STATE OF NEVADA
OFFICE OF THE LABOR COMMISSIONER
MAY 30, 2018

PUBLIC HEARING ON REGULATION PACKAGE R18-18

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

LLETA BROWN:    Lleta Brown, Investigator.
MARY HUCK:      Mary Huck, Deputy Commissioner.

COMMISSIONER:    And again, thank you all for being here today.  This is the Public Hearing on Regulation Package R018-18.  This involves some proposed regulations from the Office of the Labor Commissioner.  I’m just going to kind of give some big highlights of the Regulation Package and then we’ll go through topic by topic and I will allow public comment.  For those who wish to offer public comment, I will also provide information on submitting additional written comments after the hearing here today.  I would just ask that if you are going to offer public comment, please state your name for the record and the
business or entity that you are representing, so we have
that for the record. If you haven’t signed in, please sign
in so we have a complete record, depending on where this
Regulation Package ends up going.

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

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

That was the intent.

I stated from the start that if we got to the point
where we had a package that was not going to bring together
a great majority of the parties involved, I certainly don’t
think we’re all going to get something we like 100% but I
stated when we began this, if it’s something where we’re
just not going to have much agreement on, much of anything
then, we will see whether this package moves forward or
not. I’ll just kind of outline the main topics that the
Package sought to address.
The first topic was a definition for Normal Maintenance and Normal Operations. I will tell you that, for those of you that saw the draft language that I submitted to the Legislative Council Bureau, the language that was returned to our Office as drafted by the Legislative Council Bureau was not exactly what I intended in mind for a definition of Normal Maintenance and Normal Operations; but hopefully you’ve all had a chance to look at that definition. When we go back through that section, I will offer that open to public comment.

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

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

The other area that we sought to clarify was the definition of recognized class of workers. When the
prevailing wage rate is calculated for a recognized class
of workers, that the collective bargaining agreements would
be utilized in conjunction with the prevailing wage rates
and in conjunction with the group rates established through
those collective bargaining agreements.

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

We also included the job descriptions in the
Regulation Package. Again, what I had sent over to the
Legislative Counsel Bureau was—mainly, I intended a process
where we could update the job descriptions after a public
hearing, along with that, also maybe update the job
classifications after a public hearing and then provide
those updates to the Legislative Counsel Bureau. They went
in a little bit different direction by including the job
descriptions in the actual regulations, but I think it’s
good to clarify the actual job descriptions in the
regulations with the requirement that if the Labor
Commissioner is going to change those it does require a
Public Hearing. This is consistent with the litigation
that went on for a number of years involving the job
The package also set to clarify the complaint filing process and responding to complaints. Also, allowing the Labor Commissioner or the awarding body to investigate complaints.

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

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

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

Seeing none, we will move on then to—

LLETA BROWN: Commissioner Chambers.

COMMISSIONER: Oh, sorry. There we go.

LLETA BROWN: We have someone here.
SHERRI PAYNE: Hi, good morning. My name is Sherri Payne and I’m the Senior Associate, Vice President of [inaudible] for the College of Southern Nevada. I wanted to thank you for the opportunity to talk today about the proposed regulations.

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

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

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

Another concern is the new definition of Maintenance is reduced from what it was before, excluding work that requires a permit or a contractor’s license can affect the
maintenance work that we do. By limiting the—what is identified as Maintenance, it may limit CSN’s ability to self-perform some of the work that we currently do.

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

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

Finally, in terms of clarification, we also had questions about our larger contracts. For instance, CSN outsources our grounds. This contract is a combination of work that both requires a contractor’s license and work that does not. A large percentage of it is picking up trash and pruning trees which does not require a license; but then we also have a portion of it, that’s irrigation, that does require a license. So, it’s unclear or we would like clarification as to how it would affect the larger contract as a whole, is the larger contract, part of that regulation or is it just the portion that is the work.
Those are our main concerns on this regulation. Once again, I really wanted to thank you for letting us express our concerns. We’d be happy to discuss anything further if you need thank you.

COMMISSIONER: Thank you very much.

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

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

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

Furthermore, we are concerned by the lack of participation of some of the [inaudible] in the process with coming up with a definition to define this particular term. If a definition is going to be proposed to define Normal Maintenance and Normal Operation, then it must pass
a high bar that does not impact a public body’s ability to utilize exemptions found in NRS 338.

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

COMMISSIONER: Thank you very much.

OMAR SAUCEDO: Thank you.

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

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

We’re very concerned that we represent many, hundreds of skilled tradesmen that work and do normal maintenance for those cities and those government entities. We would like to see that changed to better reflect what we do and without that we would like to see that section deleted.
Thank you.

COMMISSIONER: Thank you.

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

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

The second issue is with requiring a contractor’s license. Under NRS 624.031, public bodies are excluded from requiring a contractor’s license. It’s arguable and in fact, it might be probable that the regulation would exclude all work that would be performed by the public body
from the prevailing wage issue. In other words, it would be a Normal Maintenance.

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

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

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

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

COMMISSIONER: Thank you, Mr. James.

JACK MALLORY: Good afternoon Commissioner. Jack
Mallory, Assistant Business Manager, Secretary, Treasurer, Painter’s and Allied Trades District Council 15.

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

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

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

I just—I can’t see this working the way that it’s intended to work. Thank you.
COMMISSIONER: Thank you.

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

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

If the City cannot directly respond to items such as water line repairs, sewer stoppage, responses, clean-up, water treatment plant operation continuity, storm drain repairs, traffic signal maintenance, road repairs, tree removal and other critical activities, then the result would be continuous disruption of critical services. To avoid even the potential of such consequences, we respectfully request a reconsideration of the proposed text so that routine municipal operations, public health and
If you have any questions—we would like to submit additional written comments as well.

COMMISSIONER: Thank you very much.

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

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

To maintain a property, there are other activities, such as repair, modernization and other facets of work that go into maintaining a building. As we get to the subject a little later, Commissioner, when we talk about trying to define the Service Provider. There are Service Providers today that would come into the building that we’re here in, in Las Vegas and would issue a contract to maintain this building from top to bottom; including painting, HVAC system, carpeting, electrical systems, you name it, it would go into the maintaining of this building. They would
bid that as a service provider. While much of that work would fall under the definition of repair.

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

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

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

Next, I absolutely believe that defining Maintenance and Normal Operation is necessary or we’re going to continue to have these arguments about what is work that is
performed that should be required to pay the prevailing wage rate and that work that is referred to as Maintenance.

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

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

So, that $6 billion worth of deferred maintenance, I believe has a significant undertone in this discussion about how work is going to be accomplished and who does it and what the wage rates are going to be paid.
And so, for those reasons, I oppose it and we will submit further comment at a later date. Thank you.

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

SKIP DALY: Thank you, I’ll try to speak loud.

Skip Daly, I’m with the Laborers Union, Local 169 in Northern Nevada. I’ve listened to the testimony. We have an issue that is not going to be easily solved.

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

There’s got to be a line and a limit on what can be, how much construction work a public agency can claim to be as Maintenance or Normal Operations. It’s not their normal job. They’re not in the construction industry. They don’t
have a contractor’s license. They don’t regularly employ craftsmen for that type of work.

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

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

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

We also want to make sure that certain maintenance that we do wouldn’t be excluded. For example, in an older building where we have a very small roof leak, we’re talking hundreds of dollars that this isn’t subject to the regulation. We do have small 332 maintenance contracts that we put out. They are for very small repairs. In total, the annual spend would likely not even reach a bid limit level and certainly wouldn’t reach a prevailing wage requirement but we do have 100 schools that we have to
maintain. We have small things happen in irrigation, in plumbing and in roof leaks for example and we want to make sure that we can still contract for that work. As an earlier speaker said, maintenance is ongoing, and a Public Works Project is a finite project, so it’s hard then to be able to do these normal things that we have to do in maintaining our buildings for small amounts.

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

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

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

Again, the language that came back from the Legislative Counsel Bureau was not exactly what this Office had in mind and you know, I’m happy that the parties have
provided testimony and written statements and again, there will be further opportunity to provide more written comment and we might be able to put something together in this package and we might not. To the extent that does not happen, it will probably continue to be on a case-by-case basis.

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

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

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

Seeing nobody coming forward in either location, we will move on to—this is the provisions involving truck
drivers and when they are deemed to be subject to prevailing wage requirements. Again, I’ll go ahead and open up both locations to public testimony.

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

LLETA BROWN: Commissioner, what page are you on?

COMMISSIONER: It’s Section 338.010.

LLETA BROWN: Page 28 at the bottom [inaudible]

SPEAKER: [inaudible]

LLETA BROWN: It starts on the bottom of 28.

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

SKIP DALY: Yeah. Skip Daly again, with the Laborer’s Union, Local 169. Just a couple of comments. Most of it looks in order and aligned with what I think
will work and should be reasonable.

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

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

Rather than saying that you may leave it as the old rate, I think you should recognize a rate from a County that did have some of that type of work, extensively that’s where those workers would come from. Maybe look at something along the lines, what has been done in the past in the State, or sometimes with the Federal, they’ll look at zones. You know, rural versus urban, or maybe split the State into two zones and then go ahead and say, we will recognize the closest County rate in that zone. You split it, the Southern four counties; Nye, Esmerelda, Clark and Lincoln. And in the Northern, what would that leave, 13 counties, into a zone.
Just a suggestion. I think that would alleviate a lot of the issues of a Southern Nevada rate bleeding all the way up into Northern Nevada, or vice versa, because there was no work. You would just look at those zones.

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

COMMISSIONER: Thank you.

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

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

Conversations we had in your office, like I said, a couple of weeks ago regarding the Pipe Layer subclassification under Laborer. Well, there is no definitive difference between a pipe layer and a pipe fitter. There have been contractors that have used the pipe layer classification in lieu of the pipe fitter classification, which is a major survey classification
successfully. They’ve gotten away with paying less.

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

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

COMMISSIONER: Thank you.

BILL STANLEY: For the record, Bill Stanley, representing Southern Nevada Building Construction Trades Council. My concern here is that many of these definitions are, I guess, could only be defined as antiquated. They’ve
been around a long time. I don’t know that they necessarily reflect the changes in construction methodology and technology that has—has encompassed the construction trades.

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

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

COMMISSIONER: Thank you.

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

COMMISSIONER: We’ll move on to that Mr. Ring, but I mean, I’m going to take Mr. Stanley’s testimony, you know, it’s a public hearing. So, go ahead and address the
NATHAN RING: Okay. I just wanted to make sure we weren’t missing an opportunity to comment on that. So, in Section 10, we are in support of adding in the statement that recognized wage class as a CBA will increase without having to do rate making or rule making after that because we think it’s important. It continues to show what the prevailing wage rate is.

COMMISSIONER: Thank you.

JACK MALLORY: Again, good morning Commissioner.

Jack Mallory, Assistant Business Manager, Secretary, Treasurer, Painter’s 9, Trades District Council 15.

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

The thing that is missing and maybe I’m just misinterpreting this and hopefully this can be clarified. In those instances, like Brother Esposito brought up where there’s a subclassification that’s included in a Collective Bargaining Agreement and included in multiple Craft Collective Bargaining Agreements, is there going to be a
period of protest? The way that this reads on its surface, there will not.

COMMISSIONER: Thank you.

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

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

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

HUGO TZEC: Okay. Section 9 discusses NAC 338.0095 and it explains that, how to apply and how to pay the prevailing wage for a type of work and in accordance with the recognized class of worker and according to the prevailing rate of wage.
The proposed revision would add an exception that a signatory to a CBA, Collective Bargaining Agreement, would not be prohibited from assigning such work in accordance with established practice.

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

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

COMMISSIONER: Thank you.

DAVID MCCUNE: David McCune, Laborers Local 872.

We would support using the subclassifications that have always been used. I know there’s some overlap in jurisdiction but if you look at the jurisdiction that’s out there, that’s being criticized and you go back and look at the awarding agencies and the bodies that have
traditionally done the work, it’s always been under a work of a classification. [inaudible] about certain classifications.

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

I’m not going to get into jurisdictional disputes, but subclassifications are important because there are several craft that have many subclassifications. Subclassifications are defined in certain Unions. They’re limited to certain things. Under the Laborers, we have many subclassifications and we would feel slighted if you did not include those when you’re looking at the prevailing rates and the class of work that’s being done. Thank you.

COMMISSIONER: Thank you.

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

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

I have to disagree with Mr. Daly. I think this is the perfect opportunity for mischief to be had on the jobsites. Let’s just say you had a contractor who is looking to cut costs, looking to save a few bucks, knows that they have a responsibility to install a plumbing system. They can simply state, oh I’m putting somebody on that project and I’m paying them at a cement basin wage rate because that’s the way I’ve always done it. The accordance with established practice is too broad of a term, unless you define where you find these established practices. Unless you define exactly where, you’re going to find what those practices may be. You can’t leave it this broad in code. Then you just open it up for anything—for anyone to do anything that they want and they can say, well it’s in Section 9, of NAC 338. I’m just following what they said, it’s my established practice. If you leave it that broad, it’s just going to cause more problems than we already
COMMISSIONER: Thank you. Let’s move on to Section 4, which contains the proposed job descriptions. We have heard some statements on that already but I will go ahead and open it up to public comment on Section 4, to both Carson City and Las Vegas.

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

COMMISSIONER: Thank you.

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

Under Subsection 21, Laborer, the very top of Page 15. I can—I understand, I know that it’s almost impossible to
find exact—you’d have 30 pages in finding what the responsibilities a laborer has on a jobsite.

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

Moving on to Page 20, Subsection 30 where you define Plumber. We have an objection to the ‘and up to five feet outside of buildings’. Now, where that may be coming from—where the five feet may be coming from is because in Uniform Plumbing Code, it states that a building sewer—or, no a building drain is from within the building to five feet outside the building and the building sewer is from five feet outside the building on. So, that’s where they may be getting the five feet, but there are fixtures that we install that fall under a Uniform Plumbing Code, that are more—that sometimes are more than five feet outside the
building. Grease traps and grease interceptors come to mind. [inaudible] can sometimes be five feet outside the building. And, I’m not trying—I’m not trying to bring up jurisdictional issues, I don’t care who does it. I don’t care what Union does it, what craft does it. The point of those surveyed classifications, the point of these classifications is to make sure the craftsperson is paid the proper amount of money. It’s not a debate as to what you call that craftsperson. It’s what they’re supposed to be earning for doing that assignment.

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

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

We’re opposed to both of those changes [inaudible], thank you.

COMMISSIONER: Thank you.

HUGO TZEC: Hugo Tzec again with Operating Engineers Local 12. We’d like to state our concern, echoing some of the other—some of these concerns stated for
Section 4.

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

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

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

We would oppose Section 4 and the—or the concern and the opposition to Section 4 and the description of these
COMMISSIONER: Thank you. Go ahead, Mr. Daly.

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

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

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

At that point, I find it humorous now here today that everybody, all of the other crafts that are complaining about the language that’s in there, that is exactly what is up on the description, right now today, are not good. They fought and argued and spent their time and efforts to stop us from getting rid of the job descriptions that they are opposed to now. That’s exactly why they were not put in
the regulation before. However, if we’re going to go forward, we will provide some written comments regarding Laborers Classifications.

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

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

COMMISSIONER: Thank you.

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

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

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

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

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

This is not the time and the place to do that. Please
submit written comments on how you want the job
descriptions to be and we’ll go from there. Go ahead, Mr.
Mallory.

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

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

SPEAKER: What Section is that?

COMMISSIONER: Section 23, 24 and 26. Okay,
seeing no public comment on that particular topic, we will move on to—actually, still part of the Certified Payroll Requirements, the Non-Performance Report and the Requirement to Submit a Non-Performance Report. I’ll go ahead and take testimony on that particular proposal.

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

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

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

I think if there was a process and I think this is an attempt and we’re going to see how it works. I think it
can only serve to benefit the process that we currently have where the Labor Commissioner can take jurisdiction of the case and then ask them to do an investigation. Then you, or whoever the successor, you know, future Labor Commissioners might be—but I think that would be a beneficial process to assist with the existing process.

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

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

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

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

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

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

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

HUGO TZEC:  Hi, Hugo Tzec, for Operating Engineers Local 12 again. We wanted to express some concern with Section 5 which is a proposed revision of NAC 338.0052. I think this is a determination of what constitutes an apprentice for prevailing wage purposes. This is—I believe this [inaudible] because this takes away the need to register or have the apprenticeship program have been registered with a State Apprenticeship Council or the Federal equivalent of that. There’s a pretty broad definition of what an apprenticeship is under NRS 610.010. I believe this can also create future issues in determining when an apprentice is really an apprentice, as opposed to just someone who is not really learning in the trade that he’s supposed to be working in. Taking away that gives too much room for a contractor to be able to possibly not get some individual who is learning that craft and provide the necessary skill to do that work. We would oppose that change and we would request that it stays the same, at least referencing the State Apprenticeship Council. Thank you.

COMMISSIONER:  Thank you Mr. Tzec. Your comments
are appreciated. I can tell you that based on the last
Public Hearing, I did not move any proposed change to the
definition of Apprentice. This is all unilateral on LCB’s
part, but your points are well taken. So, thank you.

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

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

I do appreciate all of the comments and public
comments today and written comments. I can tell you that,
you know, these topics are not easy at times to move
forward on. Sometimes it feels like, as much as we move
forward we move 10 steps back. I am committed to moving
something forward, if it’s the last thing I do as Labor
Commissioner, but again, I’m committed to making something
work here. I would just ask all the parties to the extent
that you can come together on things that we can agree on, that will fix things that have been out there for decades now. I would encourage all of you to do that.

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

[end of audio]