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PUBLIC WORKS BOARD

April 3, 2003

Assemblyman Mark Manendo, Chairman  
Assembly Committee on Government Affairs  
Nevada State Legislature  
Capitol Complex, Carson City, Nevada

Subject: Testimony on AB 534, Chapter 341, State Public Works Board

Dear Chairman Manendo and Members of the Committee:

I am writing you today to explain and request support for the passage of Assembly Bill No. 534. Chapter 341 determines the roles and authority of the State Public Works Board (SPWB). This bill addresses several areas that effect the operation of the SPWB.

The first area addressed is the authority to enforce building code provisions as they relate to the issuance of "stop work" orders based on health, safety or violations of building codes, laws or regulations adopted by the state. **Section 4**, in its entirety, relates to that issue. Currently, if a State inspector finds a violation of a building code provision occurring on a State construction project, the only authority they have to stop the work is to issue a Notice of Non Compliance (NNC), threaten a breach of contract filing for continuing the work and step back in frustration. Sure they can refuse to authorize approval of the next pay request, but by that time the code violation has occurred and is literally "set in concrete". The proposed wording in Section 4 gives the SPWB the authority to issue a citation, if necessary, similar to the authority that every city and county building department currently has available to them.

The second area addresses the area of better clarifying the role of the SPWB as the "Building Official" over all buildings or structures located on state lands. The legislative intent for such a conclusion can be found in NRS 341.153(2). That section reads "that all construction of public buildings upon property of the state or held in trust for any division of the state government be supervised by, and final authority for its completion and acceptance vested in, the state public works board". The term "building official" is defined in the Uniform Building Code adopted by the SPWB through NAC 341.045(1). **Section 6, Page 3, Line 39** and **Section 7, Page 5, Line 1** relate to this issue. The changes to these two statutes, NRS 341.100 and NRS 341.145, should clarify this issue.

The third area relates to NRS 341.145 in that the SPWB would like to seek authority to issue change orders (or amendments) to contracts below \$10,000 in any amount up to the original contract amount. **Section 7, Page 4, Line 36** relates to this issue. The reason for this proposed change is that the law currently only allows change orders up to 10% of the total contract price. To put this in context, 10% of \$10,000 is only \$1,000. The sum of \$1,000 can easily be exceeded, and under current law, the PWB would have to issue a new contract if the amount were exceeded.

The fourth area addresses a situation often faced by the SPWB where an agency has funds available for construction projects and such funds are not Capital Improvements Program (CIP) funds, which were approved by the legislature pursuant to NRS 341.146. One problem is that an agency may be hesitant to deposit funds with the SPWB if it is not clear how interest will be treated. This has caused the SPWB to set-up a time consuming procedure for obtaining funds from such agencies as the project proceeds. **Section 8, Page 5, Line 14** clarifies how to treat interest and remaining principle relating to those funds by allowing the money to accrue to the benefit of the project.

The fifth area addresses the need to clarify the order of precedence in which various types of funding should be applied to a public works project. **Section 8, Page 5, Line 22** relates to this issue. This section has a recommended order of precedence relating to spending on public works projects. Setting forth an order of precedence of spending will help to eliminate any ambiguity about how remaining funds should be reverted when the project is finished. The SPWB is recommending that reallocated capital improvement funds be spent first on a project. Reallocated capital improvement funds are funds that were approved in a past biennium, were used on a project and have a certain portion remaining, and have been approved by the legislature for use in completing a specific project. The SPWB believes that these funds should be used first in order to prevent arbitrage issues. The remaining order is funds received from the Federal Government, funds generated by state agencies, proceeds from the issuance of General Obligation Bonds, funds from the State General Fund and then any other sources of fund for the project.

The sixth area addresses the poor wording of NRS 341.148(1), which allows the SPWB to accept bids and issue contracts on either the whole or a part of the construction project when it is in the best interest of the state, not the best interest to the "lowest responsible and responsive bidder". Why would the SPWB bifurcate a project just for the benefit of the bidder? **Section 9, Page 6, Line 4** relates to this issue.

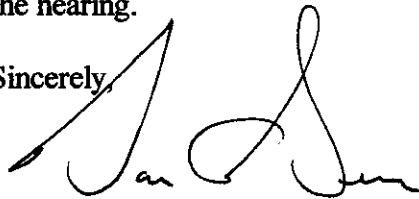
The seventh and final area relates to NRS 341.153(2), which sets forth that the SPWB shall supervise and ensure proper completion of construction projects that involve "public buildings" built upon property owned by the State. A question has arisen as to the meaning of the term "public building". In NRS 341.201, the Legislature used the term "state building" when discussing certain required inspections. The Legislature has therefore made an implication that "state buildings" and "public buildings" are different. The question really becomes whether a privately occupied building operating under a license on state land is subject to the jurisdiction of the SPWB.

The SPWB believes that so long as the privately owned building on state land has some public value, it would be subject to the jurisdiction of the SPWB. However, the SPWB believes that the issue should be clarified. The state has a great interest in ensuring that buildings on its own land are safe and properly built to the codes adopted by the state. If a privately owned building on state land were ever abandoned, it would become the property of the state and the state that would take over the building. In addition, there may be liability issues if a privately owned building on state land suffered problems as a result of improper construction. **Section 10, Page 6** relates to this issue and the SPWB believes that this issue would be resolved by indicating in statute that the SPWB has jurisdiction over all buildings on state lands.

As the Manager of the State agency that is responsible for the construction of millions of dollars worth of State facilities, it is very important to me that we have all the tools necessary to guarantee that state facilities are constructed in a safe manner. The proposed changes in AB 534 are intended to provide the State with better provisions to address the duties assigned to the SPWB. Therefore, I request your approval of this bill and submit this testimony for your consideration.

Thank you for the opportunity to comment on this matter and I will be available for questions at the hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan O'Brien", written over a thin horizontal line.

Daniel K. O'Brien, P.E.  
Manager

cc: Perry Comeaux, Director, Department of Administration  
Governor's Office  
SPWB Board Members  
Gus Nunez, Deputy Manager  
Bob Bryant, Senior Deputy Attorney General