

## SENATE JUDICIARY COMMITTEE PUBLIC HEARING

SB #5 - Senator Young

Establishes additional grounds for disciplinary action against licensed contractors; staggers board members' terms; adds exemption; provides for license renewals. Executive estimate of cost: None.

January 30, 1969.

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The public hearing was called to order by Chairman Monroe at 2:25 p. m. on January 30, 1969.

Committee members present: Senator Monroe, Chairman  
 Senator Swobe  
 Senator Dodge  
 (All present) Senator Young  
 Senator Christensen  
 Senator Bunker  
 Senator Hug

Chairman Monroe called upon Senator Young who introduced Mr. Tom Cooke, Attorney for the State Contractors' Board.

Mr. Cooke: The first amendment, Section 1, 624.060, is to provide for the term of the members of the board to be for four years commencing on July 1 of each four year term. The members of the board holding office on July 1, 1969, shall select by lot three members whose terms shall expire on June 30, 1971 and four members whose terms expire in 1973, thus staggering the terms so there will not be a complete change of members at once.

Senator Dodge: Why not stagger the terms before that time?

Mr. Cooke: This is the way it came from the legislative council, a long term and a short term.

Chairman Monroe: This makes it more interesting as it gives an element of chance.

Senator Young: Section 3, subsection 2 was amended adding standards for financial responsibility of the contractor "An adjudication of bankruptcy or any other proceeding under the federal bankruptcy laws including [1] a composition, arrangement or reorganization proceeding; [2] the appointment of a receiver of the property of the applicant or contractor or any officer, director, associate or partner thereof under the laws of [3] making of an assignment for benefit of creditors". There is a very good reason for this amendment. The last part of the first section created during the last session was not approved by the Board of Contractors.

SENATE JUDICIARY COMMITTEE HEARING  
SB #5 - January 30, 1969

-2-

Mr. Cooke: On Section 2, page 2. This was amended so there would be no effect on any work involved with federal financing of State Hiway projects or on the University of Nevada contracts eligible for federal funds. This provision would eliminate the problem. The contractor would have to get a license after he was awarded the bid.

Senator Dodge: Where do you provide for the applicant to get a state license if he were awarded the job? Could they stop him from working until the license was issued? They should not put the state in a position that they would not qualify for federal funds.

Senator Young: This was not stated the way they wanted it. The provisions of subsection 1 did not apply to any bid on work to be performed on a project financed in whole or in part by the Federal Government.

Mr. Cooke: It was the intent but this certainly should be clarified.

Senator Dodge: An excellent suggestion. This should be amended.

Mr. Cooke: On line 2, page 2. The word void should be changed to voidable as it would make it more flexible.

Senator Christensen: Can the contractor get a license after he has been awarded the bid?

Mr. Cooke: Yes, but they would have to qualify in accordance with the law. A license could be issued after the bid was awarded. ~~J~~ of subsection 2 of 624.263 should be stricken as it is more specific in the amendment.

624.300, there are now provisions for refusing renewals of licenses that are set forth in the law. Under subsection 1 there is protection to the public especially in work where there is no bid required as it gives the client a chance to file technical questions beyond the jurisdiction of the courts and justifies the Board's position. The reason for the change set forth in the amendment to 624.300 is because these are set forth in Article 5 of the rules of the State Contractors' Board and they should be in the law.

Senator Monroe: Why are there so many sections?

Mr. Cooke: This was set up by Russ McDonald, legislative council.

Section 14, page 5, line 41, the shall should be

be changed to "may."

Section 15, page 6, "Each license issued under the provisions of this expires on January 31 of the year next following the date on which issued. A license may be renewed by filing a renewal application accompanied by the annual renewal fee as fixed by the board. The board prescribes regulations concerning license renewal." Before when the license expired the Board was limited and had no power or control of relicensing. A situation came up and was before the District Court in Reno and the judge ruled in favor, however all judges do not always agree so the legislature should provide this by law.

Chairman Monroe: Are there any questions?

Senator Dodge: If a license has been revoked can it be reinstated if financial responsibility is proven?

Mr. Cooke: A license will be reinstated if the contractor provides a bond, that is performance bond, for each contract job. Upon renewal of a license it is up to the decision of the Board if the proof of financial responsibility is waived. A proven responsible financially sound contractor may not be required to submit a financial statement for renewal.

Senator Dodge: I feel sections 6 thru 14 should be consolidated.

Chairman Monroe: Is there any one else that would like to be heard?

Mr. Fitch: I am Roy Fitch, Secretary of the Electrical Workers Union from Reno, Nevada. Who would enforce the electrical code if there were no city or county ordinance to apply?

Mr. Cooke: In that situation a workmanship complaint would be filed in the same method used at the present time, that is by a building inspector. Any electrical damage caused by poor workmanship would be a violation of the building code and safety standards.

Mr. Fitch: I am in favor of the amendments.

Mr. Oakes: Mr. Rowland Oakes, Secretary-Manager of the Association of General Contractors. I would like more time to study the bill, however I am in favor as long as the regulations are followed as set forth on page 3, section 2. On page 6 the new section, the language should be in accordance with the Administrative Procedure Act so there will be no conflict of interest. The staggered terms are good and we are in favor of this. I would like to

submit to the committee the recommendation that four members of the Board must be general contractors. I feel this should be written into the amendment.

As the bottom of page 1 and top of page 2 stating a bid is void if the contractor is not licensed should be changed to voidable. It might make it difficult for the Board to to explain void.

*Martin*  
Subsection 2 should be taken out. M. and Knudsen Contractors were not allowed to submit a bid as they were not licensed at that time, however it was a mistake. The language in the federal government bill states the only ones that are exempt are on federal hiway projects and that should be in this law.

Page 3, lines 6 thru 17. Personally I am not in favor of that language. It should be determined by the board and not the bonding company as they may not qualify for a bond. It is very difficult to get a license bond as well as a performance and payment bond. The board would have to determine if they could not qualify for a bond.

I would like time to submit the amendments to get approval.

*2*  
SENATOR Dodge: Section 2 on page 2 could come out. It might be an idea to consider the contractor to be pre-licensed when bidding and he would then have to submit a license if bid was awarded. Federal Hiway projects can be bid without a license but the bidder must show a license within ten days. If any work performed in the state involved in Federal aid should be limited to federal bids on highway projects. The university projects are not the same as federal or hiway projects.

Mr. Stoker: I agree the wording should be changed from void to voidable. Sub-section 2 page 3, I feel the whole section should come out as I feel the Board should decide who gets the licenses. If he is qualified he should be awarded the job and then he could get his license. The law is drawn to protect the small person.

Chairman Monroe: I think we should be in complete accordance with the federal act.

Senator Young: We do not want to be in violation.

What about requirements? Can you bid without a license on a Federal project? Do they have to get a license if the bid is accepted?

Mr. Cooke: Yes, they should be licensed in Nevada but the law should be clarified as to intent.

Senator Young: We will change the "void" to "voidable"; The previous law stopped on line 21 page 1. If we stopped there now there would be no confusion.

Senator Hug: The way things are now the contractor was better off under the old act.

Mr. Cooke: If the contractor has 100% government money and it is 100% government inspected he cannot bid without a state license when federal money is involved.

~~Line-21-page-1-is-no-trouble.--The-last-part-could~~

Senator Young: Line 21 page 1 is no trouble. The last part could be taken out and section 2 could come out also.

Senator Dodge: The reason it was changed was that it was unlawful to submit a bid without prior licensing and it restricted who might submit a bid for a contract.

Chairman Monroe: At the present time are they permitted a license after a successful bid?

Mr. Cooke: A bid on any federal project, a successful bidder can not get the contract until they get a license. They must be licensed.

Mr. Oakes: Legislation was submitted for this but it was not put in by Russ McDonald, and we would like to have it.

Mr. Fitch: In some contract cases the bidder must have a license before bidding and in others this is not a requirement. It seems to me this is discriminatory, and in violation of Federal requirements. I would like more information on this.

Mr. Frazzini: My name is Carson Frazzini, 1630 Van Ness Street, Reno, Nevada, I have been a contractor for thirty years and in the Reno area for twenty five years. The law is very unique and the only other state that concurs with this is North Dakota. With the financial responsibility section the Board could put you out of business if you owe a few over due bills. It is the only licensing Board in the United States to put a dollar limit on financial responsibility ability. I have checked with thirty seven state capitols and there are no others. SB 5

should tighten the financial responsibility section. This allows three percent of the Nevada Contractors to dominate the others in the State. At the time of renewal they could cancel your license and can demand a financial statement, list of past clients and practically your whole past history. They tell a small contractor the limit he can bid on and they have a limit on his license. The only other state to put a limit on finances is North Dakota. In California they do not have a financial responsibility section.

Regarding the terms, some time back they had staggered terms but they wanted a change so that they all expired together and now they want to change it back again.

They have terrific power thru the Contractor's Act. They have powers not even the President of the United States has. They limit small contractors so they can only do small contractors and can force a contractor to go broke. He can't make enough to make a decent living.

Chairman Monroe: Mr. Frazzini, are you implying the wealthy contractor does not have to comply the same as the small contractor?

Mr. Frazzini: Most of the larger contractors are not asked for a financial statement. They only ask a few. There is no protection for those few. There are some big ones that dominate all other contractors in the State. They are afraid to contest the laws and the licensing as they could be put out of business.

I hope the committee will defeat this bill as it is a bad law.

Senator Dodge: (to Mr. Frazzini) From your arguments you state that this is a closed shop.

The Contractor's licensing law was created in Nevada to provide public protection. There must also be protection for the contractors, large or small. The contractors turned to the legislature for rules to use as a guide. They did this because they were interested in public protection as well as for their own protection. I will defend any reaction to the statement that the Board runs a closed shop. It is a basic law and the Board is the administrator of the law.

(To Mr. Stoker) How many contractors are licensed in the State of Nevada?

Mr. Stoker: 4,491.

Senator Dodge: I can't believe they are dominated by 3%.

Mr. Stoker: The dollar limit is placed on their financial status as well as their ability. It is placed there to protect the public as well as the contractor. They all have to meet responsible financial requirements and may not be qualified to handle a large contracting job. They would go bankrupt if we let them accept a contract they couldn't handle and the public would be left holding the bag. The financial limit can be increased as the contractor proves himself.

Chairman Monroe: A charge was made that the large contractor dominates the industry. 85% of the contractors in the state are not the large contractors.

Mr. Frazzini: I am indicating the law is a bad one. I feel all members appointed by Governor Laxalt to the Contractor's Board have betrayed their appointment.

Mr. Cooke: I certainly defend the law. It is one of the finest of its kind in the United States. Nevada was the first State to adopt a licensing law regulating acts of the contractors to protect the public. It is to protect the public and to protect the Board of Contractor's as well as the contractor. The dollar limit of licensing is unique. Other States regard it as model legislation. The Board has contracted to act on evidence as set forth in the law. Rather than risk a challenge they come to the legislature to prepare the laws for them. By limiting the Contractor it keeps many of them from getting into financial problems.

Senator Dodge: (Directed to Mr. Cooke) Do you ever have any complaints that you are too lenient?

Mr. Cooke: We have more complaints that we are too lenient than the other way.

Mr. Frazzini: Why not give everyone the same dollar limit and charge them accordingly?

Mr. Solari: I am Al Solari, a member of the State Contractor's Board from Reno, Nevada. First, may I say that the statement that 3% of the Contractors dominate the Board is not true. As far as discriminating against any one contractor, this is not true. In the event of a complaint against a contractor the Board has to investigate so they can call for a financial statement at that time. There is no discrimination at all.

Mr. Fitch: If a Contractor that was not licensed wanted to bid on a job, who is to say the Contractor is financially responsible if it was a bid on a State job?

Mr. Cooke: A Surety Bond would have to be furnished by the Contractor.

Mr. Cuno: I am Ernest Cuno from Reno, Nevada. On page 2, section 2, I feel that if there were any changes in the wording it would open the door for FHA and VA insurance loans. Also the Federal National Mortgage Association. I agree with Mr. Oakes on the bonding. I would like to know how you would define legal excuse in Section 6.

Mr. Cooke: I would say this would be an act of God, a strike, or anything beyond their control.

Mr. Cuno: Who would be responsible for inspection of jobs done by various contractors to be sure their work met the codes and that the work was accomplished in a workmanlike manner?

Mr. Cooke: There are building inspectors, both city and county to inspect finished work and if it was found to be unsatisfactory we would certainly hear about it.

Chairman Monroe: Are there any others that would like to be heard?

If not, I am sure that Senator Young and Mr. Cooke can get together and work out amendments to take care of the changes.

The meeting was adjourned at 3:45 p. m.

Respectfully submitted,

JEANNE M. SMITH, Secretary

Approved: \_\_\_\_\_