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STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE LABOR COMMISSIONER
NEVADA STATE ADMINISTRATIVE CODE WORKSHOP

September 8, 2017

CHAMBERS: Good morning everybody. We're going to go ahead and get started here so I know your time is valuable so we'll try and make this as efficient and effective as possible. So again, thank you all for coming. My name is Shannon Chambers. I'm the Labor Commissioner. In attendance with me here too is Melissa Flatley. She's our Deputy Attorney General. Jennafer Jenkins who is an Auditor for our office, and David Gould who is a Senior Investigator for our office and down in Las Vegas, I have Lleta Brown who's our Chief Investigator and Mary Huck who's our Deputy Commissioner here today.

So again, thank you all for coming. Just kind of want to go over kind of the purpose of the workshop. I know I've talked with some of you and all of you on separate occasions about making some changes to Nevada Administrative Code, Section 338. I think it's a good opportunity to make those changes before we get into a new Legislative Session. There's some issues that have kind of been outstanding since I came on board as the Labor Commissioner, and we've addressed some of those issues through

1 advisory opinions, but I think it's time to put some of those
2 changes in the regulations.

3 I will state up front that there are certain topics that
4 obviously we'll go over, but certain changes cannot be made
5 because they're in Statute. So, when we're talking about the
6 Public Work Project amount, that's something that we can't change
7 through regulations, so I just kind of want to lay some of the
8 topics out there in front of all of you, that there's certain
9 things that we just can't change because it's in Statute. But to
10 the extent that we can make some meaningful changes that
11 hopefully everybody can get on board with, I want to go ahead and
12 do that.

13 We're kind of going to go through the agenda topic by topic
14 and I'll ask the individuals if you want to come forward and
15 comment and offer written comments on a specific topic, just ask
16 that you come forward, speak into the microphone and spell your
17 name and your organization and who you're with. You're not
18 required to comment. The purpose of this workshop is to kind of
19 get the ball rolling and get the feel for how everybody kind of
20 approaches these issues and some proposed language possibly that
21 we could consider to make some changes.

22 So, like I said, hopefully this will be an efficient and
23 effective process and perhaps out of it we may come together in
24 terms of working groups who may tackle individual topics that
25

1 we're going to go over today and come back with some language for
2 our office.

3 We are governed by the rulemaking process, so this is an
4 open process. You'll have many opportunities to comment on any
5 proposed language and any proposed changes. And obviously, any
6 changes have to be approved by the Legislative Commission so
7 again this is an open process.

8 For those of you who've worked with me over the past three
9 years, we want to be as open and reasonable as possible and try
10 and get a solution for all parties involved. I know that's not
11 always possible, but I think we're very close on some of the
12 issues that we'll go over today, and I think we'll have some good
13 results out of this process.

14 So, with that I will go ahead and get started. I will also
15 let everybody know that we are recording this, and it's not to be
16 used against you later. It's so that if there is proposed
17 language that we have the language recorded and we know what we
18 want to do as far as the regulations. So hopefully all of you
19 did get a copy of the agenda here today. If not, you can pick up
20 a copy and we'll just kind of go over each of the topics, and I
21 will kind of tell you why these are on the agenda and kind of
22 where our Office stands on some of these issues.

23 Again, this Office is not committed to any particular
24 language at this point, so I just want to make that clear to the
25

1 parties that, you know we're here to get input from everybody and
2 again, come out with the best product.

3 So, the first section that we're going to talk about is
4 actually the Definition Section of Nevada Administrative Code,
5 and the first one we're going to talk about is Section 338.0052,
6 and that is the definition of an Apprentice.

7 The proposal that possibly could come from our office is
8 expanding that definition so that it would include registration
9 not only with the State Apprenticeship Agency but with the
10 Federal Apprenticeship Agency, so instead of 'and' in that
11 section it would be an 'or'. We think that that would provide
12 more flexibility for contractors and everybody to get more
13 apprentices on projects, so that would be kind of a proposal that
14 could potentially come from our office.

15 And some of you may be aware or not be aware that the
16 Apprenticeship Council did move from the Office of the Labor
17 Commissioner. It is now in the Governor's Office of Workforce
18 Innovation. I have spoke to them about changing this definition,
19 and they don't have any objection on its face, so that would be
20 one proposal on that.

21 The next definition that would potentially be changed is
22 Section 338.007. And that would actually update the definition
23 of Recognized Class of Worker. Again, we don't have any specific
24 language on that but it would possibly include language to expand
25 that definition to include all the job classifications that the

1 Labor Commissioner surveys for to make that specific so that when
2 we're talking about a Recognized Class of Workers it's something
3 that the Labor Commissioner actually surveys for.

4 So, the next section of possible changes would be Section
5 338.008. And the thought behind making a change in this section
6 is to address those situations where there may not be a contract
7 in place, but the Labor Commissioner would still have some
8 enforcement authority if a prevailing wage issue comes up. We do
9 see cases where awarding bodies and sometimes contractors say
10 well, you know, we didn't have a contract or try and get around
11 issues of enforcement through our Office by saying well we didn't
12 have a contract, a contract didn't exist.

13 So it would be expanding that definition to kind of close
14 some holes in that particular area. So, I'm going to give
15 anybody here today and also down in Las Vegas an opportunity if
16 you want to come forward and speak on any one of those issues
17 before we kind of go on to Proposed New Definitions.

18 SPEAKER: Does that also include the definition of
19 maintenance versus operations?

20 CHAMBERS: I'm going to get to that. Okay. These are
21 actually existing definitions in the regulations right now, and
22 that would be a new definition, but if anybody wants to come
23 forward and speak on - sorry, go ahead, sir.

24 SPEAKER: I have a comment or a question about
25 definition applied to Surveyors. Right now it seems like in the

1 labor rates section or whatever there's just a rate for a
2 surveyor, but if I am the person in charge as an owner/operator
3 and I've hired essentially an unskilled laborer to be a chainman
4 to simply pound in hubs [phonetic]...

5 CHAMBERS: And I don't want to cut you off, but we'll
6 get to that a little bit later as far as the job classifications
7 and you're more than welcome to comment on that, but just in
8 terms of the changes to these definitions, if anybody wants to
9 come forward, again you don't have to. You're more than welcome
10 to submit something in writing after this hearing. We'll
11 certainly leave some time open to address that, but I'll give the
12 opportunity if anybody wants to come forward and comment on
13 those proposed changes.

14 ESPOSITO: Greg Esposito [phonetic] speaking for
15 [inaudible] that suggestion, the very first suggestion you made,
16 as far as shifting it from an 'and' to an 'or', as far as whether
17 it's a Federally recognized apprenticeship or a State recognized
18 apprenticeship, I don't know that that would be acceptable. I
19 think we'd have an objection to that because I think there's
20 certain standards that we have in the State that may not be in
21 the Federal, that we want to make sure that every apprentice
22 qualifies for the [inaudible] criteria based on the State.

23 CHAMBERS: Thank you, Mr. Esposito. Anybody in
24 Carson?

25 SPEAKER: Do you want me to come up here?

1 CHAMBERS: Yeah, absolutely.

2 DALY: It just seems to be you'll be able to hear
3 better.

4 CHAMBERS: Yeah.

5 DALY: And I'll probably wait and comment on some
6 of this stuff all at the end, but in response to the comment that
7 was just made, and I guess we just need to make sure we're
8 reading it clearly on the definition of Apprentice. The way I
9 read it is that you're not an Apprentice unless you're recognized
10 or participating in the Federal and the State.

11 CHAMBERS: Uh-huh.

12 DALY: And I know for at least our apprenticeship
13 program, we are only registered with the State. We're not
14 registered by the Feds or whatever. We have to comply with all
15 the Federal rules under the State Apprenticeship Council under
16 the recognition that's been given by the Department of Labor, but
17 we are not actually recognized right now or accredited or
18 affiliated with the State, so I think unless you - the way it's
19 written now I think we're out of compliance.

20 That's why it would be 'or' - you can be the Feds which you
21 can already do, the Feds can already approve a program. They
22 generally don't override the State Apprenticeship Council or the
23 SAC State Rules, but right now it says I have to be with the Feds
24 and the state and I'm not, so I'm only with the state, so that's
25 I think the clarification. Just as a point, I think it would be

1 acceptable and actually, you know, make it clear as to what the
2 actual rule is. That's my comment on that one.

3 And then broad strokes, I understand we have no language to
4 look at. By the time we get to a hearing it will have some
5 language to look at which is good and so until you see that. But
6 in broad strokes now on the definition of when you talked about
7 the Recognized Class of Workmen, we have I think it's 38
8 categories or classifications you survey for now. I think
9 clarifying some of that stuff and not having it, you know, be in
10 limbo more than just tradition would be beneficial to put in the
11 language.

12 Then we know what it is that we're surveying for and how
13 we've done it for decades now, it would be what we would try to
14 put in there - I know you haven't gotten to that yet, but when
15 you get to things like recognizing the collective bargaining
16 agreement, if that rate prevails, it really doesn't say anything
17 about zone rates. They've been recognized for decades so some of
18 that clarification, adding those things in I think would be
19 beneficial basically to just put in there in better terms what we
20 actually do today.

21 Same thing with when you say the next closest county, if
22 there is no rate for a particular craft or type of work you go to
23 the next closest county, it's just been understood, again, for
24 decades that we're talking about closest county seat and as the
25 crow flies, and we should put that type of stuff in on what we've

1 been doing just to make sure everybody knows besides - every
2 Labor Commissioner I've dealt with over the last 20 years has
3 done it the same way, still not written down.

4 I think some of those things can be beneficial to be
5 cleaned up in this. I'll have other comments if I need to but I
6 just wanted to say that one.

7 CHAMBERS: Good. No, thank you very much. I know we
8 know who you are but can you identify?

9 DALY: Skip Daly for the Labor Union 169.

10 CHAMBERS: Thank you.

11 DALY: Thank you.

12 CHAMBERS: And I think we'll have somebody in Las
13 Vegas, Lleta.

14 BROWN: Yes, we do.

15 MALLORY: Thank you. Jack Mallory, representing
16 [inaudible] Trade District Council 15. Like Brother Esposito, I
17 also stand in opposition to this expansion of the definition of
18 Apprentice. It's our understanding and our belief that the
19 standards required by the State Apprenticeship Counsel are far
20 superior to those that are required by the Bureau of
21 Apprenticeship and Training in our bordering states and that it
22 is important for us to maintain those higher standards.

23 When you have individuals that are coming from out of state
24 they're not going to be to the best of anyone's knowledge,
25 including regulators within the state, the same level of

1 compliance, the same requirements of compliance as those who are
2 registered with the State Apprenticeship Counsel.

3 Likewise, we don't know that given the example that Mr.
4 Daly gave, where his apprentices aren't registered with the
5 Department of Labor where that would be granted in a reciprocal
6 nature where apprentices that are registered within the State of
7 Nevada would be able to cross borders and work in other states.

8 So there's a lot of questions that would have to be
9 answered in this instance, but when you talk about Standards of
10 Apprenticeship, we know what it is the State of Nevada approves.
11 We have absolutely no control and no knowledge of what it is
12 that's approved by the Bureau of Apprenticeship and Training and
13 in other individual states. And so because of that we would
14 remain opposed at this point in time.

15 CHAMBERS: Thank you, Mr. Mallory. We'll go back to
16 Carson City.

17 KOCH: Okay, Todd Koch, Painters and Allied
18 Trades, District Council 16, for the record. I won't reiterate
19 what Mr. Mallory just said, but I just simply say that I totally
20 agree with what he said and what Mr. Esposito said before that.
21 Having been one of the labor lobbyists that worked with the
22 Office of the Governor on SB-516 which restructured the State
23 Apprenticeship Council and the way it's appointed in that, I
24 don't think it was our intent, I don't think it was anybody's
25 intent in the room to open up apprenticeship to where apprentices

1 could be brought in from other states with lower standards, as
2 has been stated, but also, you know, to displace Nevada's
3 workers.

4 We've got the law in place. It seems to me that it works
5 pretty well right now where it's - the definition of an
6 Apprentice is one that's registered with the Nevada State
7 Apprenticeship Council. And if we change that then we're just
8 going to open ourself up to being displaced by workers and
9 contractors from other areas of the country, and I don't agree
10 with that. Thank you.

11 CHAMBERS: Thank you very much.

12 JAMES: Evan James. I'm with Christensen, James
13 and Martin. I'd just like to point out something in the
14 legislative makeup, statutory makeup, of Nevada's statutes.
15 Specifically, in NRS 354, there's a provision for local
16 government expenditures and the Legislature has indicated that
17 there's a preference to the hiring of Nevada workers. And so,
18 when it comes to Legislative intent, the clear intent, in fact
19 it's under the intent section of the Nevada Legislature is then
20 to give priority to hiring Nevada workers, so any step that would
21 diminish that attempt I think would be contrary to what the
22 Legislation already states.

23 CHAMBERS: Thank you, Mr. James. Anybody further in
24 Carson City? Lleta, anybody else in Las Vegas?

25 BROWN: No.

1 CHAMBERS: Okay. Thank you for your comments. We'll
2 certainly take those comments under consideration and try and
3 come up with a solution that works for everybody.

4 So next we'll turn to some possible new definitions in the
5 Administrative Code. And these would include a definition of
6 normal maintenance and normal operations. For those of you
7 who've had the experience of dealing with that issue with our
8 office, you know that currently there is no definition of what is
9 normal maintenance and normal operations. We have been taking
10 those cases on a case-by-case basis.

11 Again, our office is not sold one way or the other on
12 whether there should be a definition or whether there shouldn't.
13 Again, we're taking it on a case-by-case basis. I will tell you
14 that in dealing with this issue and going back and looking at the
15 Legislative intent of the Exception in the Nevada Revised
16 Statutes, it's in Section 338.011 which exempts normal
17 maintenance and normal operations from prevailing wage, that the
18 testimony that was given before the Legislature specifically
19 referenced things like landscaping, janitorial, just your basic
20 kind of minimal maintenance tasks, not construction oriented
21 tasks, not giant repair projects which we've seen throughout the
22 state trying to be packaged as "normal maintenance" when they are
23 actually large projects that are over \$250,000.

24 So again, our office isn't taking a position one way or the
25 other, but to the extent that the parties are able to craft a

1 definition that we think can work for everybody as far as normal
2 maintenance and normal operations, we're open to that. Again, we
3 don't have any specific language developed on that, but we think
4 it might be beneficial to clarify that issue because it does seem
5 to keep popping up.

6 And maybe the solution is is that simply if it's something
7 over \$250,000 automatically prevailing wage applies, and that
8 might be the easiest way to interpret it, but again we're open to
9 hearing from all the parties on that issue. So I'll go ahead and
10 open it up if anybody wants to come forward and comment on that
11 issue.

12 RUTTER: Hello.

13 CHAMBERS: Good morning.

14 RUTTER: I'm Melissa Rutter. I'm with the
15 University of Nevada, Reno. And we have particular concern about
16 this in relation to our elevator maintenance. We have 97
17 elevators on our campus that we have under contract for
18 maintenance, and we're having some difficulty in establishing a
19 new contract with a qualified elevator company because the simple
20 magnitude of our job takes it over the \$250,000 mark, and trying
21 to report prevailing wage on this job would be very, very
22 difficult to do due to the number of elevators, the call-backs,
23 the various complications.

24 So, we would like to see 'maintenance' further defined so
25 that it can include jobs of that size that are simply involved in

1 doing normal maintenance, including repair and replacement of
2 normal wear items, and differentiate that from modernization or
3 upgrades which would fall into a construction category. But
4 normal wear, it would be nice if that was included in the
5 maintenance definition.

6 CHAMBERS: Thank you.

7 RUTTER: Thank you.

8 STANLEY: Bill Stanley for the record representing
9 the Southern Nevada Building Construction Trades Council.

10 Addressing the previous speakers' comment, I would only speak to
11 the fact that NRS-455C and NAC-455C does have a definition for
12 elevator maintenance and boiler maintenance repair that is
13 spelled out and in statute, the difference between maintenance
14 and repair, so separate statute, so standalone that governs the
15 maintenance, repair and construction of elevators.

16 It does clearly define what is a repair and what is
17 maintenance and what is replacement. And so, I would suggest
18 that folks understand that and so that we don't bring issues into
19 this conversation that I don't think that necessarily apply.

20 CHAMBERS: Thank you.

21 MALLORY: Thank you. Again, Jack Mallory,
22 representing Painters and Allied Trades, District Council 15.
23 Thank you for bringing this issue forward. This is something
24 that is of particular importance to us because we've seen many
25 projects that should have been prevailing wage projects that had

1 been let under Chapter 332 under the auspices of maintenance and
2 to the extent that some local government agencies have gone,
3 they've actually self-performed projects using temporary labor
4 hired from various agencies and self-performed multi-million-
5 dollar projects on their own.

6 I think that the easiest way to address this situation, and
7 this is our opinion, and I believe that others will speak on this
8 as well, is that if there is a project and it's regardless of
9 dollar value, that involves a contract between a local government
10 agency and a contracting firm, somebody that is required to be
11 licensed under NRS-624, that the provisions of Chapter 338 should
12 apply and not the provisions of Chapter 332. If that standard
13 was applied then these would be public works projects by
14 definition regardless of the threshold. The threshold would
15 trigger a prevailing wage requirement that Chapter 338 is where
16 the key lies.

17 And there are provisions in Chapter 338 for projects that
18 are less than \$250,000. I think that that is the important
19 distinction, and that was what was lost when Chapter 332 was
20 written to begin with. So that is our opinion and our position
21 on that issue. But like I say, there are others that will speak
22 more clearly about definition. Thank you.

23 CHAMBERS: Thank you, Mr. Mallory.

24 JAMES: Are we ready for me?

25 CHAMBERS: Yes, go ahead, Evan, thank you.

1 JAMES: First I'd like to say that I don't know if
2 I like looking at myself from the backside because I look
3 completely different than I thought I did. It's a self-
4 awareness thing up here. I have to keep looking over here to the
5 right.

6 SPEAKER: Everybody looks the same from the top down.

7 JAMES: I have, as you know, Commissioner Chambers,
8 I have some experience in this area of representing clients
9 before you on these types of claims. I recently had the
10 experience where I visited the United States Department of Labor
11 in a conference, and the similar issue came up between the
12 Federal Service Contract Act and the Davis-Bacon Act.

13 And one of the things that I discovered is that we're not
14 the only ones who deal with this. On the Federal level, they
15 deal with this same issue. They kind of skirt the issue and
16 ignore it a little bit more than we do, but they deal with it.
17 The way I discovered that is because many of the sheet metal
18 workers from the Washington D.C. area were up in arms about
19 contracts were being let out of the Service Contract Act rather
20 than Davis-Bacon Act.

21 And so, I bring that to your attention because under the
22 Federal regulations there's a little bit more of a catch for
23 regulatory scheme that addresses that issue. For example, there
24 is indication of a drilling contract, whether or not it's a
25 service contract at issue or whether or not it's a Davis-Bacon

1 issue. And they haven't been able to resolve it. If they
2 haven't been able to resolve it I question if we would be able to
3 resolve it without some sort of bright-line rule, saying this is
4 what will be normal maintenance and this is not what - or this
5 will not be normal maintenance.

6 The challenge in doing that on each individual type of
7 system or project within a construction for a building, let's say
8 it's an air conditioning system or a parking system or an
9 electrical system, that the problem with addressing that ad hoc
10 on each system is that there are multiple systems, and those
11 systems continue to change. So, the definition of maintenance
12 would be problematic for us. We would end up with an issue in
13 five years not being solved. And so, my thought on this is that
14 we do need some sort of bright-line rule.

15 One of the things that I did take from this Department of
16 Labor conference that I attended, for example, in the painting
17 area, is under their administrative manual in military
18 installations, if you have a painting scenario where they're
19 spending less than 32 hours on a project or the painting area is
20 less than 200 square feet, that's going to get defined as a
21 Davis-Bacon Act project. Now again, we can't do that in my
22 opinion with each craft, with each trade, with each possible
23 maintenance scenario. It's just too difficult.

24 And so, one of the things that I would like to suggest and
25 I'll leave some of this language with you that I've drafted, is a

1 definition that if you're using skilled labor mechanics to
2 perform the work, that certainly would not be a maintenance issue
3 because it requires a particular skill. The next thing that I
4 would suggest is that if you set out a specific time frame,
5 specific time period, limited number of hours, for example. If
6 you're going to perform work that falls underneath this limited
7 number of hours, which would clearly be a maintenance issue and
8 not a construction, prevailing wage issue.

9 And then the third provision of this maintenance point
10 would be a dollar value. Now you've already mentioned that in
11 the \$250,000 range. I think that might be a little bit
12 problematic because you can do a lot for \$250,000. I think that
13 the standards should be much, much lower and actually comply to
14 conform with the idea of what maintenance is. Maintenance is
15 small. It's not extensive. And so I have some proposed language
16 that I'll leave with you.

17 The next thing that I'd just like to mention on this is
18 with regard to the concept of the term, normal operations,
19 because this can be misapplied as well. One of the things that I
20 would suggest is again the activity of a normal operation does
21 not require any sort of skilled labor. Operations of a facility
22 or a government entity shouldn't be requiring the application of
23 electrical work or painting work of something that is
24 specifically skilled, it's something that would be day to day.

1 And then the activity would have to be performed on a
2 routine basis, for example, weekly. I think that would be very
3 important as well. Where I get this information again is it comes
4 out of the Financing Statutes 354. And in that statute, there's
5 a definition of extraordinary maintenance, and it's clear that
6 the Legislature took the view that ordinary maintenance would be
7 reoccurring; it wouldn't be something that would be done every
8 once in a while. And so we'll leave that language with you as I
9 go.

10 I do have a question. Were you going to or wanting to
11 discuss the penalty issues for violations of normal maintenance
12 at this point or is that something you are going to raise later?

13 CHAMBERS: Mr. James, you can certainly submit
14 comments on that. That was not something I was prepared to
15 discuss today, but you're certainly welcome to submit comments on
16 that.

17 JAMES: Just very quickly, the concept of penalties
18 being applied to misapplication of normal maintenance definition,
19 normal operations definition is problematic. I mean maximum
20 penalties that can be awarded are \$5,000. Penalties are designed
21 to be a stick. In other words, if you violate this you're going
22 to get some sort of punishment. \$5,000 just isn't a punishment.

23 Let me give you an example. If you took the \$250,000
24 threshold, for example, that you just mentioned, and you
25 determined out of that \$250,000, 30 percent of that project, that

1 work, would be labor. That equals \$75,000, all right. If you
2 could avoid prevailing wage and cut your cost in half, which
3 means that the awarding body could potentially recoup \$37,500 in
4 lower wage costs. A penalty of \$5,000 is nothing. They'll run
5 the risk of getting caught because if they do get caught, what's
6 going to happen? They may end up paying some additional wages
7 and penalties [inaudible].

8 If you doubled that to be a \$500,000 project, you know,
9 they're looking to recoup \$75,000 and again a \$5,000 penalty,
10 that's not a stick, and so if you're looking to really discuss
11 the idea of what a penalty is, it will have to be applied on the
12 - perhaps a per worker basis or you would have to do what I
13 suggested before, bring down the limits of the definition of the
14 normal maintenance to something that's very reasonable so that
15 you don't get an abuse of the system by entities that are looking
16 to not expend money.

17 I don't want to use the words save money, but not expend
18 money because they don't want to follow the statute. So those
19 are the comments that I wanted to leave on that.

20 CHAMBERS: Thank you, Mr. James.

21 STANLEY: Bill Stanley, for the record, representing
22 Southern Nevada Building Construction Trades Council. I too have
23 quite a history with this issue. We have a case pending
24 currently that I'm a party to before the Nevada State Supreme
25 Court, and so this issue goes back quite a long ways with many of

1 the awarding bodies here. The issue over a contractor or I'm
2 sorry, an agency awarding work under NRS 332 thinking that
3 somehow that skirts or subverts their requirement to pay
4 prevailing wage under 338, we believe is not true. In fact, if
5 you look at 332.390, it specifically says that if you have a
6 contract being awarded under 332 that if it involves skilled
7 workmen, et cetera, et cetera, then the prevailing wage
8 requirements of 338 apply.

9 And that was, as a case that's now pending before the
10 Nevada Supreme Court will decide. The Labor Commissioner's
11 Office under previous Labor Commissioner decided in favor of the
12 elevator constructors in that case and specifically ruled on this
13 issue of whether or not a public agency who awards a contract
14 under 332 escapes those provisions of 332 if it is the normal
15 operation of its building. And so that case when it is
16 ultimately decided by the Nevada State Supreme Court will
17 obviously bring some clarification to this issue.

18 Having said that, I am in support having gone through this
19 for the last six years I think it is, or maybe even longer, this
20 case as its worked its way through the process, I too am in
21 support of a bright-line decision where you know what it is,
22 there's no doubt about it. I think that brings clarity to the
23 awarding agencies. I think that brings clarity to contractors
24 who don't end up in this predicament that they're not sure
25 whether prevailing wage applies or doesn't apply and certainly

1 not leaving it up to the awarding agencies to make that
2 determination. My history is that they have done a very lousy
3 job of determining whether or not prevailing wage should apply or
4 not.

5 And just a little bit of history to this issue and why it
6 is so complex, you know, as the world of maintenance evolves, you
7 know, there was a time when this was easy because maintenance in
8 this country was, as it's referred to as, run to fail. You
9 simply let a piece of equipment, you simply let a system run
10 until it failed, and then you repaired it. And what you did,
11 changing the oil or looking at it and doing things, which was
12 maintenance, and after it failed you would repair it and then it
13 was clearly prevailing wage.

14 Well as maintenance and as systems become more
15 sophisticated and I'll give you an easy example that everybody
16 will understand. Obviously run to fail in the airline industry
17 is a bad idea. We need to maintain airplanes before they fall out
18 of the sky. That's not an acceptable methodology.

19 So as maintenance has progressed and Dr. Stanley Nolan
20 [phonetic] is an expert in this and he's written many, many books
21 about this whole issue through how maintenance has evolved
22 throughout the last 100 years. We need to come up with a clear
23 definition of what it is because maintenance will continue to
24 evolve, and the work that was repaired, just because you don't
25 perform that work while the system is still functioning, doesn't

1 mean it's not repaired. The system can fail and still be
2 operational and the work that is required to bring it up to the
3 standard is repair work. It's not maintenance work.

4 And so, you know, I think that having that blue line,
5 here's what it is, here's the dollar value, here's what the work
6 looks like so no one has to keep making this guess about is it
7 maintenance, is it repair, is it modernization, what is it? I
8 think that would help not only the awarding agencies, but clearly
9 the rest of us who work in this area and are struggling with
10 this. Thank you.

11 CHAMBERS: Thank you, Mr. Stanley. Anybody else in
12 Carson want to speak to this issue? Anybody else in Las Vegas?
13 And I thank all of you for your comments on that and to the
14 extent Mr. Stanley, Mr. James and anybody else that spoke on the
15 issue, if you have proposed language please provide that to our
16 office on this particular topic.

17 So, we'll move on to another possible new definition in the
18 Nevada Administrative Code, and that would be a definition for a
19 service provider. For those of you who have been on our website,
20 we do have advisory opinions that are issued on topics. There
21 was an advisory opinion that was issued on the topic of service
22 providers on prevailing wage projects and whether prevailing wage
23 would apply regarding certain persons that are on these projects
24 but are really not performing work on the project. So, the
25 Office is considering incorporating that advisory opinion into a

1 definition for a service provider. So, I'll allow anyone in
2 Carson and anyone in Las Vegas to speak on that issue if they
3 would like to. Okay.

4 JAMES: Labor Commissioner.

5 CHAMBERS: Sure. Go ahead, Mr. James.

6 JAMES: Again, I'm not exactly sure if I understand
7 the issue. Could you clarify it for me?

8 CHAMBERS: So the issue involves, for example, Mr.
9 James, let's say a public works project has a piece of equipment
10 on it, for example, like a computer system. Well actually let me
11 make it even simpler for you. The Sani-Hut company has to go out
12 and bring portable toilets to the job site. Once that Sani-Hut
13 driver drives onto that job site is he subject to prevailing
14 wage? The opinion that was issued by our office is that no, he
15 is not subject to prevailing wage; he's merely providing a
16 service and he's not basically necessary to the project.

17 So, I'll send you the advisory opinion, but it's clarifying
18 that issue, that when you have people that are on these projects
19 for very limited time frames and for very limited purposes that
20 there have been situations where it has been claimed that they
21 are subject to prevailing wage, so we're trying to address that
22 issue.

23 SPEAKER: Sorry.

24 CHAMBERS: No, so we're trying to address that issue,
25 Mr. James.

1 JAMES: Just my initial thoughts on this is that it
2 would appear to me that that would be following the construction
3 contract. That would be part of the actual construction contract
4 of that building, for example, and so if it's part of that
5 construction contract, it seems to me that that would be part of
6 the prevailing wage requirements, even if they're delivering a
7 toilet because the purpose of that contract is the expenditure of
8 public funds for the development of that entire project.

9 And so, whatever is servicing that construction contract in
10 my estimation should be a prevailing wage issue. I think that's
11 one way to look at it. And I actually think that might be the
12 way Feds look at it. [crosstalk] --going on down here. I
13 apologize for that. And Bill, did you want to say...

14 STANLEY: Okay.

15 JAMES: And so, you know, the concept of redefining
16 what a service provider is could actually go contrary to defining
17 the idea of defining what normal maintenance is or normal
18 operations are if those two things aren't developed in the same
19 context.

20 That's my worry is taking this definition of service
21 contractor and expanding it into the purview of an actual
22 construction contract or into the purview of construction work.
23 We know that that's happening. In fact, we've seen it happening
24 on carpet projects. We've seen it happening on painting
25 projects. It happened again in my Federal experience recently,

1 it happened in the area of plumbing contracts they were
2 complaining where they're defining a service contractor.

3 Now, one of the key differences between the Service
4 Contract Act from the federal level and our NRS 338 is the
5 Service Contract Act on the Federal level actually has a minimum
6 wage requirement. And so, they have - or excuse me, a prevailing
7 wage requirement. That is developed by the Department of Labor
8 and the issue is the difference between [inaudible] prevailing
9 wage and the service contract prevailing wage.

10 I'd also like to point out something that's already been
11 brought to your attention by Mr. Stanley, and that's NRS 338,
12 excuse me 332.390. That's the Service Contract Act for Nevada.
13 And it says that if you're employing skilled mechanics, labor,
14 anything of that sort, you can't use that to avoid the provision,
15 prevailing wage provisions of NRS 338. And so if you're
16 developing a rule that would somehow would expand the definition
17 of service provider into what's already covered by 338, we may be
18 in violation of NRS 339.390 [sic]. Thank you.

19 CHAMBERS: Thank you, Mr. James. So just for
20 clarification, the advisory opinion was issued on November 10,
21 2015, and it is available on our website but I can also provide a
22 copy for folks here today. It's just service providers on
23 prevailing wage projects. Go ahead, Mr. Mallory.

24 MALLORY: I have a question for clarification and
25 comment. And I guess the question is when they're delivering the

1 Sani-Hut or they're delivering concrete or they're delivering
2 aggregate, sand, gravel, asphalt, whatever materials - they're
3 coming in by truck and crossing the gate. When that advisory
4 opinion was created, was there consideration given to any type of
5 activity where that individual got out of the truck and loaded
6 and/or unloaded materials from their truck on the site?

7 CHAMBERS: Mr. Mallory, yes, there was consideration
8 given to that.

9 MALLORY: Okay, so I suppose that that would be
10 construction related activity, whether they're using a forklift,
11 a crane or other hoisting device to load or unload those items.
12 I would think that, you know, that would potentially cause them
13 to be covered, you know, just a loose idea, a loose opinion. If
14 they get out of that truck and they're actively engaged in the
15 act of unloading concrete or hoisting the rebar off the back of a
16 flatbed pickup, then I think that the activity changes a little
17 bit.

18 And granted, once they're on the other side of that gate,
19 obviously the game changes, they're no longer on the side of the
20 public [inaudible] but, you know, it's a little confusing.

21 CHAMBERS: And Mr. Mallory, that's kind of why we're
22 trying to clarify that issue. So, if you want to submit further
23 written comment on that you're more than welcome to do that.

24 MALLORY: Thank you.

25

1 CHAMBERS: Anybody additional in Carson City? Okay,
2 we'll move on to the next section which is Section 338.017 which
3 governs truck drivers and the periods when they are deemed to be
4 employed on public works. The thought process behind our office
5 modifying this definition is that we continue to get questions
6 about offsite public pits and when a truck driver is subject to
7 prevailing wage if they are transporting materials to offsite
8 public pits that are private versus pits that are designated
9 specifically for a public work project. So this would be to
10 clarify that particular issue, so I'll welcome comment from
11 Carson City and Las Vegas on that particular issue.

12 STANLEY: Bill Stanley, representing the Southern
13 Nevada Building and Construction Trade Council. Clearly, this
14 issue on the Federal level is well defined. If the work - if the
15 temporary or the pit as you just alluded to is specific to the
16 work, then the transporting of material from the pit to the work
17 is covered. If they create a batch plant, a portable batch
18 plant, for a particular site of work, even if the batch plant
19 isn't contained on the site proper, the work is covered. If
20 they're bringing aggregate out of a batch plant or a site that is
21 going to remain in place after the completion of the project,
22 then that work traditionally has not been covered.

23 Now, I am somewhat concerned that folks have been skirting
24 this rule for a long time and they create temporary batch plants,
25 for example, and they will dispatch trucks to other locations

1 because it makes economic sense to them to do that when it's
2 constructed. But the reason that the batch plant was constructed
3 in the first place was for the purpose of supplying aggregate to
4 this particular construction site.

5 And because they may take a truck once in awhile from this
6 facility to service their own economic needs doesn't in and of
7 itself do away with the issue that the reason it was constructed,
8 and it will disappear when the job is done, doesn't go away. And
9 so we've seen that in Southern Nevada. We have a concern over
10 it, and I think your office has been inundated with those types
11 of complaints and I believe that we should figure this out and
12 the Council will submit some language to this issue.

13 CHAMBERS: Thank you, Mr. Stanley.

14 JAMES: Evan James again. Sorry for talking so
15 much. People tell me to be quiet a lot. The - I just need to
16 point something out that you may already know. It's in the idea
17 of fabrication on public works. And it goes directly to how Mr.
18 Stanley described it. If you have a fabrication plant that is in
19 existence and work is performed in that fabrication plant and
20 then given to the public works project, the work performed in
21 that fabrication plant is not subject to prevailing wage.

22 But if you have a fabrication plant that is established for
23 the specific purpose of servicing the public works project, the
24 fabrication taking place in that plant is subject to prevailing
25 wage. I'm just suggesting that that might be the framework that

1 you look at when deciding whether or not to take something out of
2 a pit; a gravel pit for example, should be a prevailing wage or
3 non-prevailing wage. If you're going to use that logic it would
4 suggest to me that if you have a temporary pit to create fill for
5 a roadway, for example, that temporary pit would certainly be a
6 prevailing wage issue. If you have an established pit it may not
7 be.

8 I'm not suggesting one way or another. I just for the
9 benefit of the Labor Commissioner pointing out that I think
10 that's the nature of the Law with regard to fabrication.

11 CHAMBERS: Thank you, Mr. James. Anybody else in
12 Carson City?

13 DALY: Again, Skip Daly, representing Laborers
14 Union. And I know you have certain things on the agenda. Now
15 we're having comments on the truck driving issue. But if there's
16 other sections that you didn't have on there we can still make
17 comments on those...

18 CHAMBERS: Absolutely.

19 DALY: ...and various things?

20 CHAMBERS Uh-huh.

21 DALY: ...and various things? Because I know
22 328.0097 regarding payment of benefits I might have some
23 suggestions on that. And then as I spoke earlier in the 338 -
24 NAC 338.010, the method determination, things where we talked
25 just for clarification, not to really change the intent but the

1 language currently says that your survey and the locality when in
2 reality we survey county by county, and I think we should just
3 spell our things like instead of locality we should put in the
4 county. And then we currently don't include any residential
5 construction work and I think that should be spelled out, you
6 know, that you're surveying non-residential construction
7 projects, et cetera.

8 Just some comments here on some clarification of what we
9 actually do now and have done for a long time, make the words to
10 the extent we can and regulation match. So I didn't want to
11 ignore them and skip over them. I was trying to go in order.

12 CHAMBERS: No, thank you very much. And we're going
13 to get to that next.

14 DALY: Oh.

15 CHAMBERS: So you're welcome to stay seated or...

16 DALY: No, that's okay.

17 CHAMBERS: So the next sections that we're considering
18 for possible revision would be Sections 338.009 through 338.090
19 and kind of piggybacking on what Assemblyman Daly said. It would
20 be clarify these sections as far as how we do the prevailing wage
21 survey. We do conduct the survey annually. That is set forth in
22 Statute. So that can't be changed at this point in time.

23 In addition, as a result of Assembly Bill 172 that was
24 passed during the 2015 session, it changed the way that
25 prevailing wage rates were calculated and also provided for what

1 I like to call the school construction rate, school repair rate,
2 which is 90 percent of the prevailing wage rate. What this
3 office is considering is again clarifying as Daly said,
4 clarifying, instead of locality it would be county. Clarifying
5 that if no surveys were received for a particular job
6 classification that that rate and that county would either stay
7 the same or the Labor Commissioner could use the nearest county,
8 so providing some flexibility there.

9 In addition, it would be recognizing that if a union rate
10 prevails in a particular county that the Labor Commissioner would
11 identify that when the rates are published. You'll probably see
12 that when the rates are published on October 1 of this year. You
13 will see for each job classification, each county, you're
14 probably going to see a U or a Union or you're going to see an NU
15 or a non-union, so it identifies what rates prevailed in those
16 particular counties, and by recognizing a union rate that
17 prevails in that county and in a particular jurisdiction the
18 Labor Commissioner could recognize salary adjustments that are
19 negotiated through those collective bargaining agreements would
20 recognize the group rates in those collective bargaining
21 agreements, recognize some of the zone rates, the holiday pay in
22 those collective bargaining agreements.

23 For those counties, obviously, where a union does not
24 prevail it is the average rate, so that would basically stay the
25 same, but it would be providing some clarifications in terms of

1 the surveys and who prevails in adjusting those rates based on
2 collective bargaining agreements. We're also considering
3 possibly adding some job classifications. I did receive some
4 written comments. This was back in 2016 when I asked for some
5 additional comments. I did receive comments about creating -
6 breaking out the surveyor rate. Again, we're not taking a
7 position one way or the other, but that was one proposal was to
8 break out the surveyor rates.

9 The issue has also come to my attention that some of the
10 collective bargaining agreements have a classification of what
11 they call the helper on a project because of different rates, so
12 there might be a possibility of adding that into the job
13 classifications. Again, we're open to feedback on that
14 particular issue, but that issue has been brought to my
15 attention.

16 We are not planning on changing the job descriptions at
17 this point. Again, that could change given written comment or
18 comments made here today, but that is not something at this point
19 that we are considering. We feel that those are working fairly
20 well. But those are kind of the topics, and I'm lumping those as
21 the prevailing wage and prevailing wage survey that our office is
22 prepared to take to clarify those issues. So, I'm open for
23 comment on that particular topic and we'll also welcome comments
24 on any other issues related to that. So, did you want to speak
25 or...

1 DALY: Thank you again, Skip Daly with the
2 Laborers Union. Again, with the main things you said about just
3 getting the language in line with what we actually do is, you
4 know, the next county in the distance and all that kind of stuff,
5 it would be good. The one comment you did make on helper, I know
6 somebody may want to add that in. That would be - cause me to
7 oppose the whole thing if that was in there, just FYI.

8 We have apprentices, we have journeymen. I think you just
9 open up a can of worms on issues that don't belong here in this
10 deal by adding or attempting to add in an undefined helper that
11 would just serve to undercut various different wages, and I think
12 some of the crafts that want it have their agenda; it would be
13 against - it would just cause fights between a variety of people.
14 And so I would recommend against that.

15 CHAMBERS: Go ahead, Mr. Mallory. Sorry about that.

16 MALLORY: Jack Mallory representing Painters and
17 Allied Trades, District Council 15. And please make sure that
18 this recording can be used against me in the future. This is one
19 of those rare occasions where I will agree with Mr. Daly. I
20 don't think there is any reason to include a classification of
21 helper in prevailing wage statute or to survey for that
22 classification. These are unskilled positions. These are
23 individuals who do not belong on those types of projects.
24 They're typically expeditors, material handlers, if you will.
25 They have no business being on a construction site other than in

1 very, very limited capacities and we don't believe that it's a
2 reasonable proposal to put them on there.

3 CHAMBERS: Thank you.

4 STANLEY: Bill Stanley representing Southern Nevada
5 Building Construction Trade Council. I too will raise an
6 opposition to any inclusion of a helper provision into the
7 classification. Clearly the Federal government some 10, 12 years
8 ago went through the similar process with Davis-Bacon and
9 outlawed the use of helpers on Federally funded jobs that are
10 covered by Davis-Bacon for many of the reasons that Assemblyman
11 Daly and Mr. Mallory have pointed out.

12 And I think it's important to understand that the genesis
13 of public works was to create opportunities in the construction
14 industry with upward mobility to the journeyman status. I have
15 too much experience with folks who were using the helper
16 classification on the Federal level in order to just circumvent
17 what is the genesis of public work which is to create
18 opportunities and workforce development and upward mobility for
19 individuals to enter the trades.

20 When you have a helper classification it becomes a
21 peripheral treadmill. These individuals never make it into
22 apprenticeship. They never make it into the journeyman. They
23 never make it to the journeyman classification. And that's
24 unfortunate, and I don't believe that was the intent of public
25 works in the beginning. So that's my comments. Thank you.

1 CHAMBERS: Thank you, Mr. Stanley. Mr. Koch.

2 KOCH: For the record, Todd Koch, Painters and
3 Allied Trades District Council 16. We also would be opposed to
4 adding the helper classification. One of the things that you
5 said, Commissioner, intrigued me a little bit, and that is
6 recognizing the increases pursuant to a collective bargaining
7 agreement. As we probably all know, north and south, the rate
8 that is in place on October 1 is generally the one that has
9 established the prevailing wage rate for the entire year after
10 that, the entire 12-month period.

11 During the collective bargaining process that sometimes
12 puts some undue pressure on the employers and the union to
13 frontload a whole increase for that year and make it all
14 effective by October 1 where otherwise the parties may agree to
15 doing it on January 1 or March 1 or July 1. So I would be in
16 favor of recognizing those increases in prevailing wage pursuant
17 to the collective bargaining agreement should it prevail.

18 CHAMBERS: Thank you, Mr. Koch.

19 MCKUEN: David McKuen, Labors Local 872 in Southern
20 Nevada. We also disagree with the helper classification. As Mr.
21 Daly already spoke and Mr. Stanley and Mr. Mallory, so I would
22 just go on record to say the Labors Local 872 opposes any helper
23 classification in the public work of any wages. Thank you.

24 CHAMBERS: Thank you. Anybody additional in Carson?
25

1 LEE: Is my original question kind of along those
2 lines?

3 CHAMBERS: Yeah, you can go ahead. Come forward,
4 please, sir.

5 LEE: Yeah, I'm Eric Lee, the Owner of Battle
6 Born Ventures [phonetic]. We're a surveying company and
7 essentially, we're two of the employees that are partners in the
8 business. In the event that I would have a need for I guess
9 without knowing the proper terms like an apprentice or a
10 technician, an entry level person, to help the qualified surveyor
11 on a project, currently the way I understand the classifications
12 is he would be classified as a surveyor and I just don't feel
13 like the wage rate justifies the skill level of the employee at
14 that point and I probably...

15 SPEAKER: [inaudible] apprenticeship.

16 LEE: What was that?

17 CHAMBERS: Go ahead. Please continue.

18 LEE: So at that point we probably wouldn't hire
19 somebody to be involved with one of those jobs, and I heard talk
20 of upward mobility. It's preventing us from starting a person in
21 this position to train them to become a surveyor. At this point,
22 I don't know what to classify them, I wish there was something
23 under the surveyor designation for a helper or a chainman,
24 rodman, something like that that is at a lower rate, so it would
25 be easier to bring on somebody, train them for the upward

1 mobility to be able to be left alone on a project like that and
2 have confidence in them after the training period.

3 CHAMBERS: Thank you for your comments, sir.

4 LEE: Thank you.

5 CHAMBERS: Okay, I don't see anybody further on that
6 particular topic so we'll move to the next section which is
7 Section 338.092 through 338.100 which deals with certified
8 payroll reports, and the thought process behind revising this
9 particular section would be to address the reporting requirements
10 for owner/operators. Again, there was an advisory opinion that
11 was issued on this topic, again in November of 2015 clarifying
12 how owner/operators had to submit certified payroll reports on a
13 public works projects so it would be clarifying those
14 requirements.

15 I will also comment that I have received comments from
16 parties wanting to change the due date of the certified payroll
17 reports. That is set in statute so that is not something that
18 can be changed through regulation. So the purpose of modifying
19 these sections would be to again clarify those requirements for
20 owner/operators, and I'm open to comment on that particular
21 section.

22 LEE: Again, Eric Lee with Battle Born Ventures.
23 As an Owner/Operator, the requirements to submit certified
24 payroll reports, I don't think it's - I think we should be exempt
25 from it. When I have to fill out these reports it's almost like

1 you have to guess at what your hourly rate is at hours you spent
2 on a job. When we bid a job it's typically a fixed fee proposal.
3 I don't charge them more when I have to spend more time. If I
4 work less than I anticipated that's just money that we make, and
5 so the requirement to submit these reports I don't see what the
6 benefit is to the awarding body is because the information
7 provided in there is really not even accurate.

8 It's just estimations to I guess appease the requirement
9 and I'd like to know from the Labor Commission, you know, just
10 knowledge of this why that is required at this point. What do
11 they gain from basically kind of a frivolous or estimated report?

12 CHAMBERS: What I would say is we're going to try and
13 fix it.

14 LEE: Okay. Thank you.

15 CHAMBERS: Thank you. So we'll move to the final
16 sections that our office is considering revising, and that is
17 Sections 338.105 through 338.116. And this involves the
18 complaint and determination process that is set forth in those
19 sections. Since I became Labor Commissioner it's become clear to
20 me that this whole process is on some level convoluted and
21 produces results that are not always good for the awarding bodies
22 but not always good for the contractors, so the purpose of
23 revising these sections would be to make this a more streamlined
24 process and to make sure that the Labor Commissioner is

25

1 essentially the final say on prevailing wage enforcement and the
2 public works project enforcement.

3 And again, just making the process more streamlined. For
4 those of you that have looked at these sections, it involves, you
5 know, a determination by the awarding body. Then it goes to the
6 Labor Commissioner, then there's an objection period, then the
7 Labor Commissioner can take several different actions. It just
8 can become a long, drawn out process. So the goal in modifying
9 these sections would be to clarify the sections and to ensure
10 that determinations that are issued are issued by the Labor
11 Commissioner's office. So I'm open to comment on those
12 particular topics.

13 JAMES: I have personal experience with this. As
14 the Labor Commissioner knows, often times when you issue a
15 complaint that the awarding body is the offender, the process is
16 the awarding body investigates itself. They always come back as
17 we did nothing wrong. It's a waste of time, it's a waste of
18 resources, it's a waste of effort, and it ends up costing a lot
19 of - well expenditures on behalf of my clients that are
20 unnecessary because I always have to point out the problems with
21 the awarding body's determination. I think that if the awarding
22 body is the offender or the accused offender, it would be
23 important for the Labor Commissioner's Office to actually do the
24 investigation and have the investigators go out and perform the
25 analysis.

1 Now I know that puts more burden on the Labor
2 Commissioner's Office, but at the end of the day it actually may
3 save you time and effort because you're sending it out to the
4 awarding body to investigate themselves. They come back always
5 we did nothing wrong, and then we have this big objection
6 process. And so again, when it's the awarding body that is the
7 offending party or the Claimant vendor I think it's important for
8 the Labor Commissioner's Office to do the investigation.

9 An additional point that I would like to see in regulation
10 there's no specific ability for a complaining party to actually
11 reply to an objection of the opposing party. I shouldn't have
12 said that but it's not fair because I do it anyway because it's a
13 fair process. And so what's happening is the Labor Commissioner
14 will issue a determination that's often against the awarding
15 party, the awarding body, or perhaps the contractor.

16 The contractor will, or the awarding body, will give an
17 objection. There's no specific mechanism that I know of in the
18 regulation that allows the complaining party to reply to that
19 objection. I think that it would be important to include a
20 provision that would allow that to happen so that in case it
21 comes before the Labor Commissioner that the matter is already
22 decided. Those are just a couple of my thoughts on the
23 procedures.

24 CHAMBERS: Thank you, Mr. James. Mr. Daly, please go
25 ahead.

1 DALY: Again, Skip Daly here, with the Laborers
2 Union. Anyway, I agree that the process which was changed to the
3 way it is now under Commissioner Johnson, when Terry Johnson was
4 here, and I don't know if it was a cost saving measure or
5 whatever, but he shifted the investigation responsibility over to
6 the awarding body.

7 So we have several hundred awarding agencies in the state,
8 all of which have varying levels of sophistication and ability to
9 conduct an investigation and make a determination. And then they
10 all have varying opinions and levels of expertise. In fact, some
11 of that work now has been subcontracted out to various entities.

12 What I find a lot, not that awarding bodies want to do
13 their own or whatever, they just don't have all the information
14 that they need, and we're getting bad results which then creates
15 an objection process that then takes several months to go to, and
16 I don't know that it saves the Labor Commissioner's Office any
17 time or money. It probably creates more aggravation.

18 And as the gentleman just said, sometimes those awarding
19 bodies get those complaints and they say, you know, we don't want
20 to have any issues on our job, so they review the paperwork
21 that's already been turned in and it all looked good, so it's
22 still good, and there's no violation. They don't consider all
23 the other things [inaudible] do a complete investigation.

24 So however, we do it I would be in favor - I know there's a
25 process under NAC 608 where you would make a complaint and they

1 would have to answer that complaint and they would go through
2 more of a regular civil process, if that is something that can be
3 done. Or the Labor Commissioner can say, hey, we're going to
4 take it on this way, but I think it can be done both ways it
5 would be more efficient. Then the person making the accusation
6 has to prove the case. They got to bring their stuff forward.
7 The other person gets to answer the complaint. You have time to,
8 you know, do discovery and those types of issues.

9 I think that's going to be a much better process and I also
10 think that it would then get you better results and I think
11 greater compliance if people know that there's a process by which
12 for them to be accountable for their actions. What I've seen all
13 too many times is the person just says yeah, I got caught on this
14 one little thing, they pay their minor little penalty, and they,
15 you know, walk away and say it was the cost of doing business, I
16 had it figured in, and if I don't get caught I just make the
17 money; if I do get caught I only got caught for part of it.

18 I just think we need to have a streamlined, like you said,
19 and more efficient process and one that actually has a little
20 more chance of catching the bad contractors. There are plenty,
21 believe me, there are plenty of good contractors playing by the
22 rules that are being undercut by people that don't, and those few
23 people make it hard on everybody, and if we can streamline a
24 process and get a better result, in no offense to the awarding
25 body, but get them out of the process because they're not very

1 good at it in my view I think would be useful. And a lot of
2 different ways to go and we'll have some suggestions on that.

3 CHAMBERS: Thank you, Mr. Daly.

4 STANLEY: Bill Stanley representing Southern Nevada
5 Building and Construction Trades Council. I too would support a
6 streamlining of this process, and clearly, you know, under NAC
7 338 one point which was the penalties provision which was put in
8 place to incentivize the awarding bodies to actively go out and
9 do the investigation, and in my own instances that I've been a
10 party to, when the awarding body is even in line to receive in
11 excess of \$1 million in penalties, they don't even go after the
12 penalties because they are part of the process of the
13 investigation and the award.

14 So, it's the fox watching the chicken coop, right? And so
15 even when they have a windfall to their back, my experience is
16 they walk away. I'm unaware of any public awarding agency that's
17 ever collected a penalty against an offending contractor. There
18 may be. I'm unaware of it.

19 Secondly, as Mr. Daly just pointed out, to many low road
20 contractors this becomes part of doing business. If I do it 10
21 times and I get caught once I'm ahead of the game because only
22 when I'm caught I only have to pay what I was supposed to pay to
23 start with because the awarding bodies aren't applying the
24 penalties. And so this process where the awarding agency is
25 investigating itself I believe needs to be changed.

1 And when that happens I think you'll see awarding bodies
2 become more diligent in the initial award in ensuring that folks
3 are actually doing what they're supposed to be doing when it
4 comes to ensuring the prevailing wage is paid. So let's call it
5 what it is. It's wage theft. You are stealing money from
6 workers who go to work every day in some of the most vile
7 environments there are, and we have contractors who part of their
8 business model is to steal the wages of the worker. That's what
9 they're doing.

10 In other jurisdictions throughout the country state
11 attorney generals are prosecuting this wage theft and taking
12 contractors and putting them in jail where they belong for
13 stealing workers' money. We have to fix this. Wage theft in
14 this state is - I mean I can't - I'm working with now a
15 [inaudible] and we're trying to figure out what is the wage theft
16 in this state and what does it really mean? What does it mean to
17 our tax base?

18 This has implications beyond just this conversation, and I
19 believe steps that you're going to take, that will help us ensure
20 that we have a way to enforce this is the first step in the right
21 direction. Thank you.

22 CHAMBERS: Thank you, Mr. Stanley.

23 SPEAKER: I'm [inaudible] from Las Vegas Paving. I
24 handle Labor Compliance there. I deal with all the wage
25 violations that come into our office for various contracts. We

1 have probably over 100 prevailing wage jobs. I can tell you
2 first-hand that we have many different things that we see that
3 come across that we have to spend the time as a contractor - we
4 find [inaudible] that are late, we find wages that are underpaid,
5 and as a contractor we don't have any - well as far as like going
6 and filing a claim with the Labor Commissioner we can do that,
7 but it's the awarding body that should be doing their job and
8 finding these different scenarios.

9 We have certain awarding bodies that they'll do their job
10 and they'll come after us and they'll say so and so is in
11 apprentice violation or so and so is late on [inaudible] or
12 underpaid or so forth. But there's many awarding bodies that are
13 out there that are not doing that.

14 So here I have a subcontractor I'm like well, they're
15 probably going to get first time offense for violating NRS
16 338.070, but maybe not because the awarding body never sends the
17 any letters and lets us know these people are late.

18 So I really think the Labor Commissioner in my opinion
19 needs to govern the awarding bodies and make sure that they're
20 all found doing their due diligence and following NRS 338.070 and
21 doing the penalties as far as 338.060. That's all I have to say.

22 CHAMBERS: Thank you for your comments.

23 STANLEY: Commissioner, I'm sorry if I said...

24 CHAMBERS: Go ahead, Mr. Stanley.

25

1 STANLEY: Bill Stanley for the record. One of the
2 things I believe that needs to be corrected here, and was just
3 brought up, is the certified payroll was also changed during this
4 timeframe. It goes to the awarding agency. I believe the
5 certified payroll should come to your office. And so the
6 certified payroll ought to be not laying out there - and all of
7 the awarding agencies throughout the state and those of us who
8 have an interest in it have to go dig through and everyone has a
9 different even though it's supposed to be the same, believe me,
10 the practice of it, of obtaining those records aren't the same
11 across all agencies.

12 And so, your office would clearly have a delineated process
13 for obtaining those records, and the redaction of it would be
14 consistent so that those of us who have an interest in this area
15 would be able to actually obtain records that were of value to
16 us. And so, having one office, and I know during the last
17 session of the Legislature there was, and I apologize, I forget
18 the name of it, I know they have now created this new database
19 where they're trying to collect all this information from around
20 the state from many areas, and I have also made the
21 recommendation to them that they include the payment of
22 prevailing wage into that databased for this exact reason.

23 And secondly, when we get back to the Legislature in 2019
24 when we want to know how many apprentices were employed on any
25 one job or another that database should have collected that

1 information and it should be a few keystrokes to determine
2 exactly how many apprentices have been employed in this state
3 versus us having to go and weed through acres and acres of paper
4 trying to determine that number. So thank you.

5 CHAMBERS: Thank you. Go ahead, Mr. Mallory.

6 MALLORY: Jack Mallory representing Painters and
7 Allied Trades, District Council 15. I had not initially intended
8 to speak on this but the lady from Las Vegas Paving brought up a
9 very interesting point that I think expands on another issue.
10 And in this instance, I think it would be appropriate not only to
11 make sure the certified payroll reports landed in your office,
12 but also on the desk of the general contractor.

13 There are additional implications with the changes to the
14 608.150 where this could be of extreme value to those general
15 contractors and other forms of liability that they may be subject
16 to. So, I think that there is this potential value of making
17 sure that a copy of those CPRs is submitted to them as well.

18 CHAMBERS: Thank you.

19 JAMES: Evan James again. My office represents
20 various [inaudible] trust funds that often try to collect unpaid
21 benefits from companies, entities, whoever it may be, for the
22 benefit of their participants. What Mr. Mallory just spoke of is
23 very important for a procedural process in the law, 608.150, that
24 information be available to the contractors. It also needs to be
25 available to these various trust funds who seek to use 608.150.

1 But it's also important for availability to the individual
2 worker because 608.150 applies not just to the collection of
3 benefits. Its a direct wage claim so the individual worker needs
4 to have access to that information as well to verify that wages
5 were correctly paid or be able to challenge the correct payment
6 of wages. Thank you.

7 CHAMBERS: Thank you, Mr. James. Anybody else in
8 Carson? Anybody else in Las Vegas?

9 LEE: I have one more comment.

10 CHAMBERS: Please, go ahead.

11 LEE: The gentleman that was talking about the
12 theft of the wages, we recently were fined 25 percent of our
13 contract amount for a late certified payroll report and, you
14 know, we were working as a sub to a general and they contacted
15 us, you know, five weeks after we started the project. We
16 weren't aware of the reporting which that's really not an excuse,
17 but typically they'll get us set up on like LCP tracker or
18 something like that, and in a busy time you kind of lose track of
19 those things. So by the time we were notified, got in our
20 certified payroll reports, and within a week of submitting those
21 to the awarding body we were given our fine notice and yeah, so I
22 think that's another angle on the theft of wages that's maybe the
23 opposite of what you were getting at, but it goes both ways.

24 CHAMBERS: Thank you.

25

1 BROWN: Can we get your name for the record,
2 please?

3 LEE: Yeah, it's Eric Lee, Battle Born.

4 CHAMBERS: Okay. So where do we go from here?

5 Obviously, we'll go back and kind of analyze the comments. I
6 think we got some very good feedback here today. I would ask all
7 the parties here today, including those that spoke, that if you
8 have specific language to please send it to our office. I'm
9 going to give 60 days on this to come up with some language. And
10 for those of you in the building trades and I would ask that to
11 the extent you can work together to come up with a unified
12 product. I know there's going to be some issues that we may not
13 all agree on, but the more we agree in advance the easier that
14 this is going to be.

15 Again, I'm confident we can get some meaningful changes
16 here. We may not get what everybody wants, but I'm committed to
17 this and I'm committed going all the way, and if I go before the
18 Commission and it goes nowhere, then I know I've done my due
19 diligence, but I really think this is an opportunity with just
20 the current environment and all the parties involved with these
21 issues to again produce some meaningful changes that I think are
22 going to help everybody for many years down the road. So again,
23 I'm going to give 60 days which I think would be about November 9
24 if my calendar is right. I'm just guessing here.

25 BROWN: That's correct.

1 CHAMBERS: Is that a weekday, Lleta?

2 BROWN: Yes, it's a Thursday.

3 CHAMBERS: Thursday. Let's make it that Friday just
4 to be...

5 BROWN: It's a holiday.

6 CHAMBERS: Oh we're off, that's right, Veterans Day.

7 So November 9, if you could get the comments to me. I know there
8 are parties that have raised the issue of maybe creating a
9 working group to the extent that any individuals in this room
10 want to do that and want a representative from our office to
11 participate in that, please contact me and let me know. My issue
12 with working groups sometimes is they're working groups that keep
13 going on for years and years and years, and again, I'd like to
14 get a product to the Legislative Commission before we are in
15 temporary regulation land which believe it or not is right
16 around the corner the way this year is going.

17 So, I encourage all the parties again work together. If
18 there are other issues that weren't raised here today that you
19 think need to be addressed, please submit those to our office.
20 The email address that you can submit those to is
21 mail1@labor.nv.gov. And again, you're always welcome to contact
22 me to get information on where to submit documents or where to
23 find the advisory opinions, but I thank everybody for their
24 participation and their time and like I said, I'm confident that
25 we will have a good product going forward and we'll have

1 something in place before the new Legislative Session begins. So
2 thank you for your time on a Friday and...

3 SPEAKER: The email again?

4 CHAMBERS: Oh it's mail1@...

5 SPEAKER: Is that mail1?

6 CHAMBERS: Yeah, mail1@labor.nv.gov. And for those of
7 you that are traveling back to Reno just beware because I travel
8 that. There were about three NHP on the freeway this morning and
9 I'm guessing there's going to be three on the way back, so I
10 wouldn't want anybody who came here today to really ruin your day
11 by getting a ticket if you're heading back that way, so just be
12 aware. But again, thank you all for your time and we really
13 appreciate it. Thank you very much.

14 SPEAKER: Please make sure you signed in. Anybody
15 who didn't, we have it right over there. Please give us your
16 contact info.

17 [crosstalk]

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