

**MINUTES OF THE SUBCOMMITTEE OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session
April 11, 2005**

The subcommittee of the Senate Committee on Commerce and Labor was called to order by Chair John J. Lee at 12:34 p.m. on Monday, April 11, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator John J. Lee, Chair

COMMITTEE MEMBERS ABSENT:

Senator Randolph J. Townsend (Excused)
Senator Warren B. Hardy II (Excused)

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Scott Young, Committee Policy Analyst
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Joseph M. Vassallo, President, Paragon Pools
Stephen A. Treeese, Blue Haven Pools
Don Rowland, President, Association of Pool and Spa Professionals, Las Vegas Chapter
Margi A. Grein, Executive Officer, State Contractors' Board
Ronald L. Lynn, Nevada Organization of Building Officials

CHAIR LEE:

I will open the hearing on Senate Bill (S.B.) 434.

SENATE BILL 434: Revises provisions governing regulation of contractors.
(BDR 52-1103)

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JOSEPH M. VASSALLO (President, Paragon Pools):

The purpose of this bill is to deter people such as salesmen or construction superintendents from acting as paid pool contractors. We do not want to restrict the rights of the owner-builder or licensed salesmen. However, those who are paid to build pools should either have a license or be employed by someone with a license.

CHAIR LEE:

Are you including designing a pool in this bill?

MR. VASSALLO:

Yes, if the person receives a fee.

CHAIR LEE:

You also include the selling of a pool. This is a very broad term.

MR. VASSALLO:

In this case, the seller is the person who writes the contract.

CHAIR LEE:

How do you license salespeople?

MR. VASSALLO:

We do not want to.

STEPHEN A. TREESE (Blue Haven Pools):

We are willing to omit the word "selling" from section 1, subsection 4, paragraph (a) and add the phrase "for a fee." Paragraph (a) would then read, "The design, construction, repair, maintenance, restoration, alteration or improvement for a fee of any residential swimming pool ... "

DON ROWLAND (President, Association of Pool and Spa Professionals, Las Vegas Chapter):

I am concerned about individuals who supervise construction of a pool for a fee. I recommend they be required to be under the direction of a licensed contractor or pool builder.

MARGI A. GREIN (Executive Officer, State Contractors' Board):

This issue is addressed in section 2, subsections 2 and 4.

CHAIR LEE:

This language is not specific enough. We need to add a specific prohibition against unlicensed consultants.

KEVIN POWERS (Committee Counsel):

If I understand [the discussion] correctly, we are considering the definition of "work concerning a residential swimming pool or spa." What has to be remembered about this definition [is] it's connected to the other definition, "contractor," that's used in this subsection here. For any of these elements to apply, the person at the same time also has to be a licensed contractor under chapter 624 of the *Nevada Revised Statutes* (NRS). It's not simply engaging in these activities; you have to be a contractor and also engage in these activities, and that's when these provisions come into play. That's our starting point. The type of individual [Mr. Rowland] is talking about, if they aren't licensed contractors and they are engaging in consultation work and that's not considered to be contracting work under NRS chapter 624, they wouldn't be subject to chapter 624 or the residential pool or spa provisions that are in this bill and chapter 597. However, if what they're doing is considered to be the work of a contractor, they're acting unlawfully.

CHAIR LEE:

That is what is happening. People are getting around using a licensed contractor by hiring a consultant who subcontracts with plumbers and other specialists to complete the actual work. This is why I want to add the word "consultant."

MR. POWERS:

If we're moving towards that, we really need to be not focusing on the definition in subsection 4 of the first section of the bill ... I'll have to take a look at existing state law, and then consider adding a separate prohibition to these sections that pretty much makes it unlawful for a person to do that unless they are a licensed contractor.

CHAIR LEE:

That is our intention.

MR. POWERS:

So that would be a new section added to the bill essentially saying, "It is unlawful for a person who for a fee consults or supervises work concerning a swimming pool and spa to engage in such activity unless the person is a licensed contractor pursuant to chapter 624 of NRS." Something to that effect. That is just off the top of my head.

CHAIR LEE:

There might also be a situation in which a consultant does not charge a fee as such but gets kickbacks from the subcontractors.

MR. POWERS:

"With that in mind, the prohibition could be drafted to take into consideration that sort of transaction, thereby flat-out prohibiting that transaction or prohibiting it unless both parties are licensed contractors."

CHAIR LEE:

We will let staff work on that wording.

RONALD L. LYNN (Nevada Organization of Building Officials):

With the concurrence of the State Contractors' Board, in order to increase the scope of the license to include all the gas lines and the assorted related plumbing, I have agreed to develop an exam for journeyman certification as a pool builder. The test will be ready in six months, with the intention that everyone will be licensed by July 1, 2006.

CHAIR LEE:

The plan is for Mr. Lynn to come up with testing procedures specific to pools within six months. We expect many applicants to fail the first time around because of the unfamiliarity of the exam. Starting July 1, 2006, it will be a requirement that you have a swimming pool journeyman plumbing license to do this kind of work.

MS. GREIN:

We will need to make some changes in our existing exam so that six-month period will work the same. Not all counties require the journeyman license for plumbing.

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MR. LYNN:

All of southern Nevada does, but many counties do not.

CHAIR LEE:

Sections 3 and 4 of the bill deal with down payments. I would like to keep the amount of the down payment at \$1,000.

Section 10 of the bill deals with the requirement of a bond.

MS. GREIN:

We would suggest a section stating after a swimming pool contractor has been licensed for five consecutive years, the State Contractors' Board may lift the requirement of performance and payment bonds. The licensee would need to present evidence supporting the relief to the Board.

MR. VASSALLO:

I have written testimony on this subject ([Exhibit C](#)). We support the change suggested by the Board. I would like to see this requirement eliminated completely, but this is an improvement. It is nearly impossible to get payment and performance bonds in Nevada now.

MR. TREESE:

We support this change.

CHAIR LEE:

How long has the bond requirement been in force?

MS. GREIN:

It has been in place since July 1, 2001.

CHAIR LEE:

Did you intend the five years to start from the day the Governor signs the bill?

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MS. GREIN:

It was intended to be retroactive, counting from the time the person received their license.

"For the record, I would like to state that we are in litigation on this issue. There is a hearing in Washoe district court tomorrow. What the Committee does with this bill will affect the outcome of the litigation."

CHAIR LEE:

Did we delete section 10?

MR. POWERS:

Section 10 is the changes made with regard to the bonding requirements. We discussed making changes to it, but we haven't discussed fully what stays in and what comes out of section 10. There are several different changes being made – not just a substitute for the bond, but we have increasing the amount of work that must be performed to a dollar amount of \$10,000 before the contractor is subject to the bonding requirements. We also have the third party [issue], and the provisions dealing with 5 percent of the total number of permits.

CHAIR LEE:

We will send that issue back to the Board.

MR. ROWLAND:

I would like to know when we will meet with the Board to solve the bonding problem.

MS. GREIN:

I will give you the date of our next meeting.

CHAIR LEE:

Section 13 of the bill has to do with the complaint process.

MS. GREIN:

The Board agrees to delete sections 13 and 14 relating to the complaint and warranty issues, as well as the issue of certified mail.

MR. ROWLAND:

I have a concern that there be a written policy on the complaint process rather than just a verbal policy. We need to know the process and know that we can rely on it.

MS. GREIN:

We will provide a copy of our internal procedure. We prefer to keep this out of statute because we need the flexibility to deal with gross violators quickly.

MR. POWERS:

"Sections 14 and 15 are connected to section 13. They all go hand in hand."

CHAIR LEE:

We had an issue here on changing the warranty period.

MR. POWERS:

Sections 13, 14 and 15 would not apply just to pool contractors; they apply to all contractors. [Also], as the bill is presently drafted, it changes existing law, which has a four-year period in which a person can file a complaint to either a four-year period or the warranty period agreed to by the person and the licensee, whichever period ends up being shorter. If the licensee in their contract had a warranty period of one month, then essentially that would be the period that the homeowner could file a complaint in, and beyond that period they couldn't file a complaint. Ms. Grein is saying that she does not support section 13 because it would have that effect. It would give the power to the contractor to determine the period in which a complaint could be filed. If sections 13, 14 and 15 aren't in the bill, the contractor would still have the power to enter in whatever warranty they wanted to with the customer, except the customer would still have the statutory right to bring a complaint with the [State] Contractors' Board for a period of 12 years. ... If we remove sections 13, 14 and 15 from the bill, the law as it exists now in [NRS] chapter 624 would be the same. The complaint period under chapter 624 is four years. But the complaint period is different from the warranty period. Filing a complaint with the State Contractors' Board is not seeking redress under a warranty; it's filing a complaint to seek disciplinary action against the contractor. The rights under the warranty would be

between the contractor and the customer, and that wouldn't change.

MS. GREIN:

I would like the opportunity to discuss the other matters with the Board before agreeing to the changes.

MR. POWERS:

... Hopefully Ms. Grein will prepare a written document encapsulating all that was agreed to here in the subcommittee so we can present that to the full Committee. ... I know what we're trying to achieve in section 10, but I don't know how much of the existing language in the bill is staying. ... We're creating the ability for a contractor who has worked for five years in the State of Nevada to have their performance bond requirements relieved by the State Contractors' Board. That much I understand. The question is how much of the remainder of section 10 is going to stay, because not all of it is necessarily tied to the bonding requirement or the relief of the bonding requirement.

MS. GREIN:

I will provide that material.

MR. POWERS:

When Ms. Grein prepares that document, we're going to present that to the full Committee so they can act on that document. Once the Committee acts, then [we] can produce the final amendment from there. Because of the time constraints we have this week, it's not going to be possible to produce the mock-up from Ms. Grein's document. We're just going to have to work off Ms. Grein's document.

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CHAIR LEE:

We want everyone to have seen it and signed off on it. Is there any further comment? Hearing none, I will adjourn this subcommittee meeting at 1:07 p.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator John J. Lee, Chair

DATE: _____