room, one
13 person that should have the most knowledge about the
14 interface between Chapter 332 and Chapter 338 would be Mr.
15 Thompson. I believe that the intent has always been that
16 332 was a purchasing statute. It was not intended to be a
17 statute that would be used for the purpose of employing
18 individuals in skilled trades.

19 I think that's the key thing that's in front of us
20 today is, how do those two statutes interface with each
21 other. It's our position that every project should fall
22 under Public Works, as a presumption and there's an
23 exemption in 338 that allows them to go back to 332.

24 I just—I can't see this working the way that it's
25 intended to work. Thank you.

1 COMMISSIONER: Thank you.

2 JOHN RIDILLA: Good morning Commissioner and
3 Staff. John Ridilla with the City of Las Vegas. The City
4 would like to go on record supporting the concerns
5 identified in the joint letter that was previous referenced
6 and dated May 25th. Although the proposed changes to NAC
7 338 seem to be well intentioned, we believe there will be
8 serious unintended consequences as written.

9 A reasonable interpretation of the text requiring
10 municipality to follow NRS 338 in almost every aspect of
11 their operational and maintenance activities. That
12 situation would override municipal operating authorities,
13 responsibilities and result in millions of dollars to be
14 [inaudible] for larger agencies. It would negatively
15 impact the ability of those organizations to provide timely
16 responses to operational needs.

17 If the City cannot directly respond to items such as
18 water line repairs, sewer stoppage, responses, clean-up,
19 water treatment plant operation continuity, storm drain
20 repairs, traffic signal maintenance, road repairs, tree
21 removal and other critical activities, then the result
22 would be continuous disruption of critical services. To
23 avoid even the potential of such consequences, we
24 respectfully request a reconsideration of the proposed text
25 so that routine municipal operations, public health and

1 public safety are not jeopardized.

2 If you have any questions—we would like to submit
3 additional written comments as well.

4 COMMISSIONER: Thank you very much.

5 BILL STANLEY: My name is Bill Stanley for the
6 record, representing the Southern Nevada Building
7 Construction Trades Council. I would like to address this
8 issue with Maintenance and Normal Operations. I'm going to
9 look at coming from just a little bit different
10 perspective.

11 There is, I believe, some confusion over those who
12 choose to maintain a property and the maintenance that
13 would be included in maintaining that property. There is a
14 difference between maintaining a property and the
15 maintenance that would go into that activity.

16 To maintain a property, there are other activities,
17 such as repair, modernization and other facets of work that
18 go into maintaining a building. As we get to the subject a
19 little later, Commissioner, when we talk about trying to
20 define the Service Provider. There are Service Providers
21 today that would come into the building that we're here in,
22 in Las Vegas and would issue a contract to maintain this
23 building from top to bottom; including painting, HVAC
24 system, carpeting, electrical systems, you name it, it
25 would go into the maintaining of this building. They would

1 bid that as a service provider. While much of that work
2 would fall under the definition of repair.

3 So, any time the word 'repair' shows up in an
4 agreement to maintain a property, you immediately have to
5 look to NRS 338. In fact, NRS 332 speaks specifically to
6 that in that it says that you can bid work under 332, but
7 if the work that you are covering is work that should be
8 covered by 338, 338 prevails.

9 In fact, we've had a case, Labor Commissioner heard
10 the case in Bombardier, the IUC v.—County V. Bombardier, I
11 think. That case was decided by the Labor Commissioner's
12 Office. I know that it may be on Appeal, but this was the
13 exact issue that was raised in that case. You had a
14 Service Provider who was issued a contract to maintain a
15 piece of equipment. During the maintenance and the
16 maintaining of that equipment, they did extensive repair
17 work that was required to be paid at the prevailing wage
18 rate.

19 So, public agencies who wish to bid under 332, to find
20 a Service Provider to perform certain work that they want
21 done, do not escape the provisions of 338. I think that
22 has to be on the record.

23 Next, I absolutely believe that defining Maintenance
24 and Normal Operation is necessary or we're going to
25 continue to have these arguments about what is work that is

1 performed that should be required to pay the prevailing
2 wage rate and that work that is referred to as Maintenance.

3 We have had this argument for a very long time. We
4 had proposed a blue line definition so once and for all, if
5 it falls under or over, clearly delineated, public agencies
6 knew what it was, contractors knew what it was. The labor
7 unions represented in this room today knew what it was.
8 Folks would have a clear definition to move forward. I
9 understand LCB had other ideas and I appreciate that, but
10 it doesn't—this doesn't go to the issue that I think
11 originally, we all sat down and tried to come to some
12 agreement on.

13 So, for those reasons, the Southern Nevada Building
14 Trades would be opposed to this definition that we believe
15 would simply open the door for public agencies to ignore
16 338 and simply address everything under 332 and escape the
17 payment of prevailing wage for this some estimated \$6
18 billion worth of deferred maintenance—which that's just a
19 fancy word for, I didn't do what I was supposed to do when
20 I should've done it and now it's dilapidated and I need to
21 do more than I had to do when it started.

22 So, that \$6 billion worth of deferred maintenance, I
23 believe has a significant undertone in this discussion
24 about how work is going to be accomplished and who does it
25 and what the wage rates are going to be paid.

1 And so, for those reasons, I oppose it and we will
2 submit further comment at a later date. Thank you.

3 COMMISSIONER: Thank you. Seeing no additional
4 testimony on the—oh, sorry, go ahead. Sorry sir.

5 SKIP DALY: Thank you, I'll try to speak loud.
6 Skip Daly, I'm with the Laborers Union, Local 169 in
7 Northern Nevada. I've listened to the testimony. We have
8 an issue that is not going to be easily solved.

9 The question on the opposite side of what is
10 Maintenance and Normal Operation is, on the other side for
11 me, representing construction workers and construction
12 industry and the bidding requirements under 338 and the
13 prevailing wage governing 338 is, how much construction
14 work—and we clearly know what construction work is, there's
15 maintenance, various things. You know it when you see it,
16 right? How much construction or awarding bodies or public
17 bodies are going to be able to do under the guise of
18 Maintenance or Normal Operations. And then, how big is
19 DOT, for instance, or whoever, going to be able to get and
20 say, it's our normal operation because we hired some people
21 to do it so now it's become our normal operation.

22 There's got to be a line and a limit on what can be,
23 how much construction work a public agency can claim to be
24 as Maintenance or Normal Operations. It's not their normal
25 job. They're not in the construction industry. They don't

1 have a contractor's license. They don't regularly employ
2 craftsmen for that type of work.

3 So, maybe you look at it from the other side, as how
4 much construction work that they claim is Maintenance or
5 Normal Operation. The definition doesn't work that LCB
6 has, not their fault. I don't know that anyone can do it.
7 We're going to try. Thank you.

8 COMMISSIONER: Thank you. Actually, we have
9 another comment.

10 ANDREA SULLIVAN: Hi, for the record, I'm Andrea
11 Sullivan with the Washoe County School District. I'm the
12 Director of Procurement. I would just like to echo what
13 some of the other agencies down South have said. We agree,
14 we just want to clarify that any work that would be self-
15 performed by an agency would not be subject to this
16 regulation, number one.

17 We also want to make sure that certain maintenance
18 that we do wouldn't be excluded. For example, in an older
19 building where we have a very small roof leak, we're
20 talking hundreds of dollars that this isn't subject to the
21 regulation. We do have small 332 maintenance contracts
22 that we put out. They are for very small repairs. In
23 total, the annual spend would likely not even reach a bid
24 limit level and certainly wouldn't reach a prevailing wage
25 requirement but we do have 100 schools that we have to

1 maintain. We have small things happen in irrigation, in
2 plumbing and in roof leaks for example and we want to make
3 sure that we can still contract for that work. As an
4 earlier speaker said, maintenance is ongoing, and a Public
5 Works Project is a finite project, so it's hard then to be
6 able to do these normal things that we have to do in
7 maintaining our buildings for small amounts.

8 We'd be happy to work with you and answer any
9 questions and help in the endeavor to come up with a
10 definition that might work for us all. Thank you.

11 COMMISSIONER: Thank you. This is Commissioner
12 Chambers, just so all the parties know, the intent of this
13 proposed regulation was to not take away a local government
14 or you know, an entity's ability to perform self-
15 maintenance and kind of the routine tasks.

16 The intent of this was to, again and the statement has
17 been made to provide some type of a line so that all the
18 parties out there knew it was a large million-dollar
19 construction project that awarding bodies were casting as
20 normal maintenance, that there would be some type of a
21 definition that would explain to them that that simply was
22 not the intent of that statute.

23 Again, the language that came back from the
24 Legislative Counsel Bureau was not exactly what this Office
25 had in mind and you know, I'm happy that the parties have

1 provided testimony and written statements and again, there
2 will be further opportunity to provide more written comment
3 and we might be able to put something together in this
4 package and we might not. To the extent that does not
5 happen, it will probably continue to be on a case-by-case
6 basis.

7 I will tell you, there is a case out there and Mr.
8 Stanley referenced it, the Bombardier case that is still
9 out there that at some point could provide a definition of
10 Normal Maintenance that some of us may or may not like.
11 Just to make you all aware that that is out there and
12 again, we will see what type of comments we received after
13 the Public Hearing today and then see where this issue
14 goes. I do appreciate everybody's participation and
15 comments.

16 Again, just want to emphasize that the intent of this
17 was to try and do something good, not do something bad.
18 So, again, appreciate all your comments.

19 Let's go ahead and move on to the proposed regulation
20 involving Service Providers and kind of the definition of
21 when somebody is actually employed at the site of a Public
22 Work and when they are not. I'll go ahead and open that up
23 for testimony in Carson City and Las Vegas.

24 Seeing nobody coming forward in either location, we
25 will move on to—this is the provisions involving truck

1 drivers and when they are deemed to be subject to
2 prevailing wage requirements. Again, I'll go ahead and
3 open up both locations to public testimony.

4 Seeing none, we'll go ahead and move on to the
5 proposed sections involving how the prevailing wage is
6 calculated. Essentially, the language of determination of
7 prevailing wage rates and what type of information would be
8 included when those determinations are made and if the wage
9 is determined to be a majority where it is collectively
10 bargained, that the Labor Commissioner would recognize
11 those Collective Bargaining Agreements as the prevailing
12 wage rate and the group classifications within those
13 Collective Bargaining Agreements. I'll go ahead and open
14 the Hearing to testimony on those issues.

15 LLETA BROWN: Commissioner, what page are you
16 on?

17 COMMISSIONER: It's Section 338.010.

18 LLETA BROWN: Page 28 at the bottom [inaudible]

19 SPEAKER: [inaudible]

20 LLETA BROWN: It starts on the bottom of 28.

21 COMMISSIONER: Go ahead, Mr. Daly, if you want to
22 go ahead.

23 SKIP DALY: Yeah. Skip Daly again, with the
24 Laborer's Union, Local 169. Just a couple of comments.
25 Most of it looks in order and aligned with what I think

1 will work and should be reasonable.

2 One thing in its existing language, where it says, we
3 should list the cost of the project in the prevailing
4 survey form. I know currently you don't ask for the cost,
5 so we should probably make that consistent with what's
6 actually happening. I know that's existing language, but I
7 don't know that that would still be needed.

8 Then the other quick thing I would bring up is on the-
9 if there's no work in a particular County, current language
10 says you look to the next closest county and sometimes
11 that's two or three counties away. So, you have sometimes
12 where a rate would bleed up three or four counties from the
13 South to the North or the North to the South.

14 Rather than saying that you may leave it as the old
15 rate, I think you should recognize a rate from a County
16 that did have some of that type of work, extensively that's
17 where those workers would come from. Maybe look at
18 something along the lines, what has been done in the past
19 in the State, or sometimes with the Federal, they'll look
20 at zones. You know, rural versus urban, or maybe split the
21 State into two zones and then go ahead and say, we will
22 recognize the closest County rate in that zone. You split
23 it, the Southern four counties; Nye, Esmerelda, Clark and
24 Lincoln. And in the Northern, what would that leave, 13
25 counties, into a zone.

1 Just a suggestion. I think that would alleviate a lot
2 of the issues of a Southern Nevada rate bleeding all the
3 way up into Northern Nevada, or vice versa, because there
4 was no work. You would just look at those zones.

5 And then cost, on that one section is not used now,
6 should clean it up while we can. That was it.

7 COMMISSIONER: Thank you.

8 GREG ESPOSITO: Good morning Commissioner. Greg
9 Esposito, representing the Nevada State Pipe Trades. Sort
10 of the subject we had a conversation with—a couple of weeks
11 ago in your office when it comes to the recognized job
12 classifications of workers that have been recognized
13 because they have a Collective Bargaining Agreement.

14 One of the problems that's come up is that some of the
15 subclassifications of workers that have been created by
16 looking at the language in the Collective Bargaining
17 Agreements has run contrary to other major classifications
18 that were already established.

19 Conversations we had in your office, like I said, a
20 couple of weeks ago regarding the Pipe Layer
21 subclassification under Laborer. Well, there is no
22 definitive difference between a pipe layer and a pipe
23 fitter. There have been contractors that have used the
24 pipe layer classification in lieu of the pipe fitter
25 classification, which is a major survey classification

1 successfully. They've gotten away with paying less.

2 So, this language right here, you know, the Labor
3 Commissioner will recognize the job classifications that
4 are in the Collective Bargaining Agreement. I understand
5 your intent and I understand what we're trying to
6 accomplish, but without language that expressly prohibits
7 the creation of subclassifications for work that is already
8 considered a major classification, a surveyed
9 classification, we would oppose the change because it's
10 caused problems in the past and we don't want it to
11 continue to cause problems moving forward.

12 We have the—I'm not trying to jump forward, but there
13 is similar language in Section 16, which of course, I'm
14 sure you're going to get to, Subsection 2. It's the same—
15 it's the same opposition to that language. I understand
16 that's when you make a survey and you make a determination,
17 but it's the same thing there. Without language that
18 states you can't create a subclassification that's already
19 surveyed for the major classification, we would be opposed
20 to this language. Thank you.

21 COMMISSIONER: Thank you.

22 BILL STANLEY: For the record, Bill Stanley,
23 representing Southern Nevada Building Construction Trades
24 Council. My concern here is that many of these definitions
25 are, I guess, could only be defined as antiquated. They've

1 been around a long time. I don't know that they
2 necessarily reflect the changes in construction methodology
3 and technology that has—that has encompassed the
4 construction trades.

5 I am somewhat concerned and I understand what, you
6 know, each one of the classifications has an exception at
7 the end of each one of the statements. I am somewhat
8 concerned that we are going to codify those into statute,
9 which would make it very difficult in the future for folks
10 to change as construction methodology continues to change.

11 I heard you in your opening remarks when it wasn't
12 necessarily the Commissioner's intent, that's what we got
13 back from LCB. I would just caution that to be enormously
14 cumbersome as we move forward. Thank you.

15 COMMISSIONER: Thank you.

16 NATHAN RING: Good morning, Nathan Ring on
17 behalf of IBW [inaudible]. I just wanted to clarify
18 something. I thought we were talking about Section 10 and
19 the adoption of changes and wage rates and fringe benefit
20 rates, not going into Section 4, which is the inclusion of
21 all of the definitions of what is within a classification.
22 Am I correct in that or will we move on to that later?

23 COMMISSIONER: We'll move on to that Mr. Ring,
24 but I mean, I'm going to take Mr. Stanley's testimony, you
25 know, it's a public hearing. So, go ahead and address the

1 topic in Section 10.

2 NATHAN RING: Okay. I just wanted to make sure
3 we weren't missing an opportunity to comment on that.

4 So, in Section 10, we are in support of adding in the
5 statement that recognized wage class as a CBA will increase
6 without having to do rate making or rule making after that
7 because we think it's important. It continues to show what
8 the prevailing wage rate is.

9 COMMISSIONER: Thank you.

10 JACK MALLORY: Again, good morning Commissioner.
11 Jack Mallory, Assistant Business Manager, Secretary,
12 Treasurer, Painter's 9, Trades District Council 15.

13 I can see where there's some useful things within this
14 provision. I understand at this point that there's a
15 requirement for rule making in this whole process. To do
16 something as simple as reinserting a Foreman classification
17 in the [inaudible] prevailing wage. That has been gone
18 for, I don't know, probably 10 years or so. It has not
19 been included in that classification.

20 The thing that is missing and maybe I'm just
21 misinterpreting this and hopefully this can be clarified.
22 In those instances, like Brother Esposito brought up where
23 there's a subclassification that's included in a Collective
24 Bargaining Agreement and included in multiple Craft
25 Collective Bargaining Agreements, is there going to be a

1 period of protest? The way that this reads on its surface,
2 there will not.

3 COMMISSIONER: Thank you.

4 HUGO TZEC: Good morning Commissioner
5 Chambers. My name is Hugo Tzec on behalf of Operating
6 Engineers, Local 12. I'm here to state a concern over the
7 Section--well, actually--I'm actually going to start off
8 that, we're afraid that I'm going to support part of
9 Section 10 which uses the CBA to incorporate the prevailing
10 wages. From what you explained, we're going to discuss
11 Section 4 later and that's somewhat related but it's an
12 issue that we want to discuss in terms of the description
13 in the codification of the work for the trades.

14 Then I also wanted to ask whether you intend to
15 discuss Section 9 at a later time today or is that
16 something that you've already asked for comment on? If
17 not, we'd like to make a comment on that as well.

18 COMMISSIONER: Did I miss it? [inaudible,
19 whispering] I'll offer you an opportunity. Go ahead and
20 speak to Section 9 now, Mr. Tzec.

21 HUGO TZEC: Okay. Section 9 discusses NAC
22 338.0095 and it explains that, how to apply and how to pay
23 the prevailing wage for a type of work and in accordance
24 with the recognized class of worker and according to the
25 prevailing rate of wage.

1 The proposed revision would add an exception that a
2 signatory to a CBA, Collective Bargaining Agreement, would
3 not be prohibited from assigning such work in accordance
4 with established practice.

5 We have a concern with that exception because it could
6 really overturn or turn on its head the prevailing wage
7 rates that are recognized already. If a contractor by
8 trying to argue that this is an established practice,
9 assigns the work to a particular Union with the CBA and
10 that's—that—another Union will take issue with how that's
11 assigned. We can see that that can lead to future issues.
12 You know, contractors—sometimes a contractor might take
13 advantage and pay—I guess, disregard the prevailing wage
14 rate and pay a lessor rate and that could hurt some of the
15 classifications which Operating Engineers represents would
16 have higher rates for the same or similar type work.

17 That's one thing that we wanted to discuss. We'll
18 discuss Section 4 at a later time. Thank you very much.

19 COMMISSIONER: Thank you.

20 DAVID MCCUNE: David McCune, Laborers Local 872.

21 We would support using the subclassifications that have
22 always been used. I know there's some overlap in
23 jurisdiction but if you look at the jurisdiction that's out
24 there, that's being criticized and you go back and look at
25 the awarding agencies and the bodies that have

1 traditionally done the work, it's always been under a work
2 of a classification. [inaudible] about certain
3 classifications.

4 If you go back and look at Southern Nevada Water
5 Authority, for instance, Laborers have been doing work out
6 there for 20 years under the Pipe Laying classification.
7 It's followed our classification. It's been recognized.
8 It's been no opposition until recently.

9 I'm not going to get into jurisdictional disputes, but
10 subclassifications are important because there are several
11 craft that have many subclassifications.

12 Subclassifications are defined in certain Unions. They're
13 limited to certain things. Under the Laborers, we have
14 many subclassifications and we would feel slighted if you
15 did not include those when you're looking at the prevailing
16 rates and the class of work that's being done. Thank you.

17 COMMISSIONER: Thank you.

18 SKIP DALY: Thanks, again, Skip Daly with the
19 Laborers Union, Local 169. Regarding the language that was
20 brought forward in Subsection 9. I believe it does belong
21 in the regulation. I don't believe that there's mischief
22 to be played with it. In fact, that language is in NRS
23 338.020(6). It's been there since 1973. I don't see an
24 issue with having it in this regulation. Thank you.

25 COMMISSIONER: Thank you.

1 GREG ESPOSITO: Once again, Greg Esposito,
2 representing Nevada State Pipe Trades. Since you opened up
3 comment about Section 9, I would like to echo the sentiment
4 expressed by the Representative of the Operating Engineers,
5 I believe, where the changed language—proposed language
6 reads, except an Employer who is signatory to a Collective
7 Bargaining Agreement is not prohibited from assigning such
8 work in accordance with established practice.

9 I have to disagree with Mr. Daly. I think this is the
10 perfect opportunity for mischief to be had on the jobsites.
11 Let's just say you had a contractor who is looking to cut
12 costs, looking to save a few bucks, knows that they have a
13 responsibility to install a plumbing system. They can
14 simply state, oh I'm putting somebody on that project and
15 I'm paying them at a cement basin wage rate because that's
16 the way I've always done it. The accordance with
17 established practice is too broad of a term, unless you
18 define where you find these established practices. Unless
19 you define exactly where, you're going to find what those
20 practices may be. You can't leave it this broad in code.
21 Then you just open it up for anything—for anyone to do
22 anything that they want and they can say, well it's in
23 Section 9, of NAC 338. I'm just following what they said,
24 it's my established practice. If you leave it that broad,
25 it's just going to cause more problems than we already

1 have. Thank you.

2 COMMISSIONER: Thank you. Let's move on to
3 Section 4, which contains the proposed job descriptions.
4 We have heard some statements on that already but I will go
5 ahead and open it up to public comment on Section 4, to
6 both Carson City and Las Vegas.

7 NATHAN RING: Nathan Ring on behalf of IBEW
8 [inaudible] . We do have a concern with Section 4, Sub 10
9 and the Electrician Wireman Classification. The current
10 definition of work under the [inaudible] that was previous
11 done includes handling installation of all electrical
12 equipment, appliances, apparatus, materials at the site of
13 the Public Work and necessary to the execution of a
14 contract of Public Work and the new regulations excludes
15 that from the definition. I would like to see that
16 included within the definition. Thank you.

17 COMMISSIONER: Thank you.

18 GREG ESPOSITO: Greg Esposito, representing Nevada
19 State Pipe Trades. We have two problems with the proposed
20 language and I can't imagine—like you keep saying, I can't
21 imagine it was the intent to make these more confusing.
22 I'm sure that what came back from LCB may not have been
23 exactly what you'd intended.

24 Under Subsection 21, Laborer, the very top of Page 15.
25 I can—I understand, I know that it's almost impossible to

1 find exact—you'd have 30 pages in finding what the
2 responsibilities a laborer has on a jobsite.

3 What's written here, performing tasks involving
4 physical labor at building, comma—and that comma is
5 important—highway and heavy construction projects. So,
6 basically that's saying, performing tasks involving
7 physical labor at building projects. That's the very
8 definition of all construction. I mean, every trade in the
9 room, every trade that's out there, that you survey for,
10 that is physical labor at a building project. I think the
11 language is, once again, way overly broad to where—well,
12 they are physically toiling on a building project and so
13 therefore, I can pay them at a laborer rate. That's a
14 recipe for disaster right there. Too broad.

15 Moving on to Page 20, Subsection 30 where you define
16 Plumber. We have an objection to the 'and up to five feet
17 outside of buildings'. Now, where that may be coming from—
18 where the five feet may be coming from is because in
19 Uniform Plumbing Code, it states that a building sewer—or,
20 no a building drain is from within the building to five
21 feet outside the building and the building sewer is from
22 five feet outside the building on. So, that's where they
23 may be getting the five feet, but there are fixtures that
24 we install that fall under a Uniform Plumbing Code, that
25 are more—that sometimes are more than five feet outside the

1 building. Grease traps and grease interceptors come to
2 mind. [inaudible] can sometimes be five feet outside the
3 building. And, I'm not trying—I'm not trying to bring up
4 jurisdictional issues, I don't care who does it. I don't
5 care what Union does it, what craft does it. The point of
6 those surveyed classifications, the point of these
7 classifications is to make sure the craftsperson is paid
8 the proper amount of money. It's not a debate as to what
9 you call that craftsperson. It's what they're supposed to
10 be earning for doing that assignment.

11 You can have a Teamster that's [inaudible] plumbing
12 that is completely legal as long as they have the
13 certifications, not a problem but you've got to pay them at
14 a Plumber rate, you can't pay them at a lower rate.

15 I think that—there's no other craft in this Section 4
16 that has any sort of limitation as to where their craft can
17 be applied, what part of the construction project their
18 craft is, it's not fair. It's not appropriate to limit a
19 plumber to—within a certain distance from a building.

20 We're opposed to both of those changes [inaudible], thank
21 you.

22 COMMISSIONER: Thank you.

23 HUGO TZEC: Hugo Tzec again with Operating
24 Engineers Local 12. We'd like to state our concern,
25 echoing some of the other—some of these concerns stated for

1 Section 4.

2 The problem, we believe, in looking at the
3 codification of these descriptions is that the Labor
4 Commissioner has taken an interpretation, at least with
5 what Operating Engineers believes to be an interpretation
6 of a Supreme Court Decision in Labor Commissioner v.
7 Littlefield, which we believe is flawed.

8 We believe that that Supreme Court Decision did not
9 require the Labor Commissioner to stall any additions of
10 rates and classifications that are later added to the
11 Collective Bargaining process with contractors, but
12 essentially, that's what has happened.

13 I would guess or assume that, since 2007 there hasn't
14 been any updates to some of these classifications, which
15 essentially does not recognize the collectively bargained
16 for job classifications that we believe are prevailing out
17 there. So, codifying what is, I think as somebody
18 mentioned, an antiquated list of descriptions does not do
19 service for possible hearings that you are allowing, that
20 you will allow, to add job classifications and to allow us
21 to start in that process of updating the prevailing rates
22 for what actual—for the rates that are actually prevailing
23 in these counties.

24 We would oppose Section 4 and the—or the concern and
25 the opposition to Section 4 and the description of these

1 classifications.

2 COMMISSIONER: Thank you. Go ahead, Mr. Daly.

3 SKIP DALY: Thank you again, Skip Daly with
4 the Laborers Union, Local 169. I find myself in a similar
5 position that we were in back when the job descriptions
6 were first proposed in regulation under Commissioner Terry
7 Johnson. I believe the Building Trades, North and South,
8 opposed those regulations and they were rejected at the
9 Legislative Commission, over many of the discussions that
10 we're having here now.

11 Shortly after that, Mr. Johnson put them up on his
12 website, after the prevailing wage survey was completed, as
13 general information. Just a guideline. They were not
14 adopted through the regulatory process.

15 Sometime later, I attempted—Local 169 attempted to
16 remove those provisions, as not being adopted regulations
17 because they were being applied by awarding bodies and
18 everybody else as if they were adopted regulations.

19 At that point, I find it humorous now here today that
20 everybody, all of the other crafts that are complaining
21 about the language that's in there, that is exactly what is
22 up on the description, right now today, are not good. They
23 fought and argued and spent their time and efforts to stop
24 us from getting rid of the job descriptions that they are
25 opposed to now. That's exactly why they were not put in

1 the regulation before. However, if we're going to go
2 forward, we will provide some written comments regarding
3 Laborers Classifications.

4 A couple of other minor things, if we do go forward in
5 Subsection 6, I believe it is, it says you will then survey
6 for all of the classifications that are listed in Section
7 4. I would like to point out, the Flagger Classification
8 is not currently surveyed for. It falls under the Laborers
9 and the—so, I would ask that that be put under the Laborers
10 and surveyed for separately. Same thing with Traffic
11 Barrier Erector. Of course, we want to make sure we get
12 the words right. There's some language in the description
13 for Flagger that really is a Traffic Control Person.

14 We'll provide written comments on the rest of this
15 stuff but I just—it's Déjà vu all over again, right, as
16 Yogi Bear would say. We had the same discussion a decade
17 and a half ago and everybody hated them. Then everybody
18 liked them and now they hate them again. I just find it
19 humorous, I'm sorry, but it is. Thank you.

20 COMMISSIONER: Thank you.

21 DAVID MCCUNE: David McCune, Laborers Local 872.
22 [inaudible] more than I planned to speak. I know this is
23 not a jurisdictional dispute but certain people in the
24 room, [inaudible], keep throwing the Laborers' name out
25 there. I don't know why. If they have a problem with the

1 Laborers do, come talk to the Laborers.

2 On behalf of the work, [inaudible] first connection,
3 five foot outside the building, that's been a rule and a
4 standing that's in both Collective Bargaining Agreements, I
5 believe and it's been a standing with the International,
6 for quite a while. If they want to change that, they can.

7 I can also surely give you rulings and arbitration
8 recently, pipe work that the Laborers have been done where
9 the arbitrator ruled that the Plumbers and Pipe Fitters
10 need to withdraw their grievances, withdraw their NRB
11 charges, by their General President.

12 So, I'm not going to get into jurisdiction, but I just
13 want to go on the record that if we're going to start
14 having this back and forth, this is not the place for it.
15 If we continue to be attacked, I'm going to continue to
16 defend ourselves.

17 COMMISSIONERS: Thank you. Let me just say to all
18 the parties on this topic, I think the best thing at this
19 point is, submit what you want the job descriptions to look
20 like for your particular organization that you're
21 representing and send those to us. I'll provide a date to
22 send those to us, but I agree, this is not the time and the
23 place to engage in, somebody should be doing this, and
24 somebody should be doing that. That's a separate issue and
25 I'm have issued an Advisory Opinion on that before. If

1 that's a jurisdictional dispute, figure it out yourselves.
2 This is not the time and the place to do that. Please
3 submit written comments on how you want the job
4 descriptions to be and we'll go from there. Go ahead, Mr.
5 Mallory.

6 JACK MALLORY: Thank you Ms. Commissioner. We're
7 going to do exactly that. That was the nuts and bolts of
8 my statement. In the proposed regulations, there are no
9 changes, whatsoever, to the classifications as they're
10 currently written. So you know, theoretically, we wouldn't
11 necessarily have a problem with that but I think that they
12 are to a certain extent antiquated, because of technology,
13 because of advancements within the skilled trades. Just
14 speaking on behalf of crafts I represent, we will submit in
15 writing amendments that we think are appropriate for these
16 classifications.

17 COMMISSIONER: Thank you. Let's move on to
18 Certified Payroll Reports and the Determination Process for
19 Late Certified Payroll Reports and the elimination of a
20 requirement to issue a Determination if it's simply a Late
21 Certified Payroll Report and there is no objection. I'll
22 go ahead and take public testimony on that proposed
23 section.

24 SPEAKER: What Section is that?

25 COMMISSIONER: Section 23, 24 and 26. Okay,

1 seeing no public comment on that particular topic, we will
2 move on to—actually, still part of the Certified Payroll
3 Requirements, the Non-Performance Report and the
4 Requirement to Submit a Non-Performance Report. I'll go
5 ahead and take testimony on that particular proposal.

6 Seeing nobody coming forward in either location, we
7 will move on to the Complaint Process and the Filing of a
8 Complaint and then what happens after a complaint is filed
9 with our office and the proposed revisions to that
10 particular section. Go ahead, Mr. Daly.

11 SKIP DALY: Thank you. Again, Skip Daly with
12 the Laborers Union, Local 169. Just a general comment on
13 the regulation as proposed and the process that we
14 currently have. I think anything that allows the Labor
15 Commissioner's Office, along and in conjunction with the
16 awarding bodies to have that either or type situation.

17 A lot of times you have—and I'm not trying to pick on
18 awarding bodies, but some are better at it than others.
19 Some have more knowledge than others. There's no
20 consistency there, on how some of the awarding bodies do
21 their investigation and then their conclusions. Then,
22 appeals and objections that go forward and end up at the
23 Labor Commissioner's Office anyway.

24 I think if there was a process and I think this is an
25 attempt and we're going to see how it works. I think it

1 can only serve to benefit the process that we currently
2 have where the Labor Commissioner can take jurisdiction of
3 the case and then ask them to do an investigation. Then
4 you, or whoever the successor, you know, future Labor
5 Commissioners might be—but I think that would be a
6 beneficial process to assist with the existing process.

7 I just wanted to make those general comments. I've
8 been unhappy with the existing process for a while. It's
9 inefficient and often has very wildly inconsistent
10 applications and outcomes. I think this will help make it
11 more consistent.

12 COMMISSIONER: Thank you. Just to clarify for
13 everybody. This is Section 3. One of the new requirements
14 in here is, after a complaint is filed, there would be a
15 requirement to file an answer to that complaint.
16 Hopefully, most of you are aware, the 338 regulations kind
17 of blended the 607 regulations and there's always kind of
18 been a gray area between 338 and 607. This clarifies that
19 these are the requirements for 338 and this is how a
20 complaint and an investigation would move forward. I'm
21 happy to take additional testimony on this particular
22 topic.

23 NATHAN RING: Nathan Ring on behalf of IBW
24 [inaudible] LMCC. We do appreciate Section 3 and the
25 complaint process and echo what Mr. Daly said about making

1 the process more efficient.

2 We do have one addition we'd like to see in Sub 4 of
3 that. Obviously, the Labor Commissioner does have a great
4 amount of discretion in the Chapter and given the
5 discretion to default a party that doesn't answer is
6 important. At the same time, we think there should be some
7 point in time where the default should be mandatory. We
8 shouldn't leave things sitting open ended because that will
9 take away from the efficiency that we're gaining in the new
10 regulation. Thank you.

11 COMMISSIONER: Thank you. I'll just touch on
12 Sections 18 and 19. Mr. Daly kind of eluded to this. You
13 know, when we had our Public Hearing there was statements
14 and statements made that certain entities wanted the Labor
15 Commissioner to conduct all investigations and to review
16 all Certified Payroll Reports. Quite frankly, we just
17 simply do not have the staff to do that. Just the way
18 Nevada Revised Statutes is written right now, it requires
19 the awarding body to investigate those matters.

20 We left the flexibility of and/or that we certainly
21 can step in and conduct an investigation, but the proposal
22 to have us doing all of that did not move forward. I will
23 just comment on that and let the parties know that. We did
24 build in the flexibility to allow us to step in to an
25 investigation as needed and on our own initiative, so just

1 to make that clear to all the parties.

2 At this point, I will go ahead and take any additional
3 public comment that anybody might have on these proposed
4 regulations and we will move from there.

5 HUGO TZEC: Hi, Hugo Tzec, for Operating
6 Engineers Local 12 again. We wanted to express some
7 concern with Section 5 which is a proposed revision of NAC
8 338.0052. I think this is a determination of what
9 constitutes an apprentice for prevailing wage purposes.

10 This is—I believe this [inaudible] because this takes
11 away the need to register or have the apprenticeship
12 program have been registered with a State Apprenticeship
13 Council or the Federal equivalent of that. There's a
14 pretty broad definition of what an apprenticeship is under
15 NRS 610.010. I believe this can also create future issues
16 in determining when an apprentice is really an apprentice,
17 as opposed to just someone who is not really learning in
18 the trade that he's supposed to be working in. Taking away
19 that gives too much room for a contractor to be able to
20 possibly not get some individual who is learning that craft
21 and provide the necessary skill to do that work.

22 We would oppose that change and we would request that
23 it stays the same, at least referencing the State
24 Apprenticeship Council. Thank you.

25 COMMISSIONER: Thank you Mr. Tzec. Your comments

1 are appreciated. I can tell you that based on the last
2 Public Hearing, I did not move any proposed change to the
3 definition of Apprentice. This is all unilateral on LCB's
4 part, but your points are well taken. So, thank you.

5 Seeing no additional public comment, I'm going to go
6 ahead and ask for additional written comments. I will
7 state that time is unfortunately of the essence, due to the
8 fact that we are going to be heading into a new Legislative
9 Session. If the parties can have written comments to me by
10 next Friday, June 8th.

11 Obviously, there's still going to be flexibility with
12 that, but just so we can keep things moving along, I'd
13 appreciate comments by June 8th. I will review all those
14 comments and determine where revisions can be made and
15 where they can't be made. Then, obviously, have a new
16 packet together and we'll see what that packet looks like
17 and then continue to move forward with the process.

18 I do appreciate all of the comments and public
19 comments today and written comments. I can tell you that,
20 you know, these topics are not easy at times to move
21 forward on. Sometimes it feels like, as much as we move
22 forward we move 10 steps back. I am committed to moving
23 something forward, if it's the last thing I do as Labor
24 Commissioner, but again, I'm committed to making something
25 work here. I would just ask all the parties to the extent

1 that you can come together on things that we can agree on,
2 that will fix things that have been out there for decades
3 now. I would encourage all of you to do that.

4 Again, thank you for your participation and we will go
5 ahead and close the Hearing on Regulation Package R018-18.
6 Thank you.

7 [end of audio]

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