

MEMBERS PRESENT: Mr. Nicholas

MEMBERS EXCUSED: Mr. Jeffrey

GUESTS: Ms. Joyce Devine, Washoe County, County Clerk  
Mr. Steve Tapogna, Local Govt. Purch. Comm.  
Mr. Sal Quilici, Nevada Dept. of Transportation  
Mr. Ed McGoldrick, Nev. Labor Commissioner

Mr. Nicholas called the meeting to order at 2:05 P.M. The subcommittee will discuss AB 94. Mr. Nicholas suggested that there would be another meeting of this type in about two weeks. He stated that those who did not get to testify or those who wished to testify again would have an opportunity to speak at the next subcommittee meeting. Written material would be accepted any time from now on until about a week after the next meeting.

Ms. Joyce Devine testified first. A copy of her testimony is attached to these minutes as EXHIBIT A.

Mr. Steve Tapogna was the next speaker: At the meeting that was previously held on AB 94 on behalf of the Nevada League of Cities and Local Government Purchasing Study Commission and the City of Reno, we had introduced some new language. It is the language that was proposed through the package submitted by the League of Cities and I would like to offer for the committee's evaluation that language and I will leave a copy of it. It is attached hereto as EXHIBIT B. In the definition, it reads "A public works means all new construction, reconstruction, replacement or additions, where the estimated cost to perform the contract exceeds \$5,000 on all public buildings, highways, etc. The wording here is in parity with that in NRS 332, the Local Government Purchasing Act and it reflects the formal bidding on it which we now operate under. Again I would like to reiterate my testimony to the Government Affairs Committee previously, I think our major problem lies in those areas of housekeeping and the word "repair". The Attorney General has stated that the words "repair" and "maintenance" are synonymous under the law and I believe that was opinion No. 171. The problems that we are incurring on a day to day basis might be the replacement of a broken window to window cleaning services. It is hard to imagine contracting out to have your windows cleaned in a small public building and paying an exorbitant fee when such services are available as a maintenance type item for far less, sometimes 60% and 70% less of what the posted labor rate would be. Other than that, I concur with those statements made by Joyce and would encourage the committee to look at this in great depth.

Mr. Nicholas: In the original hearing we began to get into numbers in terms of how many repair jobs in a particular area, dollar area, would be involved. Do you have any comment on that in reference to the amounts that are in AB 94 now and in terms of perhaps lesser amounts, such as \$2500.00?

Mr. Tapogna: The comments that were made to the committee were made by Mike Cool from the City of Las Vegas, who had done an in depth study on it. I would say that the City of Reno was processing around 4,000 contracts it would be from the one cent figure up to the \$5000.00 limit a year.

Mr. Nicholas: Do you have any breaking point within that \$5,000 that you calibrated, how about the \$2,500?

Mr. Tapogna: I don't have the stats with me, I would guess about 30% at \$2,500 or more. Anything \$2500.00 or more has to go out for a formal quotation pursuant to 332. The problem we face on the smaller jobs, and let's talk in a category of maybe \$2000.00 to \$3000.00, I do have an example here today with me. It's very hard for a small business or a minority contractor in some cases to post the required bonds and I realize that that is not the subject matter here today. And also to conform with those labor rates per se, I have no quarrel with that but in a lot of cases it is adding a large degree of additional costs to the local governments and therefore to the taxpayers. I would like to make one more comment. There was a point of concern brought up in the committee the other day about prime contractors and subcontractors. In the general contracting provisions, at least used by the City of Reno, the subcontractors are automatically tied to the primes and therefore are stipulated that they will pay their people and post bonds. One point that might have been overlooked the other day, it is also tied into law by the statute 338, Section 050. I am not sure if that was overlooked the other day but I thought I would bring it to your attention. There was also a comment made by the gentleman from transportation and he was concerned with the aggregate amount, and on behalf of Local Government Study Commission in the City of Reno, we have no arguments with that. The wording presented to you as in NRS 332 reads the "estimated aggregate amount." It does cover the entire scope of any project.

Mr. Nicholas: The NRS impacts includes 332, 338 and 339. Any other chapters that you are aware of that you feel an impact is felt here?

Mr. Tapogna: Not that I am aware of. We have introduced some other legislation which I am sure will follow, at least that was introduced through the league regarding Chapter 339 and the bonding limits. I will leave you a copy of the proposed changes to that Chapter if you would like. EXHIBIT C is attached hereto.

Mr. Quilici: Mr. Nicholas, my name is Sal Quilici, I am here before you today on behalf of the Nevada Department of Transportation. The department does not have any objection to the \$5000.00 limitation as proposed in AB 94, we do have some serious reservations as to the impact this particular bill would create on the department. As you are aware, the majority of our contracts are formally advertised and awarded to an awarding process, to the lowest responsible bidder. The projects that we are talking about in most cases exceed \$5000.00. We would like to amend the original bill to include on Line 15, paragraph 3, "the publicly owned works and property whose total project costs exceeds \$5000.00."

Mr. Nicholas: You were aware that there has been an amendment No. 40 294 which has changed the terminology and where you find at the end of paragraph 3 those words, "whose cost exceeds \$5000.00" in this amendment and the phrase "the estimated cost of which exceeds \$5000.00" has been put in line 10 after the two words "ending project." Were you aware of that?

Mr. Quilici: On the previous meeting on the 12th, I was familiar with the discussion but I did not get a formal amendment to that.

Mr. Nicholas: In the event that this particular amendment did apply, where would you possibly want the phrase, "total project cost" inserted in the above line?

Mr. Quilici: "Total project cost" would not necessarily have to be on Line 15 as long as the bill makes reference to the total cost of the contract. Another area we feel we would probably be impacted would be the word "repair". We can appreciate the problems that the purchasing people are experiencing in their minor contracts or informal negotiated contracts with small business firms. Nevertheless, we would like to avoid a situation where if in fact "repair" is to be eliminated and "repair" is synonymous with "maintenance" contracts we were concerned with. When we award contracts that are maintenance contracts or considered maintenance contracts for highway reconstruction in the millions of dollars, will in fact this type of contracting be effective by removal of the word "repair"?

Mr. Nicholas: Are you taking into consideration Steve's comment concerning the opinion of the AG's office in reference to the definition of the term?

Mr. Quilici: Correct. I do not believe that Section NRS 608 100 was mentioned and that would probably be influenced by this bill. The section in itself consists of wage and hour regulations and the payment and collection of wages. What our concern would be is if in fact these contracts are in the \$5000.00 or less category we would not be receiving certified payrolls. We would not have any monitoring process as to the payment to the employees. What requirements would we need in case of a wage complaint to properly monitor the complaint? Another area, if the word "repair" is to be ommitted and in effect it would affect our bidding process and our formal process, again, purchasing operates under a little different guidelines than we do. If we award a contract to the lowest responsible bidder would these prevailing wage rates not have to be paid if in fact a maintenance contract that we advertised would exempt or exclude signatory contractors from bidding on the project.

There being no further business, the meeting adjourned at 2:27 P.M.

Respectfully submitted,

*Robbie Alldis*

Robbie Alldis  
Assembly Attache

ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE

GUEST LIST

Please Print

Date 2-19-81

<u>PLEASE PRINT YOUR NAME</u>	<u>PLEASE PRINT REPRESENTING:</u>	<u>I WISH TO SPEAK</u>		
		<u>FOR</u>	<u>AGAINST</u>	<u>BILL NO.</u>
Joyce Devine	WASHOE COUNTY C. Clerk	✓		AB-94
STEVE TADOGNA	City of Reno / Local Govt. Park Commission	✓		AB-94
Sal Quilici	NDD Trans.			AB-94
Ed Moldreck	her Labor Commissioner			AB-94

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AB-94 (AS AMENDED)

IN REFLECTING UPON THE DISCUSSION WHICH TOOK PLACE DURING THE FEBRUARY 12TH HEARING BEFORE THE GOVERNMENT AFFAIRS COMMITTEE I FEEL THAT A GOOD DEAL OF CONFUSION EXISTS AMONG THE COMMITTEE MEMBERS AS TO THE PURPOSE AND INTENT OF THE PROPOSED REVISIONS BY THE LEGISLATIVE PURCHASING STUDY COMMITTEE.

THEREFORE, I BELIEVE A MORE IN DEPTH EXPLANATION IS WARRANTED WHICH SHOULD CLARIFY OUR POSITION AND ADDRESS THE SPECIFIC CONCERNS WHICH YOU HAVE EXPRESSED.

● IN ORDER TO DETERMINE THE SCOPE AND EXTENT OF THE PROBLEMS FACING LOCAL GOVERNMENTS AND THE ADVERSE FINANCIAL POSITION WHICH WE HAVE BEEN PLACED BY COMPLYING WITH THE EXISTING STATUTES IT IS NECESSARY TO ADDRESS THREE STATUTES, NRS 332, LOCAL GOVERNMENT PURCHASING ACT, NRS 338 AND 339 GOVERNING PUBLIC WORKS PROJECTS.

● NRS 332-

THE LOCAL GOVERNMENT PURCHASING ACT SETS FORTH CONTRACTUAL PROCEDURES TO BE FOLLOWED BY LOCAL GOVERNMENTS IN CONTRACTING FOR SERVICES, SUPPLIES AND EQUIPMENT IRREGARDLESS OF THE TYPE AND NATURE OF THE CONTRACT.

● SAID PRODECURES PROVIDE FOR:

● -CONTRACT AWARD OF LESS THAN \$2500.00 WITHOUT FORMAL ADVERTISING.

● -CONTRACT AWARD OF \$2500.00 TO \$4999.00 BY INFORMAL BIDS WHICH MUST BE SUBMITTED TO TWO OR MORE PERSONS CAPABLE OF PERFORMING THE CONTRACT IF AVAILABLE, AND REQUIRES THE MAINTENANCE OF PERMANENT RECORDS OF ALL REQUESTS FOR BIDS AND ALL BIDS RECEIVED.

- CONTRACTS IN AN ESTIMATED AGGREGATE AMOUNT OF \$5000.00 OR MORE MUST BE AWARDED AS A RESULT OF A FORMAL ADVERTISED BID AND IN COMPLIANCE WITH ALL REQUIREMENTS THEREOF.
  
- AS PREVIOUSLY STATED THESE PROCEDURES ARE APPLICABLE TO ALL CONTRACTS IRRESPECTIVE OF SUBJECT MATTER, WITH THE EXCEPTION OF THOSE ITEMS SPECIFICALLY EXEMPTED BY STATUTE.
  
- NRS 338 GOVERNING PUBLIC WORKS PROJECTS BY DEFINITION AS WRITTEN, WITHOUT THE BENEFIT OF REVISION THE TERM "PUBLIC WORK" READS:
  - "PUBLIC WORK" MEANS NEW CONSTRUCTION OF AND THE REPAIR AND RECONSTRUCTION WORK ON ALL PUBLIC BUILDINGS, PUBLIC HIGHWAYS, PUBLIC ROADS, PUBLIC STREETS AND ALLEYS, PUBLIC UTILITIES PAID FOR IN WHOLE OR IN PART BY PUBLIC FUNDS, PUBLICLY OWNED WATER MAINS AND SEWERS, PUBLIC PARKS AND PLAYGROUNDS, AND ALL OTHER PUBLICLY OWNED WORKS AND, PROPERTY".
  
- AS IT STANDS, WE NOW HAVE TWO STATUTES GOVERNING THE SAME FUNCTION UNDER DIFFERENT RULES AND REGULATIONS.
  
- BECAUSE OF THE A/G'S OPINION THAT REPAIR AND MAINTENANCE ARE SYNONYMOUS, OUTSIDE SERVICES REQUIRED TO MAINTAIN OUR FACILITIES IN THE AREAS OF HOUSEKEEPING, GENERAL MAINTENANCE AND MINOR REPAIRS ARE NO LONGER CONTRACTED FOR UNDER THE PROVISIONS OF NRS 332 LOCAL GOVERNMENT PURCHASING ACT, BUT RATHER UNDER NRS 338 PERTAINING TO PUBLIC WORKS PROJECTS.
  
- ALTHOUGH THERE ARE A NUMBER OF DIFFERENCES IN REQUIREMENTS BETWEEN THE TWO STATUTES WHICH ARE TIME CONSUMING AND COSTLY TO THE LOCAL GOVERNMENT THE PRIMARY FACTOR IN CONTENTION IS THAT ALL CONTRACTS NEGOTIATED REGARDLESS OF AMOUNT SHALL BE IN ACCORDANCE WITH THE PREVAILING WAGE DETERMINATION OF THE LABOR COMMISSIONER PLUS FRINGE BENEFITS.

●NRS 339 GOVERNING PUBLIC WORKS PROJECTS

REQUIRES PAYMENT AND PERFORMANCE BONDS IN AN AMOUNT OF NOT LESS THAN 50 PERCENT OF THE CONTRACT AMOUNT.

OBJECTIONS TO THE CONSTRAINTS OF THE PUBLIC WORKS STATUTES IN THE AREA OF HOUSEKEEPING, REPAIR AND MAINTENANCE ARE:

- 1) COMPLIANCE ELIMINATES THE COMPETITIVE ASPECTS OF CONTRACTING WHICH IS THE PRIMARY INTENT OF THE LOCAL GOVERNMENT PURCHASING ACT.
- 2) DEPRIVES APPROXIMATELY 75% OF THE SMALL LOCAL INDEPENDENT VENDORS OF THE OPPORTUNITY TO CONTRACT WITH STATE OR LOCAL GOVERNMENT AGENCIES.
- 3) ELIMINATES MINORITY CONTRACTORS TOTALLY.
- 4) FUNNELS ALL TAX DOLLARS EAR MARKED FOR OUTSIDE SERVICES TO A SMALL SPECIAL INTEREST GROUP WHICH CONSISTS OF THE MORE AFFLUENT VENDORS WITHIN THE STATE
- 5) INCREASES THE OPERATING COSTS OF STATE AND LOCAL GOVERNMENT WITHIN THE CATEGORIES SPECIFIED BY 50% TO 100% ON EACH CONTRACT AWARDED BECAUSE OF ADHERENCE TO THE POSTED LABOR WAGE SCALES.
- 6) TOTALLY DISREGARDS THE RIGHT TO WORK LAW OF THIS STATE AND PLACES THE CONTRACTING AUTHORITY IN A POSITION OF DISCRIMINATING AGAINST A NON-UNION LABOR FORCE WHICH HERETOFORE WE HAVE BEEN UNABLE TO DO.
- 7) IT IS ESTIMATED THAT IF ALL AGENCIES WERE COMPLYING FULLY TO THE REQUIREMENTS STATED THAT A MINIMUM OF \$1,000,000.00 MORE PER QUARTER WOULD BE SPENT TO ACQUIRE THE SAME SERVICES PREVIOUSLY CONTRACTED FOR UNDER NRS 332 FOR LESS



8) GENERALLY SPEAKING, SERVICES PROVIDED ARE PERFORMED BY NON-SKILLED LABORERS WHO ARE PAID MUCH LESS THAN THE SKILLED TRADESMAN ADDRESSED IN THE POSTED LABOR RATES.

IT IS MY UNDERSTANDING THAT EFFECTIVE JULY 1, 1981, THE POSTED NON-SKILLED LABORER CATEGORY WILL BE \$11.71/HOUR.

9) WE HAVE AND ARE CONTINUING TO LOSE WELL QUALIFIED VENDORS WHO SIMPLY CANNOT AND WILL NOT PAY THEIR EMPLOYEES AT THE RATES STIPULATED.

10) IN SOME INSTANCES WE HAVE BEEN TOTALLY UNABLE TO CONTRACT FOR SERVICES PREVIOUSLY AVAILABLE TO US

● WASHOE COUNTY TOTALLY SUPPORTS THE PROVISIONS OF NRS 338 AND 339 WITH REGARD TO BONA FIDE PUBLIC WORKS PROJECTS. HOWEVER, WE DO NOT FEEL THAT THE CATEGORIES IN QUESTION MEET THAT CRITERIA AND SHOULD THEREFORE BE REMOVED VIA THE REVISIONS SUBMITTED.

● BY DOING SO, YOU WILL NOT BE GRANTING THE CONTRACTING AUTHORITY ANY ADDITIONAL LATITUDE. YOU WOULD BE REMOVING THE CONFLICT BETWEEN STATUTES, RESTORING THE COMPETITIVENESS WHICH SHOULD EXIST, AND REDUCE OPERATING COSTS FOR BOTH STATE AND LOCAL GOVERNMENTS.

● THE END RESULT WOULD BE THAT THE STATUTES AS REVISED WOULD PROVIDE ADEQUATE CONSTRAINTS AND SAFEGUARDS AGAINST VIOLATIONS FOR ALL CONTRACTS IRRESPECTIVE OF TYPE AND NATURE.

●I STRONGLY URGE YOUR THOUGHTFUL CONSIDERATION OF THE FACTS PRESENTED FOR THE IMPACT IS FAR GREATER THAN EVEN THOSE OF US WORKING WITH IT ON A DAILY BASIS EVER IMAGINED.

●AT A TIME WHEN THERE IS SO MUCH CRITICISM OF GOVERNMENT SPENDING I DO NOT BELIEVE THAT WE CAN CONTINUE ON THIS COURSE WITHOUT A "HUMAN OUTCRY" FROM THE BUSINESS COMMUNITY AND TAXPAYERS.

The legislation under consideration is A.B. 94 regarding Public Works, and has been proposed as a result of the literal interpretation of NRS 338.010, Paragraph 3, which defines Public Work.

We find the basic problem within the definition of "Public Work" as it currently reads is that "Public Work" is defined as new construction of and the repair and reconstruction work on all public buildings. Our problem here lies with the word "repair".

The Attorney General's opinion (#171) in part states that "'repair and maintenance' are synonymous under the law" and therefore all publicly funded projects, no matter how small and insignificant, are subject to the public works requirements as stated in this statute.

The literal interpretation of this section states that all general day to day maintenance done on any public building or piece of property by any outside labor is defined as a "Public Work". An example of this might be the replacement of a broken window, the repair of a door lock, the replacement of carpeting, window cleaning services, or possibly even the replacement of a simple light bulb.

The requirements state that (for even the smallest of public works) for each project we (all government agencies) must include in the selected vendor's contract document: an arbitration clause; a documented statement of fair employment practices; a forfeiture clause; and a statement in express terms of the hourly and daily rates as determined by the State of Nevada Labor Commissioner. Also, the vendor is required to maintain wage records which must be kept available for the contracting agencies audit.

I'm sure that you can see the ramifications of this interpretation as applied to small day to day maintenance, repair, and housekeeping type projects done by any local government agency. Today, if the City of Reno wishes to have a lock on a door repaired, a \$3 to \$7 dollar project, the Purchasing Division will have to issue a contract, post wage scales, and include the clauses I mentioned. The internal cost in time and paperwork is exorbitant. Further, many small businesses within the community cannot afford and do not have the resources available to keep the lengthy and time consuming records required.

The end result in applying the literal interpretation of the law may be the loss of many vendors who now perform day to day maintenance and repair when local government crews are not available.

It is our intent, with this legislation, that the definition of "Public Work" be brought into parity with the formal bidding limits (Chapter 332, the Local Government Purchasing Act) and further, as you will see in following legislation, the bonding limit requirement relating to public works (NRS 339).

The subsequent outcome of this legislation, if passed, will literally redefine the term "Public Work" and place the requirements imposed upon such public work at a level at which all, both local government and independent business men, can be comfortable and able to comply.

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Subject: Introduction of Proposed Changes to  
N.R.S. 338 AND N.R.S. 339

As a result of joint meeting, held between the Southern and Northern delegations of the Nevada Local Government Purchasing Study Commission on September 10, 1980 the following shall reflect our desired changes which we propose be made to N.R.S. 338 and 339 in hopes of clarifying the literal interpretation of those particular statutes.

Proposed Changes to N.R.S. 338

Item 3 of Section 338.010 entitled "Definitions" shall be deleted and in lieu thereof insert the following:

3. "Public Work" means all new construction, reconstruction, replacement or additions, where the estimated cost to perform the contract exceeds \$5,000 on all public buildings, public highways, public roads, public streets and alleys, public utilities paid for in whole or in part by public funds, publicly owned water mains and sewers, public parks and playgrounds and all other public works and property.

Proposed Changes to N.R.S. 339

In Section 339.025 entitled "Performance and Payment Bonds: Amount; conditions; filing with contracting body" the phrase ["\$2,000 for the construction, alteration or repair of] shall be deleted and replaced with:

1. Before any contract, except one subject to the provisions of chapter 408 of NRS, exceeding \$5,000 for the construction or reconstruction of or the replacement or addition to any public building or other public work or public improvement of any contracting body is awarded to any contractor, he shall furnish to the contracting body the following bonds, which shall become binding upon the award of the contract to such contractor:

An Item 4 shall be added to this section which reads as follows:

4. Nothing in this section prohibits a contracting body from requiring bonds.

We, the Local Government Purchasing Study Commission, respectfully request your full support and any assistance which you may lend with regard to these clarifications.

The subject legislation will be introduced as a unified package via the Nevada League of Cities during the 1981 legislature.