

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS**

**Seventy-Third Session
March 16, 2005**

The Committee on Ways and Means was called to order at 10:32 a.m., on Wednesday, March 16, 2005. Chairman Morse Arberry Jr. presided in Room 3137 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Morse Arberry Jr., Chairman
Ms. Chris Giunchigliani, Vice Chairwoman
Mr. Mo Denis
Mr. Lynn Hettrick
Ms. Sheila Leslie
Mr. John Marvel
Mr. Richard Perkins
Mr. Bob Seale
Mrs. Debbie Smith
Ms. Valerie Weber

COMMITTEE MEMBERS EXCUSED:

Mrs. Heidi S. Gansert
Mr. Joseph M. Hogan
Mrs. Ellen Koivisto
Ms. Kathy McClain

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Mark Stevens, Assembly Fiscal Analyst
Carol Thomsen, Committee Secretary
Connie Davis, Committee Secretary

Chairman Arberry called the meeting to order and opened the hearing on A.B. 204.

Assembly Bill 204: Authorizes and provides funding for certain projects of capital improvement. (BDR S-1392)

Gustavo Nunez, Deputy Manager, Professional Services, State Public Works Board (PWB), introduced himself and Evan Dale, Deputy Manager, Administration and Finance, PWB, to the Committee. Mr. Nunez also introduced Richard Campbell, Jr., Attorney, Senn Meulemans LLP, which was the law firm assisting the State with the lawsuit to recover the funding for the repairs of the Grant Sawyer State Office Building in Las Vegas.

By way of background, Mr. Nunez explained that Capital Improvement Program (CIP) Project Number 05-C01 addressed the repair of the exterior tile for the Grant Sawyer State Office Building in Las Vegas. The PWB had originally received \$1.5 million from the Interim Finance Committee (IFC) to begin the project. Mr. Nunez stated that A.B. 204 requested the remaining amount needed to fully fund the repairs, which included replacement of the tile on the outside of the building. The requested funding would allow the PWB to proceed with the entire project without interruption in order to avoid escalation of costs, and to complete the repairs during the current calendar year. Mr. Nunez stated that Mr. Campbell would like to commence with a brief video presentation, which would demonstrate the need for replacement of the tile on the building. The video would allow Committee members to view the status of the tile on the building.

Chairman Arberry instructed Mr. Campbell to proceed with the video presentation.

Mr. Campbell advised the Committee that he was acting as Special Counsel to the State regarding the aforementioned lawsuit. He said the reason for the early funding request contained in A.B. 204 was because of a life-safety issue with falling tiles at the Sawyer Building. Mr. Campbell indicated that the short video presentation would depict the testing that was being done on the tile. Basically, stated Mr. Campbell, the State was alleging that there was an adhesion problem and the video would demonstrate that nothing more than grout was, in reality, holding the tile on major portions of the outside of the building. Once the grout was removed, the video showed that the tiles could be pulled off of the building by hand or they would fall off on their own.

Approximately 1 year ago, said Mr. Campbell, a Gaming Control Board employee was almost hit by a falling tile from the sixth floor of the building, and shrouds of the tile actually ended up in the cuff of the employee's pants. Calling the Committee's attention to the video presentation, Mr. Campbell noted that testing indicated the tiles were easily popped off the building without any effort whatsoever. The second part of the video depicted how properly affixed tiles would adhere to the building, and how difficult it would be to remove those tiles. Mr. Campbell pointed out that one of the workmen depicted in the video was almost hit by a falling tile, which hit the crowbar he was holding as opposed to hitting his hand. The tiles falling from the building were 1'x 1' ceramic or porcelain tiles, which gathered force as they fell from the fifth or sixth floors of the building.

Mr. Campbell reiterated that the PWB was in litigation regarding the building and had a testing protocol. With the approval of the request in A.B. 204, it was hoped that the work could be completed as one project, with removal of the tile and repair conducted at the same time. He referenced the video presentation and the falling tile that almost hit the construction worker. Mr. Campbell emphasized that it was a very dangerous situation. A Special Master had been assigned in the litigation case and he had approved continued testing by the State and testing by the defendants, with the ultimate result being removal of the tile and repair of the building.

Assemblywoman Giunchigliani recalled that approximately 12 tiles had actually fallen from the Grant Sawyer State Office Building when the project was presented to the IFC, and she asked whether that was correct. Mr. Campbell believed the count had been higher than 12, and he pointed out that some tiles had fallen during the demolition. Ms. Giunchigliani stated she wanted to know

how many tiles had fallen before the demolition began. Mr. Campbell said that 10 or 15 tiles had fallen off the west side of the building, and 5 had fallen from the front of the building where the Gaming Control Board employee was almost hit.

Ms. Giunchigliani said she did not care for the idea of creating a significant aura surrounding safety and health at the building. She understood why the PWB wanted to take the tile off the building, but she could not comprehend the fact that those tiles would be replaced with more tiles. Ms. Giunchigliani said before she could support the request, she would like to see the figures for demolition versus the cost to replace the tiles. Mr. Campbell said that was the figure of \$1.9 million approved by the IFC. Mr. Nunez advised that the PWB had requested \$1.9 million, but the IFC had approved the amount of \$1.5 million, which would leave the PWB "a bit short" in funding the full demolition.

Mr. Nunez stated that during the forensic investigation many of the tiles had been tested and there were large sections where the only thing holding the tiles on the building was the grout, because there was no adhesive whatsoever between the back of the tiles and the building.

Ms. Giunchigliani asked who had signed off on the building, such as the project manager or building inspector. She wanted to know who would sign off on a building when there was no adhesive on the back of the tiles. Mr. Nunez reported that the setting bed for the tile had been installed, but it had not been properly installed. Ms. Giunchigliani asked whether the purpose of inspections was to locate such problems. Mr. Nunez said that was correct.

Ms. Giunchigliani asked why the State was not able to collect money until the case went to court, and why there had not been a performance bond on the project to ensure that if problems arose, the State could collect money or hold back money. Mr. Nunez explained that a performance bond was only viable during the construction period and for one additional year during the warranty period. After that time, problems were handled as latent defects.

Ms. Giunchigliani asked whether the request for approximately \$2.3 million in A.B. 204 would be used to put new tile on the building. Mr. Nunez said the \$1.5 million approved by the IFC would address most of the demolition costs. Ms. Giunchigliani said she was referencing the amount of \$2,011,979 as requested in the bill, and she asked whether the \$1.5 million allocation from the IFC was included in that amount, or was it the secondary cost to actually replace the tile.

Mr. Dale said the request was actually for \$8 million and Section 5 of the bill depicted the additional General Fund allocation for the project. Ms. Giunchigliani noted that to reaffix a new set of tile on the building, without reviewing other options, would cost the State \$8 million. Mr. Nunez said that cost estimates had been provided from Mr. Campbell's firm for the demolition. The cost for affixing substrate would be a contingency, as the extent of the needed repairs would not be known until the old tile had been removed.

Ms. Giunchigliani stated she would stand by her original position. She agreed with statements made by Senator Mathews, and other legislators, regarding why the State was wasting additional money on substrate when the contractor would have to chisel off every single piece of tile before it would be known whether new tile could be adhered.

Ms. Giunchigliani asked what other coverings had been reviewed, if anything. Mr. Nunez indicated that the PWB had looked at the possibility of a stucco treatment for the building, but it was felt that since the Grant Sawyer Building was the main governmental building for the State in southern Nevada, the decision had been made to bring it back to its original architecture. Ms. Giunchigliani asked whether figures were available regarding stucco finish versus reaffixing new tile. Mr. Nunez said he did not have those figures with him, but he would provide those figures to the Committee.

Ms. Giunchigliani said she could not support the bill in the manner presented. She asked what was wrong with a stucco exterior, after all, it was southern Nevada, and it would fit into the architecture of the area. Ms. Giunchigliani also asked whether the PWB had made the decision regarding the tile. Mr. Nunez said the recommendation had been made to the PWB and to the Governor from the PWB. Ms. Giunchigliani said she would like to see the breakdown regarding other exterior coverings and the costs for materials. She believed it would take a significantly longer period of time to affix tiles and the State would run the risk that the same problem would develop as before, simply because someone did not think stucco would look "as nice."

Assemblyman Marvel asked whether the amount requested would cover all the costs of the project. Mr. Campbell replied that the PWB had received all the insurance policies from the five or six defendants. He emphasized that most of the companies that had worked on any portion of the original project had been labeled as defendants, and he believed there would be adequate insurance coverage between those companies. Mr. Campbell said if not, the general contractor was a very large company with \$300 million to \$400 million in revenue each year, and if an insurance issue developed the State would be able to receive a judgment from the general contractor.

Chairman Arberry asked whether there were any further questions regarding Project Number 05-C01. The Chair recognized Speaker Perkins.

Speaker Perkins referenced the costs for a stucco treatment of the building, and asked whether a stucco treatment would be less expensive than the tile, and could the PWB provide a "ballpark" figure. Mr. Nunez said stucco would be less expensive than tile, and offered to call his staff to ascertain the cost of stucco. Speaker Perkins believed it would be important for the Committee to understand the comparison.

Speaker Perkins asked about the original cost of construction for the building. Mr. Nunez said he did not have the figures for the original construction costs for the building. Mr. Campbell advised that the total approximate cost for the building was \$26 million. He noted that the stucco treatment would be a less expensive alternative, but he would seek the "benefit of the bargain" in the litigation, or the cost of retiling the entire building. Mr. Campbell said if a decision was made to approve use of a different exterior façade, an estimate would be used rather than the actual cost in seeking damage recovery. If the building was retiled, a hard number could be submitted to the court and if not, it would come down to a battle of the experts regarding how much the damages might be. For clarification, Mr. Campbell said that whatever decision was reached by the Committee regarding A.B. 204, the State would seek the full cost of retiling the building in the litigation.

Speaker Perkins realized the building had been built ten years ago, but it was a \$26 million building and it would cost \$8 million just to retile the exterior.

He noted that litigation was never a "100 percent option," and that was the concern of many members of the Committee.

Chairman Arberry instructed Mr. Nunez to continue his presentation.

Mr. Nunez said the next project, Project Number 05-C20a, was the addition to, and the renovation of, the state computer facility in Carson City. He indicated that the project had recently been bid and the bids had come in much higher than the amount budgeted because of unforeseen inflation. Mr. Nunez advised that the Department of Information Technology (DoIT) would fund the shortfall amounts of the project plus the additions/alternates, which DoIT believed were necessary to complement the renovation.

Chairman Arberry said the only concern of the Committee was the bulletproof glass, and he asked whether that was still part of the project. Mr. Nunez replied in the affirmative, and stated that perhaps Mr. Blomstrom from DoIT could address that request. Mr. Nunez reiterated that the funding request included the bulletproof glass.

Mark Blomstrom, Deputy Director, Communication and Computing Division, DoIT, explained that the glass was recommended by the consultant. The bulletproof glass had less to do with bullets per se, and more to do with explosives or large objects. Mr. Arberry asked about the construction of the building. Mr. Blomstrom said the building was tilt-slab concrete construction.

Chairman Arberry asked whether there were further questions from the Committee regarding Project Number 05-C20a, and hearing none, the Chair opened the hearing on Project Number 05-C14.

Mr. Nunez explained that Project Number 05-C14 was the design and construction of the 40-bed addition to the 150-bed psychiatric hospital at Southern Nevada Adult Mental Health Services (SNAMHS). Construction had already commenced on the 150-bed psychiatric hospital in Las Vegas and in order to award that contract, the IFC had allowed the PWB to defer some items into the FY2005 CIP. Mr. Nunez said the cost to build the 40-bed addition would be in addition to the budget request. The intent would be to negotiate a contract with the lowest bidder to build the addition, which was the contractor currently working on the initial 150-bed facility. Mr. Nunez said the bid would be based on the cost bids received for the original construction. Should the PWB not be successful in negotiating with the current contractor, Mr. Nunez explained that the Board would go out to bid again regarding construction of the 40-bed addition.

Chairman Arberry asked whether there were any questions from the Committee regarding Project Number 05-C14.

Assemblyman Denis asked whether the amount included in A.B. 204 of approximately \$9.9 million was based on the figures used for the original bid. Mr. Nunez said the amount was based on the original bid, but some inflation had been built into the figure. Mr. Denis asked what would occur if the PWB had to open the bid again for the addition and the prices came in higher. He asked whether that would mean that the 40-bed addition would not be built, or would the PWB be required to request additional funding. Mr. Nunez said the PWB would have to evaluate the situation at the time it negotiated the contract. The Board had talked with the prime contractor and had included inflation in the amount requested. Mr. Nunez said that upon approval of the bill, the prime contractor would have to talk with the subcontractors, and the PWB might

require the prime contractor to re-bid the subcontractors if the Board did not feel it was getting value for its dollars. Mr. Nunez reiterated that discussion with the prime contractor currently working on-site indicated that the PWB would most likely be able to reach an agreement with that contractor, however, that was not guaranteed.

Chairman Arberry asked whether there were further questions regarding Project Number 05-C14, and hearing none, opened the hearing on Number 05-C09a.

Mr. Nunez said that early funding was being requested for Project Number 05-C09a, which was construction of the State Emergency Operations Center for the Department of Public Safety. The project had gone to bid and the bids had been substantially higher than the projected amount because of unforeseen inflation. Mr. Nunez said the amount included in A.B. 204 would allow the PWB to award the contract to the current lowest bidder and the Board would not be required to re-bid the project.

Assemblyman Seale referenced Section 7 of A.B. 204, and asked if that was how the PWB was consuming arbitrage on the bonds. Mr. Dale explained that Section 7 described money the State had received as a settlement on a nationwide case against certain securities firms. When the project was originally approved, said Mr. Dale, the State's portion of the funding was to come from the settlement. Now that additional money was needed for the project, the PWB was asking to utilize the remaining funds from the security settlement for Project Number 05-C09a.

Mr. Seale asked how much money remained from the settlement. Mr. Dale said there was approximately \$1.2 million. Mark Stevens, Assembly Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau (LCB), explained that a bill had been passed by the 2003 Legislature to place the settlement monies under the control of the IFC. According to Mr. Stevens, there was approximately \$1.2 million remaining and the request in A.B. 204 would utilize the funding source that was currently under the control of the IFC to help finance the project.

Chairman Arberry asked Mr. Nunez why A.B. 204 was being "pushed through" so quickly. Mr. Nunez explained that the funding requested in the bill would avoid additional escalation clauses. He noted that the rate of inflation at the present time was higher than it had been in the past and it was becoming more and more difficult to project costs into the future and provide exact estimates. Mr. Nunez said that passage of the bill would continue construction projects and save state dollars.

Chairman Arberry asked whether there were existing bids that could be utilized at the present time. Mr. Nunez said if the bill was passed by the Committee, the PWB could utilize a bid for the Emergency Operations Center (Project Number 05-C09a), and the faster the Board commenced negotiations with the prime contractor on Project Number 05-C14, construction of the 40-bed wing of the psychiatric hospital at SNAMHS, the faster inflation could be stopped. Mr. Nunez said, in a nutshell, that gave the Committee at least two examples regarding action the Board could take if the bill were passed. Mr. Nunez wanted to thank staff and the Committee for the expeditious review of A.B. 204.

Chairman Arberry asked whether there was further testimony in support of, or in opposition to, A.B. 204. With no further testimony forthcoming, Chairman Arberry declared the hearing closed. He asked members to consider possible action on the bill.

ASSEMBLYMAN MARVEL MOVED TO DO PASS A.B. 204.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION

Chairman Arberry asked if there were any questions or comments from the Committee. Speaker Perkins asked how the figure of approximately \$2 million in general obligation bonds had been determined by the PWB, and how the costs would be split between the bonds and the cash. Mr. Dale stated that the amounts from the General Fund were the amounts needed before the PWB could issue bonds in the fall. The bond portion of the funding would not be available until fall, said Mr. Dale, but the PWB needed to utilize funding prior to that time, which was what had driven the decision regarding the General Fund allocation.

Mr. Stevens explained there was a General Fund appropriation of \$52 million in The Executive Budget in support of the Capital Improvement Program. Those monies were recommended in FY2006, and Mr. Stevens explained that effective dates of bills might have to be "shuffled" in order to make sure that funding was in the right fiscal year. Mr. Stevens stated that A.B. 204 would be effective upon passage and approval.

Speaker Perkins asked how the amount of General Fund allocation and the amount for bonds had been determined, and whether that amount would carry the projects through until bonds were sold. He also asked how the particular projects had been selected because inflation would affect every project in the Capital Improvement Program list.

Andrew Clinger, Deputy Director, Budget Division, explained that the PWB had provided an initial estimate that it needed approximately \$10 million in cash up-front to start the projects because bond funding would not be available until fall. Mr. Clinger stated that a one-shot appropriation had been requested in FY2005, which would be used for the White Pine County Courthouse. In addition to that, in FY2006, the budget had requested \$52 million in General Fund appropriations for the Capital Improvement Program. Mr. Clinger noted that a previously submitted budget amendment would move the \$8 million one-shot appropriation for the White Pine County Courthouse from FY2005 to FY2006, and then swap the CIP funds back to FY2005. Speaker Perkins asked if the PWB would use the \$8 million for the Courthouse to get a start on the CIP projects in A.B. 204. Mr. Clinger stated that was correct.

Speaker Perkins asked why those particular projects had been included in A.B. 204. Mr. Nunez stated that with respect to the Sawyer Building, it was believed that money could be saved on that project. The PWB would spend approximately \$1.5 million prior to July 1, 2005, and if the Board did not have the remaining funding available, the contractor would be required to "dé-modé" and then "mode" back in when the funding became available to finish the project. Mr. Nunez stated that each project was selected based on different circumstances.

Mr. Stevens pointed out that the projects were included in the Capital Improvement Program, however, there was a \$2 million increase over and above what was recommended by the Governor for the projects within A.B. 204. Mr. Stevens said the increase was in Project Number 05-C09a, construction of the State Emergency Operations Center. He noted that part of that increase would be from bonds and the remainder would be from security settlement

funding (Section 7). Mr. Stevens reiterated that there would be a \$2 million increase in the Capital Improvement Program based on passage of A.B. 204.

Assemblywoman Giunchigliani pointed out that Project Number 05-C01 was not an emergency and the demolition was ongoing since the IFC had appropriated the money for the demolition. Ms. Giunchigliani said the funding request in the bill dealt with whatever "face" was put back on the building, and she would rather wait until litigation was completed. She also wanted to continue discussion regarding use of other materials on the outside of the building. Ms. Giunchigliani said it would be her recommendation to approve A.B. 204 after removal of Project Number 05-C01.

Chairman Arberry asked Mr. Nunez what would occur if the Committee passed the bill with elimination of Project Number 05-C01. Mr. Nunez stated that after the tile had been removed the PWB would not have the funds for the substrate or the fix, so the building would simply sit there without a finish and would look fairly dilapidated.

Ms. Giunchigliani asked about the time frame for the demolition. Mr. Nunez said the demolition had been delayed. Ms. Giunchigliani said the Legislature was still in session and there was no time line for the project, unlike the others in A.B. 204. Mr. Nunez said his guess would be that the demolition would be completed within the next six weeks.

Chairman Arberry asked what would happen if it started storming when the building did not have an outside finish. Mr. Nunez said as the demolition was completed, the contractor would have to seal the substrate to make sure there would be no water intrusion.

Chairman Arberry asked whether there was a motion to amend the previous motion.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND THE
PREVIOUS MOTION BY ASSEMBLYMAN MARVEL TO DO PASS
A.B. 204.

ASSEMBLYMAN MARVEL SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywomen Gansert, Koivisto, and
McClain, and Assemblyman Hogan, were not present for the vote.)

Chairman Arberry called for a new motion:

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO
PASS A.B. 204 BY ELIMINATING PROJECT NUMBER 05-C01
FROM SECTION 1 AND SECTION 5.

ASSEMBLYMAN MARVEL SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywomen Gansert, Koivisto, and
McClain, and Assemblyman Hogan, were not present for the vote.)

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With no further business to come before the Committee, Chairman Arberry adjourned the hearing at 11:06 a.m.

RESPECTFULLY SUBMITTED:

Carol Thomsen
Committee Attaché

APPROVED BY:

Assemblyman Morse Arberry Jr., Chairman

DATE: _____

<u>EXHIBITS</u>			
Committee Name: <u>Committee on Ways and Means</u>			
Date: <u>March 16, 2005</u>		Time of Meeting: <u>10:30 a.m.</u>	
Bill	Exhibit	Witness / Agency	Description
	A		Agenda