
Public Hearing

before

ASSEMBLY LABOR COMMITTEE

*“Testimony on the implementation, enforcement
and application of the ‘New Jersey Prevailing Wage Act’ P.L. 1963, c.150,
and any proposed reforms to that act”*

LOCATION: Committee Room 9
State House Annex
Trenton, New Jersey

DATE: May 7, 2001
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman George F. Geist, Chairman
Assemblyman Samuel D. Thompson, Vice-Chairman
Assemblyman Nicholas R. Felice
Assemblywoman Arline M. Friscia
Assemblyman Gary L. Guear Sr.



ALSO PRESENT:

Gregory L. Williams
*Office of Legislative Services
Committee Aide*

Victoria R. Brogan
*Assembly Majority
Committee Aide*

Eric Richard
*Assembly Democratic
Committee Aide*

*Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey*

TABLE OF CONTENTS

	<u>Page</u>
Thomas St. John Director Foundation for Fair Contracting	2
Thomas DiGangi Director Government Affairs Building Contractors Association of New Jersey	7
Jeffrey Stoller Vice President Human Resources Issues New Jersey Business and Industry Association	8
Joseph A. McNamara Director New Jersey Laborers'-Employers' Cooperation and Education Trust	13
Louis Sancio Director Alliance for Competitive Contracting	14
Kevin Jarvis Legislative Director New Jersey State AFL-CIO	21
Tricia Mueller Political Director Political Education Committee New Jersey State Carpenters	26
John Ballantyne Director of Organizing Northern New Jersey Regional Council of Carpenters	26
Roger Simonds Chapter Manager National Electrical Contractors Association	

TABLE OF CONTENTS (continued)

	<u>Page</u>
Northern New Jersey Chapter, Inc.	31
Eric Sivertsen National Electrical Contractors Association Northern New Jersey Chapter, Inc.	31
John J. Connors Representing South Jersey Mechanical Contractors Association	32
Leonard Katz Assistant Commissioner Labor Standards and Safety Enforcement New Jersey Department of Labor	34
Richard Forman Representing Associated General Contractors of New Jersey	63
Robert V. Roberti Representing Associated Builders and Contractors Northern New Jersey	65
APPENDIX:	
Memorandum plus attachments addressed to Assembly Labor Committee submitted by Gregory L. Williams	1x
Testimony submitted by Thomas DiGangi	47x
Statement	

submitted by
Joseph A. McNamara 49x

Testimony
submitted by
Kevin Jarvis 52x

TABLE OF CONTENTS (continued)

APPENDIX (continued)

	<u>Page</u>
Testimony plus attachments submitted by Roger Simonds	58x
Prevailing Wage Statistical Information submitted by Assistant Commissioner Leonard Katz	88x
Presentation submitted by Robert V. Roberti	89x
Testimony submitted by Mark Longo Director of Government Affairs Local No. 825 International Union of Operating Engineers	92x
lmb: 1-68	

ASSEMBLYMAN GEORGE F. GEIST (Chairman): Good morning. Welcome.

Quorum call.

MR. WILLIAMS (Committee Aide): Assemblyman Guear.

ASSEMBLYMAN GUEAR: Here.

MR. WILLIAMS: Assemblywoman Friscia.

ASSEMBLYWOMAN FRISCIA: Here.

MR. WILLIAMS: Assemblyman Felice. (no response)

Vice-Chairman Thompson.

ASSEMBLYMAN THOMPSON: Here.

MR. WILLIAMS: And Chairman Geist.

ASSEMBLYMAN GEIST: Here.

Good morning. Welcome back everyone. After a brief April recess, I've been looking forward to this session. I want to begin with a brief opening remark to ask that you reflect.

1963: LBJ was president; Mickey Mantle and Roger Maris were playing for the Yankees; the Mets were not yet amazing; for the South Jersey participants, the Flyers were something that you handed out at election time; and I was in third grade. I emphasize 1963, because that is a reality. 1963 was the year of the adoption of the prevailing wage law that is the subject of the hearing today. That may surprise many of you that it was adopted in 1963, and what we are actually doing today is, perhaps, for the first time since the adoption, the beginning of a comprehensive review of the prevailing wage law.

Today we will be participating in an historic moment for this Committee, because as we proceed today with this public hearing, we will be proceeding today with the first Internet accessed public hearing. We ask for your cooperation and participation by utilizing our technologies properly so that we can listen and learn and record for history this very special public proceeding. We will boldly go where no Labor Committee has ever gone before: onto the Internet.

Today I look forward to your comments. During the month of April, I have been meeting with labor leaders throughout our great New Jersey to learn more about this particular issue. I want to publicly thank the Office of Legislative Services, staff director Gregory Williams, for providing to each of the members of this Committee information pursuant to my requests about the prevailing wages in their respective counties. We are, today, going to listen and learn a lot about our prevailing wage law.

If you are interested in participating with testimony, the process is an open one. Please let the Office of Legislative Services know of your intent to participate, and your testimony will be very welcome. Many have previously declared their intention of participation, and today we will proceed with those that have previously declared. I'm going to vary somewhat from the proposed list to try to add a little diversity in terms of the voices participating in the proceedings.

I'm going to start today with someone who has the title Director of the Foundation for Fair Contracting, Tom St. John.

Good morning.

THOMAS ST. JOHN: Good morning, sir.

ASSEMBLYMAN GEIST: You're the leadoff hitter, as I referenced baseball, so I look forward to your testimony.

MR. ST. JOHN: Thank you, sir.

ASSEMBLYMAN GEIST: Could you introduce yourself for our Committee?

And we welcome Speaker Pro Tem Felice.

MR. ST. JOHN: Yes. Good morning, Assemblyman Geist and other members of this Committee. My name is Tom St. John. I'm the Director of the Foundation for Fair Contracting. This is a private, nonprofit organization.

ASSEMBLYMAN GEIST: Excuse me. If I could ask you to push the black button, that will hopefully enable you to facilitate your testimony. (referring to PA microphone)

MR. ST. JOHN: I pushed black and I got a red-- Here we go. Now we're on.

We'll start over. Good morning, Assemblyman Geist. My name is Tom St. John. I'm the Director for the Foundation for Fair Contracting. This is a private, nonprofit organization formed for the monitoring of compliance to public works projects -- compliance for contractors working on these projects to comply with the New Jersey Prevailing Wage Act. We are funded by the building trades throughout the state. Various trades have contributed so our organization exists.

Our staff consists of three investigators, including myself, who are former New Jersey State Police officers, and two administrative aides in our office. We are located in Cherry Hill, New Jersey. We've been working in this

capacity in the State of New Jersey, monitoring public works projects, since 1992. And we've reorganized and formed the New Jersey Foundation for Fair Contracting in 1997.

And briefly, our organization monitors public works projects, and we have been doing so for the past nine years. We looked at contractors who we feel have a track record for violations. We've been keeping a database on referrals that we have sent to the New Jersey Department of Labor, Wage and Hour Section. For the past ten years, we have filed complaints of suspected violations.

I think Assistant Commissioner Katz, who is in the room today, will recognize that 90 percent of our referrals are substantive violations, which result in violations to that contractor, and the appropriate fines and penalties are assessed. We have seen in the history of our services a trend of the same contractors repeating the same violations. They are cited by Wage and Hour and assessed penalties and fines, but they go out the next week and continue to bid on public works projects.

A remedy that we see that might help this situation, that there is a provision in the Act that allows the Commissioner or gives the Commissioner the authority to suspend a contractor prior to debarment -- a situation that is prevalent. We say the contractors who are flagrant violators have been getting notice of debarment. That process takes a period of time before they get to the debarment hearing. It might take six months. It might take eight months. During that time period, that contractor is still bidding public works projects. Now, if he happens to get to the debarment hearing and is debarred, the contracts that he has bid and was awarded, he is still allowed to work on. So,

if a contractor is in serious jeopardy and he knows it, he can bid a lot of work prior to the time that his debarment hearing is final. That's one provision in the Act that might be able to be tightened up a little bit.

The other recent issue that we found that might be addressed is the recent amendment in the public contracts law, and it addresses negative experience -- the contractor works on a project and has a history of violations throughout the 21 counties, and he is the lowest bidder on a project in a certain specific municipality or county. The new provisions to the amendment regarding negative history only applies to that specific awarding agency. They can't use his history for violations on other projects throughout the state. I don't know what the intent of the Legislature was when those words were put in it. They were helpful to recognize negative experience. But it says, "The awarding agency -- it can only use negative experience if it has had negative experience with that contractor." There is a database of violations on contractors that can be exposed to these awarding agencies for their negative past performance throughout the state.

In just closing, I'd like to say in the past, since the year 2000, we have referred 153 violations to the Department (*sic*) of Wage and Hour. Of those 150 referrals, they include violations of contractors working in the carpentry, electrical, plumbing and heating, and ironworking crafts and the asbestos workers and abatement -- Asbestos and Abatement Workers Local 32. Those 153 violations encompassed all of those crafts.

The Wage and Hour Section of the Department of Labor receives our complaints and acknowledges the referrals we send to them. They assign them to an investigator. Their investigation is parallel to what we have

submitted in our referrals. Ours may be in a little bit more detail, in that we take a formal question-and-answer affidavit from workers who have claimed that they were not paid properly. That statement is notarized and submitted with other documentation to support the workers' claim. Those 153 claims are, as of 2001, there are-- The pending rate on those claims-- I'll let Assistant Commissioner Katz address that situation.

The two categories that I suggested or brought to your attention for change may have an area for change where you folks can redo and look at the--

Any other questions from the Committee, I'd be glad to answer.
Thank you.

ASSEMBLYMAN GEIST: Director St. John, first of all, thank you for your testimony. Today, because of the extraordinary enthusiasm and the extraordinary number of witnesses -- I just want to mention to the members of this Committee that the witness list is now close to 20 -- we're going to do the best we can to listen and learn. You provided some great initial insights for this Committee to consider.

The Department of Labor is here. I'm purposely asking that they stay for all the proceedings so that they can do conclusion comments after they listen and learn, as I and this Committee listen and learn first. So we want the Department of Labor to stay and listen and learn. There's been much emphasis about enforcement. I want them to hear the stories. I want them to know about these concerns, and your testimony is sensational in terms of the initial comments. You're welcome to stay.

MR. ST. JOHN: Thank you, sir.

ASSEMBLYMAN GEIST: Have a great day. Thank you.

Thomas DiGangi, Director of Government Affairs, Building Contractors Association.

For all in attendance, I'm going to try to, as you can see, blend together the witnesses -- no direct particular sequence -- to add some diversity in the proceedings and also to try to keep it somewhat interesting.

Welcome.

THOMAS DiGANGI: Thank you very much, Chairman.

ASSEMBLYMAN GEIST: Your introduction, self-introduction, for the record.

MR. DiGANGI: I am Tom DiGangi, Director of Government Affairs for the Building Contractors Association of New Jersey. I want to thank you, Mr. Chairman and members of the Committee, for addressing this important issue.

As you know, the BCANJ is dedicated to maintaining the highest standards of quality, efficiency, and safety in building commercial, industrial, and institutional facilities. Because of the sheer number of people who are testifying, I'm going to shorten my comments and just to say that there are three issues that we'd really like to recommend that the Committee look into.

First, to increase the resources for prevailing wage enforcement, it is crucial to have as many inspectors as possible visiting job sites. This requires protecting moneys that have already been dedicated for enforcement, as well as expanding other sources of resources for that. The other thing is to prosecute prevailing wage violators.

When officials find offenses, violators must be prosecuted aggressively. A deputy attorney general has recently been dedicated to prevailing wage enforcement; however, we think another is needed.

And finally, make prevailing wage violators pay. We think dedicating an administrative law judge to prevailing wage cases and strengthening the penalties to ensure a judge's decision has real effect is maybe one of the most important things that we can do.

The rest of the testimony is already written, but in the interest of time, I'd just like to make those three key points and see if there's any questions I can do my best to answer.

ASSEMBLYMAN GEIST: Thank you for your testimony.

MR. DiGANGI: Thank you.

ASSEMBLYMAN GEIST: We're going to keep things moving right along, and we may have witnesses for recall and questions. Today, as you're participating with testimony, if any of you want to comment on the Registration Act, you are welcome to comment on that. Obviously, that provided some financial support for enforcement, and you're welcome to comment on that as well.

Chico Marciante, International Brotherhood of Electrical Workers.

(no response)

Jeff Stoller, New Jersey Business and Industry Association.

Good morning, Jeff.

JEFFREY STOLLER: Good morning, Mr. Chairman and members of the Committee. Thank you for this opportunity to comment on a law that, as

you've pointed out, has been on the books for decades, and it's time to take a look at what the impact has been.

I wanted to start out by saying from the perspective of the business community that there's good news and there's bad news. On the bad news side, there continues to be, as there has been for many years, concern about the actual cost and the need for the Prevailing Wage Act as we've structured it here in New Jersey, particularly whether we have moved beyond ensuring competitive wages and competitive benefits, which obviously should be preserved on the job when you're doing public work, and moved to a level where we may be locked in to paying artificially high wages and benefits on those same projects. That continues to be a concern.

The good news is, of course, that, as you know, Mr. Chairman, BIA in particular, and the business community in general, has remained consistently in support of effective enforcement. The law is the law, and we believe that it's in everyone's interest to make sure that that prevailing wage law, even with its problems, is being enforced consistently. And so that's another one of the issues I want to touch on briefly this morning.

In terms of our concerns of the ongoing cost, even with the prevailing wage in place for as long as it has been, we have been hearing from companies for a long time, taxpayers, and those in other states around the country who have seen what they believe to be a consistent high level of cost with the prevailing wage rates as they're being set county by county and by the trades. I've seen estimates from several sources saying that we're overstating the actual costs of these projects now with the prevailing wage by 15 percent. Others have said 20 percent and higher. That's a real concern, because as I said,

it's one thing to have a legitimate goal of ensuring that everyone working on these public projects are getting competitive wages and benefits, but beyond that we have to have a way of really policing them, making sure that the prevailing wage really is the wage that should prevail for these trades.

We're particularly concerned, when we have those overruns, about the impact on the small contractors, because they are the ones who are knocked out of the process when we're overstating what wages actually have to be set at.

Let me just touch on three areas this morning, Mr. Chairman. First, let's talk about the importance of fair enforcement and consistent enforcement, to talk about the issue of the threshold that has been in place since 1963, and finally a word or two about our concern about not expanding the scope of the prevailing wage law into areas that don't seem appropriate to us.

First of all, you know that we have consistently supported fair enforcement of New Jersey's prevailing wage law. We backed the 1999 Public Works Construction Contractor Registration Act to ensure compliance with the laws and regulations. We have always supported making sure that the Department of Labor has the resources it requires to do its policing of the prevailing wage. We'll look forward to testimony from Assistant Commissioner Katz later this morning to see what the situation is in terms of those resources. We have consistently opposed efforts by others in government to try to take money that is supposedly dedicated for policing and enforcement purposes and using them for any other purpose than policing it.

And you'll be glad to hear, Mr. Chairman, that we are in support of your legislation, Assembly Bill No. 2887, which you are cosponsoring with

Senator Codey to significantly increase the fines for violations of the Prevailing Wage Act. We can do that in good faith knowing that the rules or the law that you have proposed does still take into account the history of the firm's performance in terms of past violations, recognizes their good-faith efforts to comply with the law. And as long as that's true, that's setting a higher penalty for the bad actors. It makes sense, and you have our support on that.

Our final concern, though, in terms of enforcement, having talked to some of our members who are contractors, is that even with the Registration Act, even with additional funding for staff or for higher fines, we're not sure that that will do everything in terms of policing the overall problem. I believe that you'll be hearing, either in testimony later today or perhaps we could follow up and submit some information, but I know that some of the contractors themselves have some ideas about things that could be done on the site, perhaps in the form of weekly attendance, and things that would not involve a great deal of regulation and problem, but would help police compliance with the act. The contractors who are obeying the law want to make sure that there is an effective and simple regulatory process for doing that.

The second issue I wanted to touch on, Mr. Chairman, was the issue of the projects that are still covered by the \$2000-level threshold for the prevailing wage that's been in place since 1963. And I'm sure that you would have heard from many in this room, Mr. Chairman, if the minimum wage had not been adjusted periodically since 1963. Similarly, we're hearing from a lot of companies who are saying, "Wait a minute. Can't more be done to have the cost of living reflected after four decades in that prevailing wage threshold?" And one of the things that we feel would be a step in that right direction, and

certainly as we move into the major school construction, is Assembly Bill No. 2513, which would simply raise the prevailing wage threshold for the school boards to the level that has already been established by the Legislature recently for municipalities. We still believe that that really is a more accurate reflection, dividing minor work and major projects. So we would support that bill as well.

And finally, our remaining concern is in terms of not taking the scope of the prevailing wage law and extending it beyond projects that -- where it makes sense. You know from our discussions in the past in this Committee, our concern about Assemblywoman Friscia's bill, Assembly Bill No. 146. That was the one where we are very concerned that that would say that any financial assistance from the Economic Development Authority should trigger the prevailing wage. We saw that as an unprecedented movement of bringing in private sector construction instead of just public sector construction under that law.

We're very concerned, as you know, that if a company is taking EDA money not for construction, where clearly the prevailing wage law applies, but if they're taking research and development credits, if they are cleaning up their underground storage tanks using EDA's program to help small companies clean up, if we are hiring young people from the inner cities and we can benefit from some of the EDA programs for hiring, there's a real serious concern that that legislation could be interpreted as meaning, well, the next time you're undertaking a reconstruction of your laboratory, or whatever, that it might be viewed as public works. So that's one of the issues that we're very strongly concerned about, and similarly, Assembly Bill No. 3114, where even custom cabinets and various projects that are built off-site would be considered

something instead of being a material supplier where you would have the prevailing wage in effect. So those are expansions of the prevailing wage that the business community is concerned really goes beyond the accurate intent of the original law.

So that's it in a nutshell, Mr. Chairman. I just want to conclude by saying that again, we are glad to work with you and with our member contractors in terms of looking at what the Department of Labor is doing currently in terms of enforcing this law, and I hope that the Committee will take a look at the threshold issue and will consider again whether those prevailing wage rates that we're setting are a fair and accurate reflection of what a truly competitive wage would be, as opposed to an inflated wage.

So thank you very much for the time to share these comments with you.

ASSEMBLYMAN GEIST: Thank you for your testimony.

Moving right along, Joseph McNamara, New Jersey Laborers.

Good morning, Joe.

JOSEPH A. McNAMARA: Good morning, Mr. Chairman.

ASSEMBLYMAN GEIST: If you could do a self-introduction, for the record.

MR. McNAMARA: I will.

ASSEMBLYMAN GEIST: Do you have a companion?

MR. McNAMARA: I do have a companion. I also have some written testimony that I'd like to submit to the Committee.

ASSEMBLYMAN GEIST: As always, always welcome.

Good morning, and your introduction.

L O U I S S A N C I O: Good morning. I'm Lou Sancio, Director of the Alliance for Competitive Contracting.

ASSEMBLYMAN GEIST: Good morning to both of you. Welcome to the Committee.

MR. McNAMARA: Good morning, Mr. Chairman.

ASSEMBLYMAN GEIST: I did not arrange the timing of your testimony to coincide with the cameras. It just might look that way. (laughter)

MR. McNAMARA: That's okay. I'll give them my best side.

ASSEMBLYMAN GEIST: Good morning, gentlemen.

MR. McNAMARA: As mentioned, my name is Joseph McNamara. I'm here today as the Director of the Laborers'-Employers' Cooperation and Education Trust, or LECET, as we call it. That's a long name to use. LECET is a labor management coalition involved in promoting business opportunities for laborers and signatory contractors. But we also get involved in improving and recommending on improvements for quality of work and improving standards in the construction industry in New Jersey.

Lou Sancio is with me this morning. He's the Director of the Alliance for Competitive Contracting, as he mentioned. Lou is very involved. He's affiliated with LECET. He's involved day to day in monitoring and helping to enforce prevailing wage laws. So I will go through some broad comments. Again, I submitted some formal testimony. I will refer to some background -- some points that I would like to make about prevailing wage, the needs, the law, why it's there, and some recommendations that we have. Lou certainly will be able to answer any questions on some of the details. He has as

much experience as anyone in the state in terms of actually what the problems are and how, perhaps, we can fix them.

ASSEMBLYMAN GEIST: Joe, could you hit your button?
(referring to PA microphone) Red light's good.

MR. McNAMARA: The red light's good. Okay. Thank you.

ASSEMBLYMAN GEIST: Thank you.

MR. McNAMARA: That's better. Okay.

In my statement, I talk a little bit about the background for Davis-Bacon, the fact that it's resulted in decent wages and benefits and a better standard of living for construction workers. What I'd like to do is also mention there's some other aspects of it which are not normally discussed. In fact, with due respect to my colleague from the Business and Industry council, I would like to talk a little bit about the competitiveness of prevailing wage laws. In fact, we feel very strongly that throughout New Jersey the prevailing wage law is the actual wage that is paid and should be paid to construction workers. We strongly disagree that it results in higher wages. In fact, there is evidence to support that -- there's no evidence to support that prevailing wage actually increased the cost of construction.

We have heard, and I think it was mentioned this morning, I've seen comments or written comments that there's speculation that it may increase it 15 percent to 20 percent. Again, I say there is no evidence to support. In fact, to the contrary, there have been a number of studies done over the past 10 years, not necessarily in New Jersey, but around the country, that have looked at prevailing wage and looked at all of the benefits, looked at the cost per mile. I know there was a study done in 1992 by the Federal Highway Administration,

and actually it showed that there was in many states a lower cost by states that use prevailing wage laws. So again, we submit that there is no evidence to support the other.

Beyond the normal, decent wages and all the positive things that we commonly talk about, there are -- and this was looked at -- some benefits for the taxpayers for using prevailing wage. If you have a higher standard of quality of professionalism on the job site, your productivity increases. If it's public work, which it is when you're paying prevailing wage, well, then your cost comes down for the taxpayers.

Also, contractors that are paying prevailing wage also pay unemployment insurance, they pay workers' compensation. And since most workers, you know, they get pension and health and welfare benefits, there's less of a burden for the taxpayer in welfare and charity care costs, which has been a problem in the State of New Jersey.

And also, when prevailing wage is properly enforced, employers are less likely to misclassify their employees. By doing so, as a result, the employers are taxed on the full wages they pay and receive so that you don't have a loss of tax revenues. So again, we submit that prevailing wage laws, besides providing standards of productivity, are also good for the taxpayer.

One other benefit is that -- it's less recognized also, is that prevailing wage laws serve to counter the shortage of skilled workforce that we have, not only in this state, but around the country. Construction has been very good. We want to keep that. It's very hard to bring qualified people in and train them and have them be productive when we're not paying a decent

standard wage. It does provide employment for local people throughout New Jersey. It is an important part of our economic foundation.

But there are some problems. We have some problems which were mentioned already, but I think the biggest problem that we face is the ability to move cases through the administrative law process. Simply put, the Department needs both more deputy attorney generals whose primary focus is to prosecute prevailing wage cases, and secondly, additional law judges to hear those cases.

We also offer a set of recommendations that increase the possible penalties for prevailing wage violators. The prosecutors and judges need the ability to ask for and impose stiffer penalties than those currently prescribed by law. We recommend, as others have and I'm sure others will, that we make this much stronger.

Finally, I think the administrative law judge should also be given some flexibility in determining the length of a time a contractor can be debarred. Now it's pretty much set -- you get so much time, whether it's serious or a more important violation. I think if you give them some flexibility -- some could be stronger, some could be less -- I think you might have a more efficient system.

We also-- Obviously, we need to-- Enforcement is great, but we have to make sure that the Department of Labor has the resources necessary to process claims against contractors. The Contractor Registration Act, which was mentioned, which was passed, I think has been a good source of revenue. I think the process has worked fine. I mean, when you go from no registration to registering all people doing public construction work, building work, it's worked very, very well. One danger, though: There's always the tendency for the administration or the Treasurer -- we're looking for moneys to try to divert

moneys from the-- Each contractor is required to put \$300, to register for \$300, which goes into prevailing wage enforcement. We must protect against that money being used for other purposes.

We should also consider looking at making all public work, all contractors doing public work, register with the Department of Labor. I think that gives us a good handle in the state. It helps to ensure to know that unemployment compensation, workers' compensation, all those things are being done and gives us a good working handle and also some additional resources for the Department of Labor's prevailing wage enforcement.

The last piece of the puzzle is the owners. We could probably get into these -- the counties, the municipalities, and others. They need to take a greater stake in the enforcement process. They are in a great position to oversee and monitor prevailing wage enforcement, yet very rarely do. They don't usually understand the need for it and the purpose of it. Just ensuring that a certified payroll is available for inspection is not enough.

I don't have a real answer on how we'd do that, but it's something that should be considered. It's in the best interest of all parties -- the State, the owner, the contractor, the worker, and the taxpayer -- if we enforce existing laws, and they have to understand that. It doesn't-- I know the mentality may be that they may get some economic benefit from that, but they're not. If anything, they're usually involved with a work that's substandard, doesn't have the same qualified, skilled workforce that a contractor that's paying prevailing wage does. So we contend that in the long run it does cost the owner and the taxpayer more money.

Well, those are the recommendations that I present. There are some more details in my testimony. Again, I don't know if Lou wants to add something or if there's any questions that you have about the enforcement aspect. We'll do what we can to answer.

ASSEMBLYMAN GEIST: Let me interject with, first of all, assurance with this chairman. My goal of these proceedings is to provide a record on which we will have a foundation for enhanced legislation. You have heard me say before, the prevailing wage should prevail. It's a 1963 law that needs to be updated to reflect the realities of our New Jersey economy. In terms of the Registration Act, in terms of enforcement, in terms of enhanced penalties, these are the topics that I would love to have focused with as much specificity if possible today as to how we can have a corrective course to enhance a solid law. So I'm appreciative of your testimony. I'm hopeful that you can stay so you can hear some of the responses from others that may not be so compatible with your objectives.

Good morning.

MR. SANCIO: Good morning. I'd like to concur with Mr. McNamara on his statements and add a few of my own. As he said, one of the largest problems is the enforcement efforts and strengthening the violations. Currently, the criminalization of prevailing wage violators is almost nonexistent. Right now, they are -- someone who does not pay prevailing wages on a public project is classified as a disorderly person. We would like to see actual criminalization of that to a fourth-degree crime.

ASSEMBLYMAN GEIST: This Committee will consider that--

MR. SANCIO: Thank you.

ASSEMBLYMAN GEIST: --because it's more than disorderly.

MR. SANCIO: I couldn't agree more, Mr. Chairman. And the apathy on the part of the owners is quite often a huge obstacle to overcome. Most of the -- not most of, but many of the public officials don't understand prevailing wages thoroughly. They know it's a requirement, yet it quite often does not show up in the job site specifications on their bid packages, even though it is in the law that they should have it. They'll put words to the effect that you must pay prevailing wages without actually having a determination from the Department of Labor for that specific job site, as per the law.

This apathy -- it leads to substandard work on jobs by cost-cutting contractors, and it encourages contractors to skirt the law, if they can possibly do it, if they can pay workers cash or if they can get away with not paying benefit moneys and saying that they are paying benefit moneys, which is a very large problem. The benefits portion of the law is either -- the way it's worded now -- either has to be paid through a benefits package or directly to the individual. They will quite often say they are paying one and not paying one at all. This leads to increased health-care costs and a burden on the local community and the taxpayers to take care of benefits, ultimately health-care costs for the workers and their families.

ASSEMBLYMAN GEIST: Thank you. Thank you for your testimony.

MR. McNAMARA: Mr. Chairman, we appreciate your interest in this subject, and we will work with you in any way to strengthen these laws.

ASSEMBLYMAN GEIST: Joe, as you know, it's a strong interest, and I'm looking forward to working with all of you to enhance our legislation.

MR. McNAMARA: Thank you.

MR. SANCIO: Thank you.

ASSEMBLYMAN GEIST: Kevin Jarvis, Legislative Director, New Jersey State AFL-CIO.

Kevin, somehow or another, Gregory Williams put you number one on the witness list, but I thought you'd rather listen and learn a little bit before you commented.

KEVIN JARVIS: I appreciate that, Mr. Chairman.

ASSEMBLYMAN GEIST: Good morning.

MR. JARVIS: I know I'm always number one in the Committee's heart, so, you know. (laughter)

ASSEMBLYMAN GEIST: Good morning.

Why did Jeffrey Stoller laugh so loud on that comment? (laughter)

Good morning.

MR. JARVIS: Well, I'll take up my issues with Jeffrey and some of his comments a little bit later.

I just wanted to start, though, by thanking the Chairman and the members of the Committee for holding this very important public hearing. The prevailing wage law is obviously an issue of great importance to the New Jersey AFL-CIO and our building trades members, many of whom are seated behind me today. Just for the purpose of the record, I would also like to mention that I did speak to the Executive Director, Joe DeMark, of the New Jersey State Building and Construction Trades Council. Unfortunately, because of some personal matters, he was not able to make it here today, and so this testimony I'm giving is submitted on his behalf as well.

I'm not going to belabor the written testimony I gave to you. Some of the issues I wanted to hit have already been made. I think one of the most important ones was actually mentioned by the very first speaker, Mr. St. John of the Foundation for Fair Contracting, and that is the issue of individuals being able to continue bidding while proceedings are pending because of prevailing wage violations. That becomes a tremendous problem not only because it weakens confidence in the system, but also because it gets into a vicious cycle. Oftentimes what happens is, because of the low number of DAGs that are assigned to this -- and as a matter of fact, I think at this point there's only one DAG who's assigned to prevailing wage issues full time -- it can take sometimes as long as two to three years to bring the case from initial report of violation to adjudication.

ASSEMBLYMAN GEIST: We will invite the Attorney General's Office to the next hearing.

MR. JARVIS: Right. I'd appreciate that.

The issue, though, is that because it takes three years, and during that time the individual may have received and bid on one or two other contracts and can continue to do that work, make his money on behalf of public tax dollars while being a prevailing wage violator, and during that time perhaps even violate the prevailing wage law again, that is a serious problem and one of the main problems. I realize that it raises some very difficult issues with respect to due process and possibly debarring someone or suspending someone from being able to bid while, in fact, there are proceedings pending and no final adjudication has happened. But there is a countervailing public policy that the people who rely on this law, the workers who rely on this law to protect them,

and the honest contractors out there who are having their name sullied by those unscrupulous ones who do, in fact, violate this law is an important interest that really needs to be balanced against that.

So we think that there needs to be some sort of plan, some sort of means of invoking that authority that the Commissioner has to, in fact, suspend contractors while proceedings are pending to make sure that they don't continue to violate the Act and also to continue to bid and receive more jobs.

The issue of the settlements and penalties was brought up, and we think that is an important issue. We support your legislation to, in fact, significantly strengthen the penalties.

Another key issue was the issue of enforcement that you've heard about. The Department has been making good strides. I know, in fact, they have handled several new inspectors. I believe the number is somewhere around seven, but I think Assistant Commissioner Katz will address that a little bit further. There have been more inspectors. I think there are plans under way to hire more support personnel, such as auditors, so that the inspectors can be out actually inspecting while the auditors go over the contractors' books and help them look for the violations, which would be a great help.

Also, in that respect, the Contractor Registration Act has been helpful. It's given the Department some added revenue that has been dedicated solely to enforcement matters, and so we think that's a good start in helping the Department. But again, as someone else mentioned, that money is often subject to budgetary pressures, to be taken and siphoned off and used elsewhere, and we really have to work to prevent that.

I did want to take issue with a couple of the comments from the business community, respectfully, of course, one of which being that perhaps it's time to raise the threshold on the law. The New Jersey State AFL-CIO opposes that. We have opposed it. Our belief is that if it's a public works project, public moneys are involved. The prevailing wage law should apply irrespective of the size of the job, if we don't really think that it's a fair excuse that smaller jobs should somehow be exempt from paying fair and competitive wages. Because, in down economic times, those "smaller jobs" are, in fact, the bread and butter for many union members, nonunion members. We think that everyone is paid a fair wage with benefits is very important to the State and to those workers and their families, and so we would oppose that.

The New Jersey State AFL-CIO would also like to see the scope of the Act expanded. And to that extent, we do support Assemblywoman Friscia's bill that would expand the scope of the law to also include projects that are funded pursuant to the EDA. Now, I just want to make a clarification. The legislation is not aimed at expanding the prevailing wage to those entities that receive EDA money for purposes of grants to hire inner-city kids, to use some of the examples, for the purposes of cleaning up toxic waste.

The purpose of it is this: There are contractors out there who have figured out means of getting around the law. And so, what they do is they will take EDA money, grant money, because they're going to be building a new facility. The money is awarded to them. Rather than using the money to build the new facility, that money is held up as collateral so that they can obtain private loans from banks. At that point, the money has been now officially changed, cleaned up, if you will, and now it's actually private money,

technically, that's being used to build the building. And that's how they get around the prevailing wage law. And that is exactly what Assemblywoman Friscia's bill is aimed to prevent, and what we would like to see prevented. Because, again, that's something that undermines the law. It's something that reduces confidence in the law.

You can use all the happy and feel-good analogies and, hey, we're using this money to hire inner-city kids, and we're using this money to clean up toxic waste dumps. Well, the purpose to the prevailing wage law is also to pay a fair wage. So I don't think the message should be that doing all these other things are okay, but if we also have to pay a fair wage, we as a business entity aren't going to be able to do it. That shouldn't be the trade-off. It shouldn't be a trade-off of wages for these other socially beneficial projects. And so we support expanding the scope of the legislation to include projects funded by EDA and any public moneys, as the law was originally intended.

With that said, I will just add one final comment. Someone had mentioned it before, about adding or possibly designating an administrative law judge solely to these prevailing wage cases. We would support that as well, as well as the assignment of additional deputies attorney general to make sure that these cases can be prosecuted quickly.

I have submitted written testimony that includes some other issues, but I won't take up any more of your time. I know there are others to follow. So I just thank you for your time and attention.

ASSEMBLYMAN GEIST: You're adding proposed participants in this process. We have, through OLS, extended the invitation for EDA to be here today. The AG's Office will be on the list. The Administrative Office of the

Courts will be on the list. We're learning today about those that need to participate, and we thank you for your testimony.

MR. JARVIS: Thank you, Mr. Chairman.

ASSEMBLYMAN GEIST: Well done.

Tricia Mueller, New Jersey State Carpenters.

Good morning.

TRICIA MUELLER: Good morning.

ASSEMBLYMAN GEIST: And you have a companion?

MS. MUELLER: I do.

ASSEMBLYMAN GEIST: Participant?

MS. MUELLER: John Ballantyne.

ASSEMBLYMAN GEIST: Your name?

JOHN BALLANTYNE: John Ballantyne, with the Northern New Jersey Regional Council of Carpenters.

ASSEMBLYMAN GEIST: Good morning, good morning.

MR. BALLANTYNE: Good morning.

MS. MUELLER: This is my very first testimony with the Committee.

ASSEMBLYMAN GEIST: Congratulations on your debut.

MR. MUELLER: Thank you. And what a topic, and cameras and all so--

My name is Tricia Mueller. I am the Political Director for the New Jersey State Carpenters, Political Education Committee. It is a new portion of the Carpenters Union that has dedicated dealing with legislation and policy and educating our members on the issues that best affect our members. Prevailing

wage, obviously, is one of our top priorities. I'm not going to dispute with my colleagues who have said everything so clearly so far -- AFL-CIO, BCA, and the Laborers. The carpenters firmly believe that the enforcement component is probably the most critical component to this point with the legislation.

We have a really good working relationship with Commissioner Boyd, who has been very open to discussion with us in better enforcing the law and dedicating more resources to enforcing the law. We look forward to continuing that relationship with him and moving forward. Hopefully, my colleague, John Ballantyne, will be able to produce some real-life examples in how prevailing wage is -- the law is skirted and how abusers can get away with blatant disregard for the law.

Thank you to the Committee. Thank you, Chairman, for providing a forum to discuss this law. I firmly believe in your philosophy in that open dialogue is key and maintaining open lines of communications. So thank you.

ASSEMBLYMAN GEIST: Thank you, Tricia. Thank you, Tricia.
Good morning.

MR. BALLANTYNE: Good morning. My name is John Ballantyne. I'm the Organizing Director with the Northern New Jersey Regional Council of Carpenters. We represent approximately 5000 carpenters in the areas of Passaic, Hudson, Essex, and Bergen County. We have an organizing staff of six members under my direction, four of which out of that organizing staff are specifically assigned to monitor prevailing wage jobs in our areas in our jurisdiction, those four counties. They're out there every day. What they're out there doing is trying to empower workers with the knowledge of what they're prescribed by law. They're out on a job. They interview workers. And when

they find noncompliance of the law, we refer them to the Foundation for Fair Contracting under Tommy St. John, so that he can go ahead and file complaints with us with the New Jersey Department of Labor.

What we find out there constantly is that a lot of workers on the job sites are not receiving the proper wages. Their general contractors are circumventing the laws by trying to use 1099 workers or subcontractors that they, of course, don't let them know what the proper wages are to be paid. And of course, they keep them in the dark where they'll use the subcontractors to avoid detection. We find this constantly, that workers under subcontractors are not paid the proper wages prescribed.

What we propose is, number one, we send out a protest package with contractors that we find that are, of course, of the lowest bidder on a job. And of course, being 20 percent under the next bidder and being the lowest bidder by 20 percent, we start to target them. We put together protest packages of past experience. A lot of the townships are very concerned when they start seeing protest packages of discrepancies in work, noncompliance of the prevailing wage, people not receiving the proper wages on the job. And what the sad part is, is they can't use that. They feel that they can't use it, because it hasn't happened in their township. So to remove a contractor or to exclude a contractor of being the lowest responsible bidder, it would of have to have happened in their area or in their awarding agency.

I think that's wrong. I think if you were to have somebody come to your home and build a home, and you found out that your neighbor had some problems on a job site, you wouldn't have hired them.

ASSEMBLYMAN GEIST: Let's get a clarification. Is it your understanding that the definition of responsible does not incorporate enough criteria about compliance with the prevailing wage law?

MR. BALLANTYNE: No. I certainly do. I don't think there's enough criteria in there of what the lowest responsible bidder is, especially when you have a contractor in one area who's in blatant disregard for the law and having discrepancies on the job sites, and then going into another area where they can't use that same information within their awarding agency. So I think, yeah, it needs to be tightened up a little bit with the definition of the lowest responsible bidder within the prevailing wage laws.

I also think that there should be some legislative initiative to include the owners and the developers of prompt pay law to legislation, owners and developers being responsible for the proper taxes, tax payments from the contractors working on their projects. And what you see is a lot of blatant disregard for the certified payrolls that have to be submitted. What you'll see is, you'll see contractors putting down the wages that, of course, are prescribed to be paid, but never paying the individuals out in the field. And what they do is, they back into the number.

What they'll do is, they'll say that employees only worked four hours on a job site, five hours on a job site. We all know within a construction industry, you can't finish a project by working four or five hours a day. But what I would propose is that -- make the owners and developers responsible for the prompt and proper payment of the taxes in regards to the certified payroll and how much they're actually certifying that they're paying. Make sure that they're paying the proper taxes on those wages. That would at least help us be

able to monitor the job and make sure that the people are receiving the proper wages on those job sites.

Thank you so much for allowing me to testify here this morning.

ASSEMBLYMAN GEIST: Thank you both for your debuts before this Committee, and you're very much welcome to participate in the future proceedings.

Mark Longo, International Union of Operating Engineers, Local 825. (no response) We'll come back to him.

David Johnson, Director of Organizing, Laborers International Union. (no response)

Kent Weisert, Associated Builders and Contractors. (no response)

These are those that had declared their intent to the Office of Legislative Services.

John Ballantyne, Director of Organizing.

Roger Simonds.

ROGER SIMONDS: Yes, sir.

ASSEMBLYMAN GEIST: Good morning, good morning.

MR. SIMONDS: Good morning.

ASSEMBLYMAN GEIST: And you are?

MR. SIMONDS: I am Roger Simonds. I'm the Chapter Manager of the Northern New Jersey Chapter of the National Electrical Contractors Association. And I brought Eric Sivertsen, who is my associate with the same chapter, with me this morning.

I'm really here, Mr. Chairman, to let you know of our support for the prevailing wage laws in the state they are currently. I understand that you're

seeking brevity here in the comments, but I just wanted to go on record in indicating that we do support the prevailing wage laws as written. And since you are seeking brevity, that's my main purpose for being here this morning.

ASSEMBLYMAN GEIST: How can we make them better is also, obviously, a topic of this forum. So you're welcome to make recommendations, as others have as well.

Good morning.

ERIC SIVERTSEN: Good morning. I'm Eric Sivertsen. As Roger said, I'm his associate with the Northern New Jersey Chapter of NECA. I think many of the individuals who came before us this morning had some good ideas as to what might be done in order to increase the effectiveness of the prevailing wage law.

As Roger said, we are strong proponents, and our membership are strong proponents of this particular law. And I would just like to say that we personally would like to see the law including the school construction program, which the Assemblywoman has written legislation, and we strongly support that. And we would like to, again, agree with the individuals who feel that the enforcement component needs to be strengthened. We currently see a great deal of difficulty with contractors. Our contractors are complaining quite often about the same individuals who are constantly found to be in some sort of violation of prevailing wage laws and yet show up on public project after public project.

MR. SIMONDS: And the only other thing is that one of the other gentlemen spoke about increasing that threshold on prevailing wage work. We do not support increasing that threshold, sir. Those are our comments.

ASSEMBLYMAN GEIST: Thank you for your testimony.

MR. SIMONDS: Very good.

ASSEMBLYMAN GEIST: Before we conclude today, I'm going to ask the Office of Legislative Services to hand everyone in attendance my card. You can, subsequent to today, through the Chair, provide an E-mail, a fax, a letter supporting and supplementing the record today. Everyone is welcome to participate even if you are not desirous of testifying on this first of its kind Internet session of the Assembly Labor Committee.

John J. Connors, South Jersey Mechanical Contractors Association.
You have a cheering section in full force.

Good morning, John. Welcome to this Committee.

JOHN J. CONNORS: Thank you, Mr. Chairman.

ASSEMBLYMAN GEIST: Always a pleasure. Good to see you again.

MR. CONNORS: Thank you. Thank you members of the Committee.

The South Jersey Mechanical Contractors Association represents large and small contractors in the southern portion of the state. Just for the record, we are members of the South Jersey Chamber of Commerce and the fine Association of Business and Industry. One of the comments I just wanted to address was recently made this morning regarding the prevailing wage law, is the cost, the supposed cost benefits when you do not have prevailing wage laws.

Well, there was a recent article that came out just in April of 2001, a very timely article by *Cockshaw's*, The Construction Labor News and Opinion. It was a study done at the University of Utah, which is certainly not a union

area, but a 56-page study done by Dr. Peter Philips, who analyzed the prevailing wage laws issues and costs in the great plain states. And basically, he said, “Our comparison of new school construction in great plain states with and without prevailing wage laws found little difference in cost.” So it’s a very detailed study. It’s up to date. And also, the author of the article, Cockshaw, said that there is really no studies that really show there is any savings in the areas that do not have prevailing wage laws.

So we strongly support the prevailing wage laws. We think, as other speakers have said, some of these ideas that have been put forth would enhance them, the enforcement, and not raising the thresholds. All would be in the interest of the working men and women in this state.

Thank you very much.

ASSEMBLYMAN GEIST: Thank you.

If there are any others desirous of participating in the proceedings today, please declare your intent through OLS.

Leonard Katz, Assistant Commissioner, Department of Labor.

Good morning.

ASSISTANT COMMISSIONER LEONARD KATZ:

Good morning, Mr. Chairman, members of the Committee.

Mr. Chairman, you said you were in third grade in '63?

ASSEMBLYMAN GEIST: Yes.

ASSISTANT COMMISSIONER KATZ: Well, when you were in eighth grade, I started working for the Department of Labor as a prevailing rate examiner. So maybe I’m the guy who is at fault here.

But seriously, I have been at it for over 30-some years already, and it's a difficult law to enforce. And as you've heard already today, there are a number of reasons, and I probably know a few more that I'm embarrassed at times to discuss, and that's from my own internal operations.

ASSEMBLYMAN GEIST: We're looking forward to possibly working with you to enhance your capabilities.

ASSISTANT COMMISSIONER KATZ: Well, as I say, it's a tough job. Again, I started out as a prevailing rate examiner. And of all the jobs I've held in the 30 years in the Department of Labor, that was the toughest job. You go on the construction site, and you say I'm from this State and I'm here to help you. And you're dealing with, in the instances where we need to be, with contractors and employers who are willful violators. So they don't want you there.

As you've heard today, the public body often doesn't want you there. And sadly enough, the workers don't want you there when they're in collusion with the employer. It wouldn't be unusual to have workers agree to cheat and to certify with their employer that they are getting paid prevailing rates when they're not, especially when the contractor says to them, "If you work with me and lie, we'll be the low bidder, and we'll get the work, and I'll keep you working." And that sounds good to that employee at the time. Sooner or later, they'll have a falling out, and the employee will come to us and they'll tell us, "You know, I lied to your inspector when he was on the job. I wasn't really getting paid prevailing rates, and I want you to go out and get those wages for me now."

Even when that employee finally comes forward at that late date, he's not a very good witness, because he's already in some form attested to having been paid properly. He's represented by his former employer's high-priced attorneys as a disgruntled former employee, not a great witness.

We have now 24 inspectors. In my 30-some years, that's the most we've ever had. Twenty-four people dedicated solely to Prevailing Wage Act compliance. We have, as you've heard, a deputy attorney general dedicated solely to prosecuting cases at the Office of Administrative Law. When I say prosecuting cases, 99 percent of those cases to bring a contractor for debarment.

When a contractor knows--

ASSEMBLYMAN GEIST: Did you say one?

ASSISTANT COMMISSIONER KATZ: One deputy dedicated full time to nothing but Prevailing Wage Act compliance. There are, I would say, maybe five to six other deputy attorneys general assigned to the Department of Labor, but they have many varied responsibilities, most of those funded through Federal funding sources -- UI tax violators and that type of thing. So those deputies will assist our one. In certain instances, we have one that's dedicated strictly to Prevailing Wage Act compliance. That's the first time we've ever had that, and it was, I think, in good part because of the Public Works Contractor Registration Act and the funding that that brought to the Department that we were able to afford this deputy attorney general full time.

ASSEMBLYMAN GEIST: Please proceed. I'll have some questions for you before you conclude.

ASSISTANT COMMISSIONER KATZ: Sure.

He's one of the best deputies I've dealt with in all my years. He's not afraid to go into court and make a case. But making a case is a time-consuming process I've learned through him and through his dedication. He told me, most recently, one case had over 1000 documents that he had to prepare for evidence. I think now we probably have about a dozen or more cases with this deputy attorney general that are in various stages of being brought before the OAL. He was at the OAL last week on a specific case where we were in a hearing for debarment.

The debarment process, in and of itself, is difficult. You have OAL judges that I have come in my experience, I guess, not like any other judge in any other court, with a tremendous caseload looking to see if there's not opportunity for a settlement and pushing to settlement. We have, of course, the attorney for the contractor pushing for settlement. But when you're telling a contractor that you're going to debar him and you're going to keep him off the prevailing wage projects, public works projects, for three years, there's not much room for settlement.

We've even taken a position where the contractor is offered, though he doesn't owe a dime, to pay us tens of thousands of dollars in alleged, in his mind, back wages and all the concurrent fees and penalties and we said, sure, we'll take every one of those dollars so we can get those employees paid, but we're still proceeding with debarment. So it's tough to discuss settlement in those situations, nor do we want to, not when we've gone that far. When we've made the case and we've brought it to the OAL, the only settlement we'll accept is if the contractor walks away and gives up his right to work on public works for three years.

You've heard the concerns, mine also, as to the time it takes to get a case to debarment. Somebody up here mentioned six months. It wouldn't have been unusual in the past to take two years to get a case heard for debarment. It's getting better, as I said. The Commissioner is looking at and considering if we have the resources to make a representation to the Office of Administrative Law to allow us to pay for a judge just to hear these cases. He is in process of those negotiations.

ASSEMBLYMAN GEIST: An administrative law judge?

ASSISTANT COMMISSIONER KATZ: An administrative law judge.

ASSEMBLYMAN GEIST: How many administrative law judges do we have assigned?

ASSISTANT COMMISSIONER KATZ: I have no idea.

ASSEMBLYMAN GEIST: We're going to work with you to find out some of these answers. I appreciate your comments. Keep going.

ASSISTANT COMMISSIONER KATZ: One of the things -- I've made notes, as you've asked me to do, and of course, I would do in listening to the comments. With the new school construction program, the billions of dollars, we've brought together, I'd say, almost all the various State agencies that have any piece of this pie -- of course, the EDA, Treasury, the Attorney General's Office, the Office of the Inspector General, Department of Community Affairs, the Department of Education, and we sat down together to see, with one purpose, how can we ensure that prevailing wage rates are paid and that we get the right contractors on the school construction program.

ASSEMBLYMAN GEIST: Thank you.

ASSISTANT COMMISSIONER KATZ: And we've had a number of meetings on this, and we've rehashed everything you've heard here today. And one of the things that have come from that meeting-- And I have to correct myself; it's not just those State agencies. We brought in representatives from the contractors. We brought in representatives from the local school districts themselves, I was surprised to hear.

I've been going around the state, also, talking to groups that are interested in the school construction program, whether they're school administrators or business administrators or contractors. And I had always been, these last 30-some years, of the understanding that the schools and all the public bodies didn't care about prevailing wage. All they wanted was low bid. But I heard, as vocal as in some of the concerns you've heard today, I heard back from the school of business officials that they're just tired of dealing with the same habitual violators as we all are. They're frustrated themselves in the fact that, as you've heard, they can't use someone else's negative experience. They only have to rely on their own.

That's the first time I'd ever -- I understand that that's a fairly recent amendment to the local school bidding law.

ASSEMBLYMAN GEIST: It's one of the reasons why we're here today, by the way.

ASSISTANT COMMISSIONER KATZ: And I asked. And the other side of the coin, one of the contractor organizations said that when that legislation and that amendment was discussed, that there was some concern that a good contractor or a legitimate contractor in every respect, though he may have had a run-in with an architect or an engineer on a project, that sometimes

they get into confrontational situations. They were afraid that this good contractor would have this one negative experience that might have been nothing more than a personality conflict trace him through other projects and cause him to be deemed not the lowest responsible bidder when indeed he was.

But I think going from that situation to a situation where we've seen contractors, more recent than in my memory, removed from project after project, the same contractor, for nonperformance, that that's a heck of a lot different than a public body being able to use that negative experience and a negative experience where there might have been a personality conflict between the contractor's foreman and the engineer. But it seemed like there's room to move in that regard.

The other thing that you've heard is that the public bodies don't necessarily have a lot of responsibility under this Prevailing Wage Act. The Prevailing Wage Act requires the public bodies to ascertain from the Commissioner of Labor the prevailing rates for that job. And we issue about 800 wage determinations a month to public bodies. The law requires that those rates be incorporated into the construction contract. I think the only other provision in the Prevailing Wage Act that puts any weight on the public body is that before they make final payment, they get from the contractor a sworn statement attesting to any wages that that contractor may owe.

I don't think the contractor, the willful violator, is going to indeed make such an affirmative statement that he owes wages. And I don't see often where that provision of the Act is complied with. But I think those are the only two areas of major responsibility placed on the public body.

When I was out in the field, public bodies used to have a clerk who works on the job, which would help us significantly. Even though we have 24 investigators now issuing 800 wage determinations a month, you can get a sense of the number of projects that are subject to the Prevailing Wage Act. If a public body had, indeed, a clerk out on the works on a project, who doesn't have to be an architect or an engineer or a high-priced individual, someone who would count heads and say, "On this date, Contractor XYZ had 15 workers, and I also walked around the job and I saw those 15 workers performing carpentry work or I saw them laying asphalt," whatever it may be, that would help us. But I'm sure you would hear from the public bodies that it's tough enough for them to get their job done, yet afford to have someone to act as a clerk of the works.

We talked about or you heard about lowest responsible bidder. A public body, in my experience, is not going to deny a low bidder as being nonresponsible or irresponsible unless we, the Department of Labor, have debarred that contractor or some other agency has done something to enable that public body to deem that low bidder not responsible. And as a matter of fact--

ASSEMBLYMAN GEIST: Question, if I could interrupt you. Is that the law, or is that the interpretation of the law?

ASSISTANT COMMISSIONER KATZ: As to what--

ASSEMBLYMAN GEIST: That responsible is defined by being someone who has not yet reached the magnitude of being debarred. Is that the law, or is that the interpretation of the law?

ASSISTANT COMMISSIONER KATZ: I think it's the interpretation. The public body is afraid of the cost and the timeliness of going through that process of saying to a contractor and proving to the contractor you may be the lowest bidder, but you're not the most responsible. Because again, that contractor is going to get his attorney, and they're going to go to court. The public body needs to get that job done. And so it's easier in the short run, I would say, more cost effective, for the public body, at least in their mind, to not make the fight.

ASSEMBLYMAN GEIST: I'll have more questions for you. Thank you.

ASSISTANT COMMISSIONER KATZ: We talked-- Someone mentioned here about not simplifying, but deemed that maybe suspension -- because the Prevailing Wage Act does indeed provide for the Department of Labor to suspend a contractor, as opposed to debarment. But again--

ASSEMBLYMAN GEIST: Do you do it?

ASSISTANT COMMISSIONER KATZ: No. Because it's the same due process. In order to suspend a contractor, we'd be back at the OAL. He's afforded due process the same way he is debarment. And to give him his right to contest the suspension would take us through the same process as debarment.

ASSEMBLYMAN GEIST: I'll have more questions.

ASSISTANT COMMISSIONER KATZ: One thing that we've seen more recently, at least, again since my experiences when I was out in the field, is a trend toward broker-contractors. This is where we see a lot of violations. You have multimillion dollar jobs where a contractor is the general contractor,

the prime contractor, and maybe he has two employees of his own on this multimillion dollar project. He subcontracts everything out. And this is where we see not only prevailing wage problems, but we see performance problems also. I don't see how you could have a contractor awarded a multimillion dollar contract and only have a handful of his own employees on that project. They don't do any of the work with their own sources.

I think that was part of the reason that the attendees here pushed and supported the Public Works Contractor Registration Act, because what we were seeing was nobody on the construction project was an employee anymore. Everybody was an independent owner, operator, subcontractor, or self-proprietor. So, not only were wages probably not being paid, but taxes probably weren't being paid either. So we've said with this Public Works Contractor Registration Act that you identify yourself to us as a subcontractor, we don't care how far low on the tier you go, you better be registered with us and you better show us an employee ID number. If you have any employees, you have to carry workers' comp. Show us your UI tax number.

And to my surprise, we've registered, not to my surprise in the number, but we've registered over 5000 public works contractors to date. This is about a little over a year since that law was put in effect. We haven't had many instances of finding unregistered contractors on a project. So these workers who were misclassified as independent subcontractors are either putting up the \$300 registration fee, getting themselves their proper employee ID numbers, and getting registered, or they've gone back to being what they really were in the first place as employees.

I belong to -- represent the Commissioner in an organization that's called the National Association of Government Labor Officials. This is the nationwide organization of Commissioners of Labor from all around the country. One of topics at every one of our meetings is Prevailing Wage Act compliance, because most states have a prevailing wage law. Again, because I started in the Department enforcing this law, it's still dear to my heart. And every meeting I attend I ask every State rep there, what are you doing better than what I'm doing to enforce this law better?

My friends in Pennsylvania will be mad at me, but they contend that they have great compliance. And I asked how they do that, and they said they allow the employers to do self-audits. Yeah, I don't see how that works, but that's their claim to fame. Our neighbor a little further north, Connecticut, has a criminal sanction under their Prevailing Wage Act.

Even though I've been around, as long as I keep reminding us and myself, I can't remember when, but at sometime the Prevailing Wage Act had more than a disorderly persons offense. I forget when, but when the criminal codes were changed, probably 20-some years ago, they lowered it to a disorderly persons offense. And again, in the meetings we've been having with the other State agencies and myself going around the state and meeting with the contractors, I'm hearing from the contractors that they want to see some criminal penalties on this law. Maybe that's what it's going to take. Maybe it will take putting somebody in jail to set an example as to how serious this is.

Because the debarment-- I talked to you about the debarment and what a long and lengthy process it is because of due process. What you haven't heard yet, and I'm surprised, is that I'm concerned as to how valuable that due

process -- or that debarment is anyway. A number of the attendees here today would be able to tell you that after we go through that process and we debar a contractor, it's not unusual to see that same contractor debarred for three years. The law says, "And any firm that he has an interest in is also debarred." But yet, they know and I know that that contractor pops up somewhere else, because he puts the firm in his sister's name or his son's name who had not been previously listed, at least, as a responsible officer of that firm. They probably operated out of the same facility as they used to.

Though we debar the firm and the individual, the responsible corporate officer, that is a loophole for a firm that wants to continue to stay on public works and wants to continue to skirt the system to beat us in what I would consider our best sanction. So there's even a problem with the debarment once we go that far.

What else? I'll mention again that the frustrations that you've heard here and that are mine through all these years is when you're dealing with a willful violator. And sadly enough, there's just too many willful violators out there.

ASSEMBLYMAN GEIST: We're going to change that.

Let me ask you a couple of questions. By the way, I welcome my colleagues to do so also.

I don't know necessarily where to begin, because what you've brought to our attention is unfortunately confirmation of the inadequacies in the system. By the way, we did homework and we pulled off of your Web site what you are referencing as the prevailing wage rate frequently asked questions on your own Web site.

The suggestion is, reading verbatim, "Prevailing wage rates are generally set for each of the state's 21 counties." You have 24 inspectors statewide. Are they assigned by county? Is there 1 per county, if there are different rates per county?

ASSISTANT COMMISSIONER KATZ: It's almost basically one per county, but up in the northwest part of the state, Sussex, Warren, we might have one field rep that covers a couple counties up there and then concentrate a few more in Essex or Mercer, depending on where the work-- But they're spread out over the state.

ASSEMBLYMAN GEIST: Do you have more inspectors now than you did before you had the financial support coming from the Registration Act?

ASSISTANT COMMISSIONER KATZ: This is the most inspectors we've ever had in my 30-some years.

ASSEMBLYMAN GEIST: Are you utilizing all of the revenues for the Registration Act for enforcement? There's been some suggestion of diversion. I'm concerned about dedication. They're paying registration fees. They're doing so with an assumption that the law will be enhanced in its enforcement and its execution. Do we need as a Committee to worry about diversion?

ASSISTANT COMMISSIONER KATZ: My understanding is that the money from public works contractor registration -- all of those fees will be dedicated to administering the Public Works Contractor Registration Act and enhancing our Prevailing Wage Act in force with that. It's a dedicated fund now for us.

ASSEMBLYMAN GEIST: Can you provide to the Committee, through the Chair, an update on the implementation of the Registration Act and the utilization of the revenues for purposes of enforcement?

Due process -- with all due respect, I candidly can't believe his attorney, the reference that the Department has said, that you have the same due process standard for suspension as you do for debarment. I mean, to me, suspension is almost an automatic. Debarment is obviously a more significant imposition; therefore, a more significant due process standard should apply. I'd like you to give us an update as to on what basis there is the same due process for suspension as there is for debarment. I mean, to me, suspension should almost be a summary proceeding, if at all, requiring due process. So, when you say suspension has equality of due process as debarment, I candidly don't know of any legal authority for that standard.

ASSISTANT COMMISSIONER KATZ: Again, this was on the advice of our legal representation with the Attorney General's Office, but I'll--

ASSEMBLYMAN GEIST: We'll invite them to sit with you next time.

ASSISTANT COMMISSIONER KATZ: Good.

ASSEMBLYMAN GEIST: I really want to try to do this the right way.

The standards of responsibility -- today I heard in your testimony in the definition of responsible bidder, "There is no statutory establishment relative to compliance with the prevailing wage law as a criteria as to whether one is responsible or irresponsible."

ASSISTANT COMMISSIONER KATZ: That's my understanding, Mr. Chairman. We don't administer that law, but that's my understanding.

ASSEMBLYMAN GEIST: Do you notify the school districts of those on a debarment list prior to the bidding process?

ASSISTANT COMMISSIONER KATZ: Yes. Again, with those 800 wage determinations that we issue, we send a copy of the most current debarment list.

ASSEMBLYMAN GEIST: Is debarment an automatic disqualifier from participating in the school construction contracts?

ASSISTANT COMMISSIONER KATZ: Yes.

ASSEMBLYMAN GEIST: Are the districts aware of that?

ASSISTANT COMMISSIONER KATZ: The ones I've talked to, certainly.

ASSEMBLYMAN GEIST: You heard earlier reference to the Chairman's bill to increase the penalties for noncompliance with the prevailing wage. Is it the opinion of the executive branch, Department of Labor that we need to increase the monetary penalties?

ASSISTANT COMMISSIONER KATZ: Again, my concern with the penalties-- I mean, we right now could, probably, with what the statute provides for assessed penalty. I think it provides that per day. So, if we wanted to pump up the penalties, we could probably do it now. But it's a matter, you get to a certain point and you're hitting with penalties and then you're fighting with attorneys again and you're either at the OAL or in court or something. So, yeah, I think the penalties would be a deterrent, but again, it has to go hand in

hand that they're are going to be quickly administered that we're going to be able to collect those penalties, somehow, quickly. That's my concern.

ASSEMBLYMAN GEIST: I understand. The administrative law judges, do we have them throughout the state working to oversee compliance with the prevailing wage laws in all 21 counties?

ASSISTANT COMMISSIONER KATZ: OAL judges?

ASSEMBLYMAN GEIST: Administrative law judges.

ASSISTANT COMMISSIONER KATZ: My understanding is that there are only two areas or possibly three where OAL judges sit, certainly, here in Trenton. I think they have an office in Newark, and maybe they sit part time in Atlantic City.

ASSEMBLYMAN GEIST: So we have 21 counties with 21 different prevailing wage systems, and we only have one attorney general and maybe three judges.

ASSISTANT COMMISSIONER KATZ: I'm not saying how many judges. I told you where I think the judges sit. I have no idea of what the number of judges are.

ASSEMBLYMAN GEIST: Do we have any cases of criminal prosecution for noncompliance with the prevailing wage law?

ASSISTANT COMMISSIONER KATZ: No, not that I'm aware of.

ASSEMBLYMAN GEIST: Has there ever been an indictment for violations of prevailing wage law?

ASSISTANT COMMISSIONER KATZ: No, not that I'm aware of.

ASSEMBLYMAN GEIST: Is there a special prosecutor assigned to prevailing wage law?

ASSISTANT COMMISSIONER KATZ: The closest thing we have now is this Office of Inspector General in the Attorney General's Office, who is working with the EDA to ensure the "moral integrity" of contractors involved in the school construction program. The EDA has a unique opportunity under the school construction program. They're not obligated to low bid. It's cost and other factors. And I've been working with the EDA, and they've set up a point system to give points to contractors that have clean prevailing wage records and to take points away from contractors. So they're moving towards that. We'll have to see how effective that is.

ASSEMBLYMAN GEIST: If you, hopefully, can tell by my questions, they're not cross-examination, they're just an endeavor to learn through the record about how the Legislature can enhance the executive branch in overseeing enforcement.

We do have a process, by the way, if any of you sitting there want to comment further. If you want to testify for the first time, you can fill out a slip, and we'll declare your interest.

Do any of the members of the Committee have any other questions?

Vice-Chairman Thompson.

ASSEMBLYMAN THOMPSON: Yes, Mr. Chairman, I do have some questions for the witness. But first, in regard to one of your questions, you were raising questions about the ALJs conducting hearings. I'm not certain on this, but I suspect they are not assigned specifically to prevailing wage, thus

they conduct hearings for all the various departments related to violations or regulations and so on. So they may not have any specifically assigned for these types of hearings, as opposed to rotating among the judges and how many get assigned at any time.

My questions for you are related to some of the statistical information that we were handed out as you appeared there. First, it indicates registrations issued this fiscal year is 3353, last fiscal year 1343. Now, these are not the total number of contractors that are registered, but only the ones that were registered in each of these years, right?

ASSISTANT COMMISSIONER KATZ: Right. I think right now, again because the law went into effect last April. So we're just coming into the renewal period. But right now, there are approximately 5000 contractors that have current, valid registrations.

ASSEMBLYMAN THOMPSON: That's the sum total, roughly 5000?

ASSISTANT COMMISSIONER KATZ: Sum total, yes.

ASSEMBLYMAN THOMPSON: Claims filed, 1551, this fiscal year -- 1176, previous fiscal year. I'll just get back to 2000. The number of claims filed is very close to the number of registrations that you issued that year, but again that's not the total number of registries. That's only the ones issued that year. I guess -- okay, there's some increase in the number of claims filed this year versus the previous year.

ASSISTANT COMMISSIONER KATZ: If I may? The claims filed are claims for wages. So that could be -- you could have a number of employees filing claims against the same employer, against the same contractor.

ASSEMBLYMAN THOMPSON: Well, that goes into the next question. The number of violations, thus, for example, in FY 2000, 1176 claims filed, 1408 violations.

ASSISTANT COMMISSIONER KATZ: Right.

ASSEMBLYMAN THOMPSON: So, thus, it could be here that there was one claim filed and there was only one employee on one occasion involved or it could be the claim was filed and there were multiple employees related to the claim. Is that--

ASSISTANT COMMISSIONER KATZ: Yes. And also a number of violations do not necessarily relate specifically to prevailing wage violations. When we cite a contractor for failure to pay prevailing wages, we usually also cite him for-- As I was trying to tell the Chairman, we try to hit him with the book just up front to get their attention. So we'll cite them for failure to maintain proper records. If you didn't pay them properly, you didn't maintain the proper records. If you didn't pay them properly, you didn't pay them on time. For one, what you would consider one failure to pay the prevailing rate, we might hit that employer with about four or five different violations on that same failure.

ASSEMBLYMAN THOMPSON: And likewise, when you count the number of violations here, since I believe it should be considered a violation if you do it once in a week and then you do it in the second week, that's two violations. It could be the same employee and two and three times you--

ASSISTANT COMMISSIONER KATZ: Yes.

ASSEMBLYMAN THOMPSON: Okay. The final question relates to the number of -- where was it here? -- registrations revoked, five in FY 2001,

two in 2000; registrations suspended, one in FY 2001, zero in 2000. But we also have here listed contractors and subcontractors pursuant to Prevailing Wage Act who you can't award contracts to.

ASSISTANT COMMISSIONER KATZ: Right.

ASSEMBLYMAN THOMPSON: I assume all of these have been revoked or suspended, about 130, 150 here--

ASSISTANT COMMISSIONER KATZ: Right.

ASSEMBLYMAN THOMPSON: --which is nothing like the numbers I see there.

ASSISTANT COMMISSIONER KATZ: Right. That's a good point. The ones you see on that list, I'll be the first to admit, of how many hundreds you say, I'd say 95 percent of those were contractors who -- we found the violation, we sent the contractor an audit saying you owe X amount in back wages to your employees, you owe fees, you owe penalties. We'll afford you an opportunity to come in and discuss it with us, or you can just pay it. And those -- 95 percent of those listed are contractors who basically just walk away and say, "I'm not going to pay it. Come chase me." So one of the first things we do when they tell us that or when we realize that they're not responding to any of our communications is, we send them a debarment notice and list them.

And sadly enough, that list, as impressive as it is, it's for contractors who just simply walked away. For the ones who want to contest, for the ones who want to register and be able to work on public works, and then for us to take away that registration or to debar them at some other date for violations, they're the ones that will end up at the OAL, and they're going to take us through the system.

ASSEMBLYMAN THOMPSON: But you don't count these in the number of registrations revoked for suspension?

ASSISTANT COMMISSIONER KATZ: No. That's two different processes. Debarment is based strictly on your failure to pay prevailing wage. Suspension -- most of those suspensions, if not all of them under the Public Works Contractor Registration Act, were for contractors who employed unregistered subcontractors.

ASSEMBLYMAN THOMPSON: But these are still suspended for three years minimum. As a matter of fact, how do we tell whether they're revoked or suspended?

ASSISTANT COMMISSIONER KATZ: Right. The debarment list is for three years by statute, and the contractor registration, I think, is five years. I'm not even certain myself. I think it's five.

ASSEMBLYMAN THOMPSON: I'm still having difficulty understanding what's the difference between some of these.

ASSISTANT COMMISSIONER KATZ: Well, if you're debarred--

ASSEMBLYMAN THOMPSON: Right.

ASSISTANT COMMISSIONER KATZ: If you're debarred-- I guess, if you're debarred, you might as well not be registered. If you're debarred, you can't do any public works. If you're not registered, you could do certain public works, because the Registration Act does not apply to all public works. That might be it.

ASSEMBLYMAN THOMPSON: Well, the latest date -- the expiration date -- the latest date for any of these is 2003, which is suggesting that the maximum is three years on any of these, I believe.

It was suggested by Joe McNamara that perhaps it might be better related to -- he used the term suspension. I don't know whether revocation or debarment is an appropriate one, rather than having a fixed three years, but that is the penalty that you have more flexibility, that in some cases you might want to go for less and in some cases you might want to go for more. Would this perhaps assist in getting earlier resolution of some of these things and getting people off of the list or whatever?

ASSISTANT COMMISSIONER KATZ: It may, Mr. Vice-Chairman. As I mentioned earlier in my remarks, that when you're at the OAL and the judge is pushing you or trying to move you toward settlement and maybe both attorneys are also, and you're saying it's three years and that's it, maybe there's some way, then, to work out something.

ASSEMBLYMAN THOMPSON: If you settle for six months, if you go now, they might take that as opposed to--

ASSISTANT COMMISSIONER KATZ: Yeah. Maybe I've been a bureaucrat too long. I don't want to get into that, because then that's a whole nother-- What justifies a six-month debarment? What justifies a one-year debarment? It just, I think, would complicate the process also.

ASSEMBLYMAN THOMPSON: Thank you, Mr. Chairman.

ASSEMBLYMAN GEIST: Assemblywoman Friscia.

ASSEMBLYWOMAN FRISCIA: Thank you, Mr. Chairman.

In the beginning of your testimony, you said that you found out if someone wasn't paying prevailing wage by asking either the employer or the employees on the job. Have you no other method of finding this out?

ASSISTANT COMMISSIONER KATZ: Oh, no. That's the first step.

ASSEMBLYWOMAN FRISCIA: Okay.

ASSISTANT COMMISSIONER KATZ: We go to the job site. Hopefully, the job is still working, and we'll get a field representative out there. And again, we have the eyes and ears of the Foundation for Fair Contracting, the building trades, video -- have given us videos of projects where they said the numbers of workers on the job site -- that the video far outmatched what the certified payroll records showed, so here's some good evidence. So we like to go ourselves to the job site and do interviews and make observations.

The next step is, then we go to the public body and we ask for the certified payroll records that the contractors had to submit. And then the next step is to go to the contractor's office or his accountant's office or his lawyer's office or wherever he may wind us through our way to get all his payroll records. Under the wage and hour laws, we have access to all his records, not just his certified payrolls.

As you heard, some of the games that are played is that they'll show a worker on a school construction project that has to get done within a two-month time frame in the summer so the school opens on time, yet the payroll records show the worker working four hours a day. Well, we know that that's not right. We assume that we suspect it, so we go to the contractor's office and we say where else is John Doe working this week that you're only employing him four hours a day in this booming economy where you can't find workers? And we either get stonewalled and say, that's it, that's the only place he worked, prove otherwise, or if the contractor is not as willful or is not as wily as he may,

he may show us the other records where this individual worked, if he did indeed work anywhere else. Because what is assumed is, he worked eight hours that day on that project and forty hours that week on that project.

It's a matter of proofs, and as long as the employee is in that collusionary relationship that I told you about with the employer, it's tough to make the case, even with videos. Without the employee, it's a tough case to make.

ASSEMBLYWOMAN FRISCIA: Does Treasury ever get involved in these violations since there are not -- in some cases there wouldn't be proper payment of income taxes or FICA or social security?

ASSISTANT COMMISSIONER KATZ: Yes. We do a lot of referrals to Treasury. Sadly enough, Treasury is a one-way street. You can give them information, they won't give it back to you. So, evidently, they have laws that do not allow them to let us know what were the results of the referrals we made to them, but we're working with them more and more. We haven't seen it so much yet on public works, but we see it in construction, where vans of workers are coming to the job site, allegedly undocumented workers. So we're working more closely than we ever have with Treasury, because they have that tax hammer that we don't have. They have some authorities--

We worked with them again. It wasn't a public works project, but it was a massive construction project. The carpenter's union referred it to us, because this one employer from out of state was buying up more drywall than all the other contractors in the state, and they were concerned, you know, what kind of work this contractor was doing. He certainly wasn't calling the union hall for any help. We went out there, and we found hundreds of workers

coming up from Texas to work here in New Jersey, and every one of them was an independent subcontractor, no payroll records at all. So we brought Treasury in, and they confiscated trucks and they took moneys, again, things we don't have the authority to do, and got some better results that way. So we're working with them.

ASSEMBLYWOMAN FRISCIA: Good. Thank you.

ASSEMBLYMAN GEIST: The Chairman has legislation requiring notification to subcontractors that's on the Speaker's desk right now.

Assemblyman. Gary.

ASSEMBLYMAN GUEAR: One quick question with regard to debarment. Now, we're talking by statute that it's a three-year standard?

ASSISTANT COMMISSIONER KATZ: Yes.

ASSEMBLYMAN GUEAR: All right. It seems to me then, if we're talking about the possibility of raising any thresholds, that maybe we should raise this threshold and make three years a minimum. This way, if you go into court, the Department of Labor, as well as the administrative law judge, would have something to plea bargain. Basically, that's what you said earlier in your testimony, you do a little plea bargaining. So, if we have a little room for plea bargaining, it would seem to me that the contractor would be more willing to settle a case if he knows he's facing like, say, three to five years as a form of debarment. Does this make any sense to you? Does that sound feasible?

ASSISTANT COMMISSIONER KATZ: My understanding is a public works contractor, if you tell him you're putting him out or if he can't do public works for three years, unless he's going to play the other game that I told you about and somehow move the company to somebody he trusts and under

a different name, even three years isn't going to put him out of business. So he's not going to agree to anything. He's going to fight us the whole way, because we're basically-- To somebody who is contracting -- you build schools, you don't necessarily build homes or commercial properties. So, as you've said, as you've heard, the sense is it's the same contractors over and over again. So, if you tell him he can't do it for three years, you're, for all intents, putting him out of business, so he's going to fight you the whole way. He's not going to settle it.

ASSEMBLYMAN GUEAR: Okay.

ASSEMBLYMAN GEIST: Your testimony has been pretty enlightening about what we'd better do. I mean, we talk about being tough on crime. We'd better be tougher on prevailing wage enforcement.

ASSISTANT COMMISSIONER KATZ: If I may, Mr. Chairman--

ASSEMBLYMAN GEIST: I would like it if you could plan on another appearance with more, obviously, explanations, with companions from the Attorney General's Office and from the Administrative Office of the Courts, the people that you're working with now, this inspector general, etc., and we'll bring you all in and learn more about what's happening and what's not happening and all of that.

Go ahead. You had further comments.

ASSISTANT COMMISSIONER KATZ: I'd probably get myself in trouble. (laughter) Well, as I said--

ASSEMBLYMAN GEIST: I think you have a lot of friends out there that are interested in enhancing your capabilities.

ASSISTANT COMMISSIONER KATZ: Well, with my Jewish guilt, I don't know how they still remain my friends after-- As I said, I've been at this 30 years, and I feel guilty as hell that we haven't been more effective.

One of the things, again, they've seen it, is our people out in the field. I always tell my staff this whole thing-- We have more resources than we ever had. We have a deputy attorney general dedicated to us. We have the Commissioner's attention. But it starts with you. It starts with the guys out in the street and the job they do. And sadly enough, it's part of the system where there are low paid individuals. We have a high turnover.

As I said, when I used to be out in the field, on the weekends when I drove past a construction site, I used to break into a sweat. It's a tough job when you're out there. The contractor is intimidating you. He doesn't want you there. The employees who are the ones who are cheating the system just as well. They don't want you there. The accountant is going to shake you around. Even the public body doesn't want you there. It's a tough job, and maybe we have to look at getting ourselves some higher paid, higher educated field staff. I know that in my gut, that that's part of the problem.

Tom St. John from the Foundation for Fair Contracting -- it took him years to beat into my head that it didn't make any sense doing business the way we had done it when I was out in the field. You were the guy who, as I said, went to the construction site and took the abuse, interviewed the workers, tried to get some information. Then you went to the public body to get more information, and then the accountant's office, the contractor's office, and then you went somewhere with all those records and you did the audit. It's two different types of expertise. We finally realize that the guy out in the field or the

woman out in the field gathering that information does not have the same expertise to then sit there and do the audit. Because the contractors are going to come at you, even the ones that don't play the real willful games about cutting hours. They've got other ways to beat the system, as to fringe benefits that they give their employees.

I didn't have a field person who had the accounting ability to sit there and go through other records that the contractor contends bring him up to the prevailing rate because he's providing these employees with in-house fringe benefits that we, indeed, have to consider and in certain instances have to give credit for. So we finally, under Commissioner Boyd, have taken away some of our UI tax auditors and put them solely to do prevailing wage auditing. And I think that that is going to help us.

ASSEMBLYMAN GEIST: You've mentioned you're part of this national endeavor--

ASSISTANT COMMISSIONER KATZ: National Association of Government Labor Officials.

ASSEMBLYMAN GEIST: Do you know of the experience of other states where they have actually criminalized noncompliance with the prevailing wage law?

ASSISTANT COMMISSIONER KATZ: As I said, I think Connecticut has. I don't know what kind of successes they've had in prosecuting and putting someone in jail.

ASSEMBLYMAN GEIST: Maybe we should think about that. Can you get us some more information about what some of these other states are doing?

ASSISTANT COMMISSIONER KATZ: Sure.

ASSEMBLYMAN GEIST: Vice-Chairman Thompson.

ASSEMBLYMAN THOMPSON: Perhaps the most troubling part of what various witnesses have said here was the aspect whereby abusers, violators, continued to do this and continued to remain in business, because the length of time that it takes to get this to a hearing and get action taken, that can run two to three years, and meanwhile, they're continuing to get contracts and continuing to do business.

I think it was Kevin Jarvis who suggested that one way to handle this would be to immediately suspend them when the charges are brought. But the problem with that is, of course, that's saying you're guilty before you're tried. I think that the only way to handle this to bring it down to a reasonable period is, as has been suggested, to try to get more people -- deputy attorney generals, ALJs, or whatever -- involved, so that the time between the charges being brought and the time that the hearing is conducted and actually being taken is compressed considerably. Because I think it is, I agree, it's very bad for these people to continue getting work when they should be out of work. And on the other hand, I cannot see having them suspended, out of work for two or three years, when it may be the charges ultimately will not be as severe as brought. So I think that your suggestion to have future hearings with people from the AGs Office and others involved in this process to see what we can do to shorten it is probably the best approach to handling that.

ASSEMBLYMAN GEIST: Thank you.

I want to mention to my colleagues, while there's no direct analogy, this Committee was at the forefront of enhancing inspections investigations and

accountability on amusement park ride safety, with immediate suspensions, immediate revocations, and now we have the best amusement park ride safety record in the nation. So I think we can enhance your capability to be the best you can be, and I'm very open-minded toward criminalization and immediate suspensions, revocations, debarments, debarments of longer durations, etc. There should be a graduation and penalty scale that enhances deterrents.

So I think there's some enthusiasm here. Broadening the scope has not been much of a topic today. EDA moneys have been somewhat referenced. I'd like it if you could bring in an EDA voice, so we can get some clarity on the ambiguity, because obviously there's some disagreement about the administration of the current law. I see your chart, in terms of your prevailing wage statistical information or the prevailing wage penalties collected, has increased. I assume this is going to continue, the upward trend toward penalty collection and accountability.

Any other questions for the Assistant Commissioner? (no response)

You've done very well today, and I want to thank you and Commissioner Boyd.

ASSISTANT COMMISSIONER KATZ: Thank you.

ASSEMBLYMAN GEIST: We want to work with you to do better.

Any other questions? (no response)

Moving along on the witness list--

Thank you. You're welcome to stay.

Some have asked to participate, and we want to continue.

Richard Forman, Associated General Contractors.

Good morning.

RICHARD FORMAN: Good morning, Mr. Chairman.

ASSEMBLYMAN GEIST: Thank you for your patience.

MR. FORMAN: Thank you.

ASSEMBLYMAN GEIST: You may have strategically wanted to listen and learn before you commented. I'm glad you did that.

MR. FORMAN: Absolutely. Our Associated General Contractor members do the infrastructure work, and we don't have a problem with other contractors not paying on the DOT work. What we do want to concentrate more on is the local aid aspect, because the dollars from the DOT and the locals keep getting bigger. And one of the things we're worried about is, as there is going to be hundreds of millions of dollars, we want to make sure that the Contractor Registration Act will apply to all the work. We want to make sure that there is some incentive for the local people who are owners to take it seriously.

I think Joe McNamara was on the right track. If we could think of incentives to make it important for local public owners to have a good record, their work will improve, whether it's prompt or grant money to them, or something that would be seen as a real reason to watch their consulting engineers, if they're the ones responsible for keeping the records, making sure that there aren't too many layers of who has the payroll, who's checking it, and bringing some expertise into that. Because that's what happens with DOT and with the authorities and the people who really do enforce it and have, for example, DBE programs, where there is a second look, a lot of times, at payrolls. We find that's what it takes. It just can't be misunderstood, glossed over, or just seen as a burden. So we would suggest bringing in as many agencies

as we need to educate and talk about with the owners of why it's a good idea.

Also, we hope -- I'm not just sure how well the computers talk to each other within State departments, and if there is a way to coordinate better with insurance departments, now that the Labor Department has more information about the contractors, find out what kinds of information contractors are putting in for their workers' comp and how many workers they say they have, things like that. I mean, get as much coordination quickly. We feel that information is the most powerful thing to find out really who's doing what out there.

Our contractors want a level playing field. We're paying the prevailing wage--

ASSEMBLYMAN GEIST: Right.

MR. FORMAN: --and we want to keep playing it--

ASSEMBLYMAN GEIST: Right.

MR. FORMAN: --but we have to get the jobs, too.

ASSEMBLYMAN GEIST: Understood.

Thank you. Thank you for your testimony.

MR. FORMAN: Thank you.

ASSEMBLYMAN GEIST: Robert Roberti, Associated Builders and Contractors.

If there are any others who desire to participate, please let us know.

Good morning, Robert.

ROBERT V. ROBERTI: Good morning, Mr. Chairman.

ASSEMBLYMAN GEIST: You, too.

MR. ROBERTI: Let me just say that I was thrown into this first thing this morning, and the Associated Builders and Contractors attorney, Kent Weisert, couldn't make it this morning. I'm a rookie in off the bench, and I'm an average person.

So, first of all, I'd like to say, Mr. Chairman and Committee members, I'd like to thank you for having this open dialogue with labor, merit shop, and the business community. First of all, I want to go on record as saying I represent the Associated Builders and Contractors of Northern New Jersey. I would say there's a couple of thousand merit shop employees out working both in the public and private sector.

I want to make something very clear right off. There was something mentioned against the willful violations of the Prevailing Wage Act, and I stand with the rest of the people in this room when I say the Associated Builders and Contractors are against any willful violations of the Prevailing Wage Act. We are against anyone who is cheating the system in any way by not paying those wages that we're supposed to pay.

Also, I'd like to say that the Associated Builders and Contractors are not against prevailing wages, because a lot of our members make their living doing public projects, and it does even the playing field on a public project. However, I have to say that we do feel that the prevailing wage is not the true wage or not the realistic wage, and it's a little on the high side, but since that has been the wage that has been accepted and that's the wage that should be paid, we don't mind taking the extra money. We do feel it's at the expense of the taxpayers, though.

Okay. Item two, there was something mentioned about thresholds, whether to increase the threshold or not on prevailing wage. We do feel honestly that the threshold is rather low, \$2000. We would like to see it higher. You can hardly do anything for \$2000 anymore. I had a renovation of my kitchen. The contractor -- I didn't even ask if it was union or nonunion, but I assumed it was nonunion -- every time I turned around and I wanted an addition to what I proposed or what was proposed in the contract, it was an extra \$1000. So I'm pretty sure that we can hardly get anything done in the public sector for \$2000. That's kind of low as far as a threshold.

One of the other things that was mentioned about owners and developers responsible for policing the contractors -- that's a hard thing for them to do. In the Associated Builders and Contractors, we try to grab a hold of the members that are doing public work, and we try to educate them in the proper way to handle the paperwork. And you have to understand one thing: Some of these contractors are small contractors, father-and-son type of people, and they need to be educated as to the proper paperwork handling and so forth so they don't violate the law. But we are policing that and we're trying to educate the membership in that way.

The last thing that I wanted to mention is, there may be a perceived notion in the room that if you're not a union contractor, and you're a nonunion contractor, that you may be cheating the government or when you come in low, low, low on a project. I don't know. I've sat in some -- I don't see any familiar faces here -- but I've sat in some bid reading situations where I was bidding against union contractors, merit shop contractors, and other nonunion contractors, and I sat there and I scratched my head when I've seen the bid

come in real, real low. I don't know how they do it, but not all of those contractors that bid low, low just to get the job and make the money on the extras or cheat or do anything like that. Those contractors are not necessarily merit shop contractors, because we do not tolerate that type of bidding. We always go for the fair bid to get the job and to make money, and that's what we're in business for. That's what all of us are for.

Thank you so much for listening to me.

ASSEMBLYMAN GEIST: You're welcome.

Any others desirous of participating in what is now an afternoon session? (no response)

If any of you are interested in supplementing the record, you can do it through the Chair. I am going to be asking the Speaker to enable a continuation at the next Labor Committee meeting. Obviously, the genesis will be from today, the legislation. We will be trying to act faster than the Senate Judiciary Committee, for those of you who are following that.

I appreciate your testimony. If any of you want to comment on bills already introduced, through the Chair, with comments on the legislation -- it's already assigned to the Committee -- you're welcome to do so.

Many of you today have just participated and sat and listened and learned. You're always welcome to participate in this process. Thank you for participating in this historic Internet session of the Assembly Labor Committee. Have a great day. Thank you.

(HEARING CONCLUDED)