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PUBLIC WORKS BOARD

May 7, 2003

Assemblyman Morse Arberry, Chairman  
Assembly Committee on Ways and Means  
Nevada State Legislature  
Capitol Complex, Carson City, Nevada

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

Dear Chairman Arberry and Members of the Committee:

I am writing you today to explain and request support for the passage of Assembly Bill No. 534. This Bill relates to general changes requested by the SPWB relating to NRS Chapter 341. Chapter 341 determines the roles and authority of the State Public Works Board (SPWB). This bill addresses seven (7) areas that effect the operation of the SPWB.

The first area addressed is to better define the role of the SPWB as the Building Official over all buildings or structures located on state property. The second area 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. The third area addresses the increasing of the change order limits for smaller projects. The fourth area relates to the treatment of interest on Agency funds when turned over to the SPWB for management of a project. The fifth area relates to order in which funds are expended when there are multiple sources. The sixth area relates to clarifying that savings resulting from the separation of contracts on a project should result to the State not the contractor. The seventh and final area relates to the clarifying that the policy of the State relates to all buildings on State property.

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.

To assist in your review, following are the proposed changes, each set forth with a justification.

**SPWB AS THE STATE BUILDING OFFICIAL**

Section 2 and Section 3, Page 1, Line 3 and Section 6, Page 3, Line 39 relates to this issue.

The SPWB would like to clarify that it is the "building official" of buildings placed upon state lands. The legislative intent for such a conclusion can be found in NRS 341.153(2). The term "building official" is defined in the Uniform Building Code adopted by the SPWB through NAC 341.045(1). Two statutes should be amended to clarify this issue. Those statutes are NRS 341.100 and NRS 341.145.

### **ISSUANCE OF STOP WORK ORDERS**

**Section 4, Page 1, Line 6** relates to this issue.

Currently the 1997 Edition of the Uniform Building Code (UBC) is the code adopted by the State of Nevada. Chapter 1, Section 103 – Violations, states that:

“It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter repair, move improve, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this code”.

In addition Section 104.2.4 Stop Orders, states that:

“Whenever any work is being done contrary to the provisions of this code, or other pertinent laws or ordinances implemented through the enforcement of this code, the building official may order the work stopped by notice in writing served on any person engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the building official to proceed with the work”.

Because there are no provisions within the Nevada Revised Statutes (NRS) to impose a penalty upon anyone violating the provisions of the codes, adopted by the state, the state has no ability to immediately stop work that is not conforming to the codes or is an unsafe condition. This lack of enforcement has been very frustrating for the Public Works Board inspectors, as well as its management staff. Our contracts have provisions for issuing “Notices of Non-Compliance”, but this is a contract provision and our only recourse would be to declare a Breach of Contract and sue the contractor. This is not a very efficient process.

When local government adopts codes governing construction within their jurisdiction, their ordinances always have a penalty section, putting “teeth” in their enforcement process. Other state departments and agencies have penalty provisions within NRS. An example is the State Fire Marshal’s provisions. This request will allow the SPWB to better fulfill its Legislative mandate of protecting the health, safety and welfare of the public, while having no fiscal impact upon the state or its citizens.

### **SMALL PROJECT CHANGE ORDERS**

**Section 7, Page 4, Line 33** relates to that issue.

With respect to NRS 341.145, 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. 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.

## **TREATMENT OF AGENCY INTEREST**

**Section 8, Page 5, Line 14 relates to that issue.**

The SPWB is often faced with a situation where an agency has funds available for construction projects and such funds are not capital improvements funds approved by the legislature pursuant to NRS 341.146. The SPWB is requesting clarification regarding how to treat interest and remaining principle relating to those funds. 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 PWB to set-up a time consuming procedure for obtaining funds from such agencies as the project proceeds.

## **MULTIPLE FUNDING SOURCES**

**Section 8, Page 4, Line 22 relates to that issue.**

The SPWB is also requesting clarification regarding the order of precedence in which various types of funding should be applied to a public works project. The SPWB 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 on future projects. The PWB believes that the funds should be used first in order to prevent arbitrage issues.

## **SAVINGS TO THE STATE**

**Section 9, Page 6, Line 5 relates to this issue.**

The PWB would like to clarify that bifurcating a project can be done when in the best interest of the state. To that end, the SPWB would propose this amendment to NRS 341.148(1).

## **JURISDICTIONAL ISSUE**

**Section 10, Page 6, Line 26 relates to this issue.**

NRS Chapter 341 sets forth the duties and powers of the SPWB. NRS 341.153(2) 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 properly built. If a privately owned building on state land were ever abandoned, it would most likely be 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. The SPWB believes that the issue may be resolved by indicating in statute that the PWB has jurisdiction over all buildings on state lands.

Thank you for the opportunity to comment on this matter and I am available for questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan O'Brien', written over the word 'Sincerely,'.

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