

MEMBERS PRESENT: Mr. Nicholas
Mr. Jeffrey

MEMBERS ABSENT: None

GUESTS PRESENT: Joyce Devine, County Clerk, Washoe County
Steve Tapogna, City of Reno, Local Govt. Pur. Comm.
Ed Park, City of Las Vegas
Mike Cool, City of Las Vegas
Ed Mc Goldrick, Labor Commissioner
Glenn Taylor, Labor Commission
Sal Quilici, Nevada Department of Transportation

Mr. Nicholas called the meeting to order at 1:23 P.M.

Mr. Nicholas stated the purpose of this meeting was to take additional testimony on AB 94.

Mr. Jeffrey indicated that there was another bill that was introduced that was apparently the bill that the league was after to start with, AB 284. Although, technically we are not authorized to get into that bill, I think it would be helpful if we would deal with both of them at the same time.

Mr. Nicholas stated that apparently AB 94 is contained in the first part of AB 284.

Mr. Steve Tapogna, Purchasing Manager with the City of Reno, representing today, the City of Reno and Local Government Purchasing Committee of the State of Nevada, Northern Section, as well as League of Cities was the first speaker. There was some discussion as to the word "repair" as it reads currently. A committee of the Local Government Study Commission of the north did provide both of you with a copy of some suggested exceptions to the statute as it currently reads with no re-write to the definition of "public works." The document which I have just given you, again amends our exceptions by amending exception No. A on the correspondence dated February 25. Those exceptions which we feel will be equitable to all concerned would then read, "Exceptions to the provision of the statute upon completion of public work. Item No. A, contracts which by their nature are directly related to the day to day maintenance and operating services excluding construction related work. EXHIBIT A Item No. B, Emergency contracts as defined in the Local Government Purchasing Act, Section 332.055. Item No. C, Contracts awarded under the exceptions of Subsections A and B must be in compliance with the provisions of NRS 332 or 333 as applicable." Those for your information, are the Local Government Purchasing Act and the State Act. "Exception D, nothing in this section shall pertain to new construction, re-construction or additions to publically owned land, buildings, parks and playgrounds."

Mr. Nicholas asked Mr. Tapogna when he mentioned the Number 1 for contracts, if that would be 1 or A in your exceptions.

Mr. Tapogna answered that it should probably read, "A. Contract which by its nature is directly related to day to day maintenance." Mr. Tapogna stated that he would like to place in the record some correspondence received by the City of Sparks, from our Honorable Governor List. EXHIBIT B

Mr. Tapogna stated that he would like to make some comments that Mr. Nicholas and Mr. Jeffrey had referred to. The first section on AB 284 is the original request as presented through the League of Cities for revision to 338. It is also the original request through the League of Cities for the revisions to 339. Mr. Tapogna stated that if AB 94 is passed when the hearing on AB 284 is made, we could possibly just strike the first section pertaining to 338. I believe I had previously provided you the original proposals as submitted through the League as subsequently entered under AB 284. EXHIBIT C

Mr. Jeffrey: The problem the committee had and the problems that I had too, was the elimination of the term "repair" by definition. If we do it by definition then we exclude any contractor receiving any amount of money in the "repair" area and I think that this language does that also. I don't think it would if we eliminated the last four words "excluding construction-related work." I think contracts which by nature are directly related to the day to day maintenance and operating services.

Mr. Tapogna stated that would be acceptable.

Mr. Jeffrey said that if we eliminated the last four words there wouldn't be any doubt then that the projects over whatever dollar amount we come to would be exempt.

Mr. Tapogna said that would be acceptable. He pointed out that Section C to the exceptions will confine the local governments to those bidding requirements as specified therein, for it affects not only local governments but also the state.

Mr. Jeffrey said that in B, emergency contracts, as defined in the Local Government Purchasing Act, I don't have any problem with that, local government certainly should have the latitude to do whatever they have to, to protect their citizens and naturally you shouldn't have to go out and bid if there is a broken water main or something along those lines. I think in this section if the emergency work exceed the dollar amount then the reported requirement should still be in effect.

Mr. Tapogna stated that by law if we have an emergency contract and we act on it then we, too, have to take it back to our governing body with full explanation after the fact.

Mr. Jeffrey indicated that is under 332 and 333. He just wanted to be sure that the other provision in 338 is in effect.

Mr. Tapogna said that would be acceptable because if it is an actual public work, we would have to comply.

The next speaker was Mr. Ed Park, Chief of Purchasing and Contracts for the City of Las Vegas, Nevada and also a representative of the Southern Group of the Purchasing Study Commission. I am here to endorse 100% the remarks of Steve. We would have no problem with the elimination of excluding construction related work. I believe we put that in there to make it very definitive that what we were trying to do is place maintenance aside from construction. We have no problems with reporting the emergencies as required under NRS 332.

Mr. Jeffrey said that, he assumed, that somewhere in here we are going to arrive at a dollar amount. If the emergency contract exceeds that dollar amount, where other contracts would be covered by the reporting requirements to the Labor Commissioner then those emergency contracts should be covered under that same provision.

The next speaker was Mr. Glenn Taylor, representing the Nevada State Labor Commissioner's Office. Mr. Taylor stated that they had no problem with the bill except in the area on Line 15 which covers the actual threshold which currently reads in AB 94, "whose cost exceed \$5000.00." We would like to amend the amount of \$5000.00 to be at least a minimum of \$2000.00. We believe that would insure that just the prime contractor's themselves would not be the only individuals which would be responsible for insuring prevailing wage rates on various public work projects. We feel that if the amount, as written here, whose cost exceeds \$5000.00 is amended as read, then in turn we believe that \$5000.00 would eliminate our jurisdiction in overseeing many of the subcontractors which are involved in those types of projects, in which they are subs to a prime contractor and the amount of their particular work or bid is less than \$5000.00. For example, in some of the projects, we found that on the average violations were those of individual subcontractors who throughout the course of their particular work on a project have failed to pay their individual employees the prevailing wage rates. Generally, those contracts have been anywhere between the \$5000.00 and \$10,000, but we have found other jobs in which the individual contractors have violated our state statute NRS 338 and they have actually been between \$2500.00 and \$5000.00. We would like to see the current bill amended on Line 15 to at least a minimum of \$2000.00 instead of \$5000.00

Mr. Jeffrey stated that this is the problem we have had with this bill because, really what we are trying to do is to cover all the bases with a piece of legislation that is intended to do one thing and interpreted very broadly. I can understand your concern with the dollar amount when we are talking about a construction project. When you get into other areas, then \$5000.00, depending on the nature of the contract, can be funded if it's primarily for labor. I did ask Mr. Mc Goldrick to bring the information over on the Davis-Beacon Act. I don't know if this has been amended or not. This was published in 1977 and I don't know if there was a later edition or not. In 1977, the covered amount of the federal contractor was \$2000.00. It seems to me that with the exception that we are excluding by statute day to day operation which I think covers such things as custodial services, window washing contracts for the city of Las Vegas that far exceed \$5000.00, those things should not be covered by this act. I think with these exclusions that provide a fairly broad blanket exemption in the act, I think even the \$2000.00 limitation would cover the small repair projects and they would be excluded from the bidding process and the reporting process.

Mr. Tapogna stated that the amendment which we had provided you left the definition of public works as it was written and it excluded any dollar limit request. It was to leave the statute as written in its present form adding only those exceptions, and thereby dropping that dollar limit.

Mr. Jeffrey felt that wouldn't completely solve the problem. If you agree that we exclude construction or related work from the definitions, that puts "repair" back in. If we put repair back in, then I think you are going to need a dollar amount. I think you are going to need some kind of dollar limitation. It is going to take a combination of both of the exceptions.

Mr. Tapogna asked if Mr. Jeffrey would suggest the \$2000.00 limit.

Mr. Jeffrey answered that it was kind of open to suggestion, the testimony that we have had so far for the intent of the bill the \$5000.00 doesn't seem to be a problem. It seems to be a \$2000.00 problem.

Mr. Tapogna stated that he would like to offer several comments in that case, when the \$5000.00 would bring it into parody with the Local Government Purchasing Act. The Local Government Act does stipulate that it is a total aggregate amount of the contract. I believe that the Department of Transportation was concerned about this previously. It would be covered under 332. It's also specified within Chapter 338 of the Public Works Act that all subs are tied to the prime and must be paid the going wage.

Mr. Jeffrey said that the problem I think you have here in Chapter 338, 332 and 333, is kind of a apple, orange thing. I was involved back when 332 and 333 were changed and I supported those changes. The problem we have, and maybe Mr. Taylor would like to comment on this, I understand the problem the highway has when you have federal funding involved with the highways. I think we also may have the same kind of problems in Parks and Recreation. We spent a lot of federal dollars on a matching basis. \$5000.00 in this case might be quite a bit.

Mr. Tapogna said that any time there is any federal money involved, they have to comply with the federal rules and regulations.

Mr. Jeffrey asked if it wouldn't be easier to make them all the same.

Mr. Tapogna replied it's possible.

Mr. Jeffrey stated that if the limitation is \$2000.00 on the federal level for the same act, it seems to me that it would make more sense to bring it in line with the federal act than it would be to try to be in compliance with an act that was designed basically for government purchases.

Mr. Tapogna said that he had a problem relating to the \$2000.00 because he did not know the exact guidelines set down by the Feds with regards to that \$2000.00. He was under the impression that there was some other set asides or other exceptions to that.

Mr. Jeffrey said that there are other exceptions. We were talking about dollar amounts, that is what my concern was, what the dollar limitations were. The best information I have is \$2000.00.

Mr. Nicholas asked if there were any other thoughts on this matter.

Mr. Ed Park stated that there are a great majority of set asides especially at Nellis Air Force Base where they have small business set asides up to \$10,000 where Davis-Beacon is waived, payment performance bonds are waived. They just give the contract to a small business set aside if you can qualify. We are in direct competition for that labor force with Nellis AFB and it is becoming extremely difficult for us in our area to obtain that necessary labor when they go to Nellis AFB and not have to turn dime one for payment and performance bond or worry about reporting requirements under Davis-Beacon for a \$10,000 contract. They had a small business set aside, I believe if I recall correctly, of over 3½ million dollars to small businesses.

Mr. Jeffrey commented that again you are comparing apples and oranges. Working on federal projects under the Davis-Beacon Act, there are a lot of differences between the enforcement of that act and the enforcement of the little leagues. We have to go to reporting requirements because we don't have the staff of the labor commissioners office.

Mr. Park stated that we received a letter from the State Labor Commissioner in 1978 which indicated that it is a requirement that any contract involving labor be reported to the Labor Commissioner's Office in writing, with the name of the contractor, their address, the title of the contract and the dollar amount. We do handle upwards of 150 to 200 of these contracts every year and it is becoming somewhat of an administrative burden to keep track of them.

Mr. Phil Cathcart, representing the City of North Las Vegas, also a member of the Southern Nevada Local Government Purchasing Act Committee spoke next. I think we have all agreed on the makeup of this bill. It would make it easier as far as the reporting goes if we set a limit say of \$2000.00, that is standard with government. It would also cut down all the reporting for everything under \$2000.00. The way the law is now, it should be reported no matter what the amount is. By setting the \$2000.00 limit it would cut down tremendously on the work load of reporting all these small contracts.

Mr. Etcheverry, Executive Director of the Nevada League of Cities stated that he concurred with the purchasing personnel that testified here today. He indicated that the purchasing people have put a lot of effort into trying to make this statute presentable and workable and that they were speaking on the position of the Nevada League of Cities.

Mr. Sal Quilici, representing the Nevada Department of Transportation, stated that he would like to re-confirm his position on this bill. His main concern was basically in two areas. He asked if the word "repair" was still part of AB 94 or has it been deleted.

Mr. Jeffrey stated for all practical purposes, one way or another, the word "repair" would still be in there.

Mr. Quilici stated that in the bill AB 284 it has the word "repair" omitted from it.

Mr. Jeffrey said that as far as the first pages of AB 284 and AB 94, he thought basically what we said here today we will come out with that revision.

Mr. Quilici said that the second area they would like to address would possibly clarify the intent of this amendment as he had earlier testified on under Paragraph 3 under Section I, Line 15. He stated that he would like to add to that particular line, "whose total project cost exceeds \$5000.00 or whatever amount you so desire to put into that particular area to simply eliminate the possibility of misinterpretation and having to be involved with a subcontract of less than \$5000.00 and the subcontractor indicating that he would be exempt from any payroll requirements, certified payrolls and this type of documentation and the minimum prevailing wage rate.

Mr. Nicholas: Sal, if you will recall the first amendment to this taking that line out, I will say again we are on Page 1, Line 15, and have inserted it on Line 10, I believe.

Mr. Quilici said that in further evaluating this, we felt it was probably more appropriate on Line 15. It would be the total project cost.

Mr. Nicholas said we had talked in terms of under \$5000.00 being 6%, if we had the \$2000.00 limit what kind of proportion are we talking about for total business.

Mr. Quilici answered that on our contracts, primarily, approximately 5% to 10% of the subcontracts in a range from \$1000.00 to \$5000.00. In review of last year's work it came up closer to 10 than it was to 5 the number of subcontracts on our projects that were below \$5000.00.

Mr. Nicholas: The percentage we are talking about as far as \$5000.00 is concerned, is that the 6%?

Mr. Quilici stated that of the \$12 million spent in fiscal 79-80 budget, 6% was cut on projects that were less than \$5000.00.

Mr. Nicholas: When you get down to the \$2000.00 figure is what I am working on at this point, what kind of percentage are we talking about?

Mr. Quilici thought that from our agency that would be reduced from the 8% or 9% that we presently have, it would be closer to maybe 3% or 4% of the projects that would have subcontracts in that range. Even lower than that, probably 1%, because most of our jobs that include labor and the subcontracts and materials does not take much more to utilize \$2000.00. I don't think we have had in the last couple of years, that I am aware of, a single contract below \$5000.00.

Mr. Jeffrey stated from the testimony from the City of Las Vegas they said that their jobs that were under \$5000.00, averaged approximately \$1500.00.

Mr. Quilici stated that as a suggestion, he would like to bring up the fact from his past experience in monitoring payrolls, and contractors and subcontractors, possibly the relief that these entities are seeking as in the area of also reporting and documenting of these reports which is time consuming and it takes a number of man hours to accomplish this process. It would be incumbent on a contractor to maintain his records on file in case of a wage complaint. Only through proper documentation can we, as contract compliance officers, monitor the complaint to the satisfaction of the employees to see whether in fact the contractor was paying the prevailing wage rate, the hours worked, etc.

Mr. Jeffrey: I think we would be covered by that, I think the reports should be eliminated for amounts under \$2000.00 and in the cases where we are talking about the exceptions.

Mr. Nicholas asked that if we then go for a \$2000.00 figure, eliminate the reporting under \$2000.00, utilize Steve's amendments, do we have a consensus here of the people in this room that this would be a direction that would be acceptable?

Mr. Jeffrey stated that he thought the \$2000.00 still belongs in the definition of "public work".

Mr. Nicholas said that he would like to ask Steve for his thinking insofar as the insertion point and the NRS of his amendment.

Mr. Taponngna said that, as I understand it, we are talking about setting a \$2000.00 threshold within the definition of public works leaving the word "repair" in that definition and then by exception taking out maintenance and operating services, emergency contracts, and tying those portions or exceptions back into the Local Government Act and State Act.

Mr. Jeffrey said he thinks the only thing we need to add in there is that you will comply with the provisions of 338.

Mr. Taponngna: The only place where you would have a problem would be relating to 339 because of the bonding thing.

Mr. Nicholas stated that what we are intending to do is to go ahead basically with AB 94 taking care of the changes we are talking about here, as far as the other bill is concerned, delete all the references that are duplicatory - AB 284 would simply stay in tack dealing only with 339.025.

Mr. Taponngna said that there are several instances in 332, exceptions to competitive bidding, that should be placed right within the definition.

Mr. Nicholas and Mr. Jeffrey stated that the next step would be to go to the bill drafters office with the amendments and then back to the committee.

With no further business, meeting was adjourned at 2:20 P.M.

Respectfully submitted,

Robbie Alldis

Robbie Alldis
Assembly Attache

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ASSEMBLY GOVERNMENT AFFAIRS COMMITTEE

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GUEST LIST

Date 3-10-81

<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 ^{County Clerk}			
STEVE TAPORNA	City of Reno ^{Shovel Salt Park Comm}	X		AB 94
ED PARK	CITY OF LAS VEGAS	X		AB 94
MIKE COOL	city of Las Vegas			
Ed Mc Goldrick	Labo Commissioner			
Glen Taylor	Labor Commission			AB 94
Sal Quirei	N DCT			AB 94

Please Print

ASSEMBLY

AGENDA FOR COMMITTEE ON GOVERNMENT AFFAIRS SUBCOMMITTEE

Tuesday

Date March 10, 1981 Time 1:15 P.M. Room 214

Bills or Resolutions
to be considered

Subject

Counsel
requested*

AB 94

Limits definition of "public works."

The purpose of this second meeting will be to take testimony to determine the effects of the bill, not only on the quoted statutes, but also to determine what other of the Nevada Revised Statutes will be affected and in what way.

1. Contracts which by their nature are directly related to the day-to-day maintenance and operating services.



The State of Nevada
Executive Chamber

November 3, 1980

Robert List
Governor

Capital Complex
Carson City, Nevada 89710

Mr. Thomas J. Milligan
City of Sparks
431 Prater Way
Sparks, Nevada 89431

Dear Mr. Milligan:

During the past three months, the Office of the Labor Commissioner has been asked by local government agencies in Washoe County to review the public works project requirements contained in Chapters 338 and 339, Nevada Revised Statutes.

As you are aware, NRS 338.020 requires that every contract to which a public body is a party is subject to the reporting and prevailing wage provisions of the state public works laws.

The local government agencies had requested that the Labor Commissioner establish monetary thresholds below which the prevailing wage and reporting requirements would not apply.

Upon review of the matter with legal counsel, the Labor Commissioner denied the request and ruled that all public works projects entered into by local government agencies must comply with the prevailing wage and reporting requirements. This would include minor repair and maintenance contracts, operating services, and purchasing contracts on which labor is employed.

The Labor Commissioner ruled that he did not have the legal authority to establish arbitrary monetary thresholds, or to raise the \$2,000 bonding requirement specified in Chapter 339, Nevada Revised Statutes.

The ruling was reviewed by Washoe County District Attorney Calvin Dunlap and Reno City Attorney Louis Test who requested a ruling from the Attorney General on the matter.

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Exhibit B

Mr. Thomas J. Milligan
November 3, 1980
Page Two

The Attorney General's Office upheld the Labor Commissioner's ruling. In an opinion issued September 2, 1980, Deputy Attorney General Donald Klasic stated:

"[I]n short, there appears nothing in either statute (NRS 338.010(3) and NRS 339.015(2)) which would justify a limitation on the term 'repair' to include only structural changes to a building. The term 'repair' as utilized in each statute is simply too broad for such limitation. . . ."


I am enclosing a copy of the Attorney General's opinion for your information.

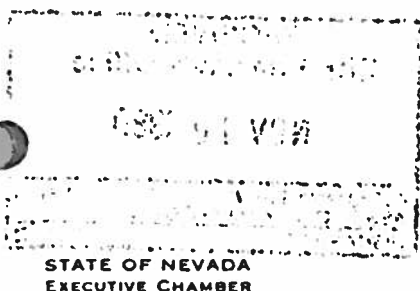
In light of the legal opinion, the Labor Commissioner simply cannot institute an "administrative remedy" that would be contrary to the wording of the statutes.

I agree with you that current procedures adversely affect the efficiency of local public works' activities. Nevertheless, it is clear that we must adhere to the statutes as they are written. You can be assured that I will do everything necessary to see that this problem is resolved, as soon as possible, through corrective legislative action. Until that time, we must continue to work together to minimize the effect of this procedure on the activities of our individual operations.

Thank you for your cooperation and your interest in this matter.

Sincerely,


ROBERT LIST
Governor



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Stephen J. Tapogna, Chairman
Local Government Purchasing
Study Commission
P.O. Box 1900
Reno, NV 89505

February 25, 1981

Re Assembly Bill 94

The Honorable David Nicholas
Assemblyman, State of Nevada
Legislative Building
Carson City, NV 89710

Dear Sir:

Pursuant to discussion in subcommittee hearings re AB-94 on February 19, 1981 I met with Joyce Devine, Washoe County Purchasing, to discuss the problems encountered with the subject bill. We would offer for your review the following addendum to the current statute as written:

Exception to provisions of the statute upon completion of public work:

- a. Contracts awarded by the public body to care for and preserve, and keep in proper condition of a non-structural nature on all publically owned land, buildings, public parks, and playgrounds.
- b. Emergency contracts as defined in the Local Government Purchasing Act, Section 332.055.
- c. Contracts awarded under the exceptions of sub-sections a. and b. must be in compliance with the provisions of NRS 332 or 333 as applicable.
- d. Nothing in this section shall pertain to new construction, re-construction, or additions to publicly owned land, buildings, parks, and playgrounds.

As you can see this would allow and provide for the day to day housekeeping chores performed on a daily basis by virtually every government entity in the state.

Further it imposes the legal limitations of the Local Government Purchasing Act and the State Purchasing Act upon such contracts and excludes only the four areas of land, buildings, parks, and playgrounds addressed in Chapter 338.

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Exhibit C

This too will comply with concerns as expressed by several members of the Government Affairs Committee and as addressed by the representative from the Department of Transportation.

I hope these suggestions are of some help to you in your deliberations regarding this bill and may in some way effect equitable relief for all government entities within the State from the problems imposed by the limitations of Chapter 338.

Sincerely,

LOCAL GOVERNMENT PURCHASING
STUDY COMMISSION



Stephen J. Tapogna, Chairman

SJT:lew

cc: Joyce Devine, LGPSC
Ron Creagh, City of Reno Lobbyist