

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Fourth Session
May 2, 2007**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:03 a.m., on Wednesday, May 2, 2007, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn K. Kirkpatrick, Chair
Assemblywoman Peggy Pierce, Vice Chair
Assemblyman Kelvin Atkinson
Assemblyman Bob Beers
Assemblyman David Bobzien
Assemblyman Chad Christensen
Assemblyman Jerry D. Claborn
Assemblyman Pete Goicoechea
Assemblyman Ruben Kihuen
Assemblyman Harvey J. Munford
Assemblywoman Bonnie Parnell
Assemblyman James Settelmeyer
Assemblyman Lynn D. Stewart
Assemblywoman RoseMary Womack

GUEST LEGISLATORS PRESENT:

Senator Dina Titus, Clark County Senatorial District No. 7



STAFF MEMBERS PRESENT:

Amber Joiner, Committee Policy Analyst
Scott McKenna, Committee Counsel
Mary Kay Doherty, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

John Balentine, Purchasing and Contracts Administrator, Washoe County
Ted Olivas, representing the City of Las Vegas and the Nevada Public
Purchasing Study Commission
Steve Walker, representing Truckee Meadows Water Authority
Rose McKinney-James, representing Clark County School District
Greg Smith, Administrator, Division of Purchasing, Department of
Administration

[The meeting was called to order. Roll call.]

Chair Kirkpatrick:

This morning there are two bills for consideration. I will invite the representatives from Washoe County to come forward to present the bill.

Senate Bill 137 (1st Reprint): Revises provisions relating to local governmental purchasing. (BDR 27-365)

John Balentine, Purchasing and Contracts Administrator, Washoe County:

Before you is a copy of Senate Bill 137 (1st Reprint). Essentially, the nature of this bill is to raise the threshold at which governmental purchasing contracts must be advertised and put out to bid if they are from \$25,000 to \$50,000. [Read from prepared statement ([Exhibit C](#)).]

Ted Olivas, representing the City of Las Vegas and the Nevada Public Purchasing Study Commission:

I was the vehicle buyer for Clark County. At that time you could buy fleet vehicles for the Metropolitan Police Department for about \$12,000, those Crown Victorias that we used to see. I can assure you that those have more than doubled in price from that amount. Things have changed, particularly with the price of steel among other things. Obviously, we want to be responsive to the community. We want to make sure we get the best prices for things. This will not only help the smaller jurisdictions that do not have the resources of purchasing professionals, but also the larger jurisdictions who are also being squeezed and are responsible for large volume purchases, such as

Washoe County, Clark County, the Clark County School Districts, and others. We are in support of this bill.

I want to mention something that happened on the Senate side. There were questions about having a multiyear contract that in total represents more than \$50,000. The answer is provided in the first reprint, on page 2, Section 1, subsection (c). It is possible to be in a situation where we are spending \$20,000 on an annual basis for softball equipment and, instead of doing a contract that represents \$20,000 for one year, we might do a five-year contract. Well, 20 times 5 is \$100,000, but it is based on the annual amount. That is what was clarified in this bill. That is why you see the wording that you do on page 2 [of the bill].

Assemblywoman Parnell:

I want to add for the record that I received an email yesterday from Mark Korinek, the Purchasing and Operations Services Manager at the Carson City School District and he mentioned and complimented John [Balentine]. Coming from a small school district, hearing your comments certainly make sense. I was happy to hear from him because it puts it in perspective of how you go about your contract work. I am in support of this bill.

Assemblywoman Pierce:

How do you advertise these contracts?

John Balentine:

The law requires us to advertise them in the local paper for a period of seven consecutive days. I know Clark County and the bigger counties do the same thing. We also go out on the Internet and use the services of a company called DemandStar, which goes out nationwide, actually worldwide, to advertise these contracts. Depending on the nature of the bid, we may even go to specialty magazines. If we are buying aircraft parts, for instance, we would go to the Aircraft Owners and Pilots Association (AOPA) publications. If we are advertising for a consultant for legal services we would advertise in the American Bar Association publications. We advertise as extensively as we possibly can for the most competition because that is how we get our best prices.

Chair Kirkpatrick:

On page 2, line 5, it says you do not need to advertise. If we go up to \$50,000, what kind of projects would not be advertised? I know DemandStar works and they appear on the back page of the newspapers with the legal notices in a very small font. Sometimes you can go on the local government's

website. Would \$10,000 be for light bulbs for a building for a year? Now we are going up to \$50,000, which might be for what? I am trying to look statewide and I know that some of the smaller jurisdictions may never see a \$50,000 purchase, but some of the larger jurisdictions will.

John Balentine:

Another point is in Section 2, where it says, "This section does not prohibit a governing body or its authorized representative from advertising or requesting bids regardless of the estimated *annual* [emphasis added] amount." There may be times when something is estimated at less than \$50,000 and we will want to go out for a formal bid anyway. It is hard to say exactly what commodities might be involved because the price of everything is going up dramatically. One of the things that we hear in northern Nevada, and our compatriots in southern Nevada hear the same thing, is that we have a consortium of government purchasing here in northern Nevada, whereas government entities we pool our needs. Everybody uses light tubes, tires, tire tubes, batteries, gasoline, diesel fuel, fertilizer, and that sort of thing. We pool our needs and the value of them is well over \$100,000. We then formally bid those, and we bid them on behalf of all the entities. By so doing we get the value of those additional bids and everybody saves money, particularly our taxpayers. Does that answer your question?

Chair Kirkpatrick:

No, but Mr. Olivas can answer my question. I believe he knows where I am going.

Ted Olivas:

The process, as defined in this bill, is if it is over \$50,000 you advertise, as Mr. Balentine mentioned, in a newspaper of general circulation within the county. If there is none, then one advertises in a newspaper in general circulation. For instance, Nye County does not have its own paper, so the advertisement might be in the Las Vegas Review-Journal.

From \$25,000 to \$50,000 we have to solicit bids from two or more people who are capable of performing the contract. The key word is capable. If you go to people who you know provide those goods or services, you can use them without going through any process at all. That threshold would change from \$25,000 to \$50,000. Below \$25,000, it is at the discretion of the local government jurisdiction.

The goal of all local governments is to pool their requirements. What we do not want to do is to buy softballs here and basketballs there and baseballs there. They are all recreation equipment so we consolidate them. Based on what the

estimated annual amount is for those consolidated items, we determine where those purchases fit into these thresholds. That is how the process works.

Chair Kirkpatrick:

My concern is that we have 18 purchasing bills [to consider] for the State of Nevada, from both local governments and other procurement offices. I do not want to get away from transparency in the bidding process. I want to ensure that everybody, whether or not they presently have the capability to fill the order, has the opportunity to apply. A small company may just be getting started. I will use a resource in southern Nevada, Battery Source, as an example.

Battery Source is a fairly new company. They went through the procurement process for minority or small businesses and actually were able to apply for their first bidding process.

Sometimes a company will apply several times before they are accepted. There are many steps. You may miss a line on the application and it is thrown out as an incomplete application. With trial by error you keep learning. I do not want to increase the dollar threshold and not give an opportunity for all to know about it. I want to ensure that we are not cutting out the small businesses.

John Balentine:

We certainly understand your concern. One of the advantages of this bill is it allows, by raising the formal bid limit, the opportunity to use the services of the minority and, historically, seldom used businesses, for the smaller dollar amount purchases, and thereby bring them up to speed.

In fact, last Wednesday, there was an outreach program at John Ascuaga's Nugget for veteran-owned businesses. We spent time, one-on-one, with these business people, talking with them about the process, how to get into the process, and, indeed, how to submit bids to us. Additionally, we must keep all of our records, for seven years and they are all open to public inspection. We try to ensure that we do reach the largest amount of businesses possible to ensure we get the best prices.

Assemblywoman Pierce:

Mr. Balentine, the limits you cited from the other states, are they also annual limits?

John Balentine:

Yes, those are annual limits.

Chair Kirkpatrick:

At this time I am asking anyone wanting to speak to come to the table. I always give the bill sponsor the last opportunity for response. Who would like to speak in favor of S.B. 137 (R1)?

Steve Walker, representing Truckee Meadows Water Authority:

The Board of Directors of Truckee Meadows Water Authority supports S.B. 137 (R1).

Chair Kirkpatrick:

What kind of things would the Water Authority buy?

Steve Walker:

Purchases between \$25,000 and \$50,000 would be incidental things, like paper, pencils, and those types of things. Obviously, purchases of chemicals for water treatment, or pump stations, and things like that would well exceed these limits. Prices have gone up and increasing the limit to \$50,000 makes sense.

Rose McKinney-James, representing Clark County School District:

We would like to indicate, for the record, our support for this bill. As you may know, the school district has a representative who is really active with the purchasing council. We participate in those discussions and a variety of bills, some of which you referenced this morning, that we support, are consistent with those positions.

Chair Kirkpatrick:

Is there anyone else who would like to speak in favor of S.B. 137 (R1)? Is there anyone who is neutral on S.B. 137 (R1)? Is there anybody in opposition to S.B. 137 (R1)? [There was none.]

Assemblywoman Pierce:

Does this [bill] affect any contracts that deal with prevailing wage?

John Balentine:

Absolutely not. That is legislated under the *Nevada Revised Statutes* (NRS) Chapter 338. It is always there.

Chair Kirkpatrick:

We will close the public hearing on S.B. 137 (R1).

Our next, and final bill this morning, will be Senate Bill 307 (1st Reprint).

Senate Bill 307 (1st Reprint): Revises certain provisions relating to state and local governmental purchasing. (BDR 27-782)

Senator Dina Titus, Clark County Senatorial District No. 7:

As we move forward into the new millennium, powerful external forces are reshaping government and the marketplace and thus the procurement process. Simply put, the world is changing. [Read from prepared statement ([Exhibit D](#)).]

Assemblyman Goicoechea:

I have a question on Section 6, subsection 4. In order to trigger the rule, must you meet all three parts of that criteria — a, b, and c? I am concerned about the broadness of it. I am concerned that we might have a Grader Operator working for the state road department and there is a private contractor working alongside him. This contractor likes the guy's work. If he [the grader] only had to meet one of those criteria, not all three, it would make it illegal for him to change jobs.

Senator Titus:

I agree. That would be a problem. I think the key word is on line 41; it says "and" not "or". It would be all three of the criteria.

Assemblyman Settlemeyer:

As you know, I tend to look at the fiscal notes for the county governments, as I did in the previous bill. I see that Churchill County says there is a small fiscal impact [from the bill], but it did not actually list why. Douglas County says there is no fiscal impact, but it has ethical implications. Do you have any idea why those counties put that in? I would like to ask Legal if this flies in the face of some of the Supreme Court cases that deal with restrictions on people's jobs by saying it has to be reasonable in the place and time considerations. Is a year acceptable? Or should we think of something else?

In the bill, page 4, on line 36, referring to the one-year limitation, I am concerned because some of the Supreme Court cases, in relation to jobs, have indicated that sometimes an arbitrary number must be somewhat flexible, depending on the contract. If you are talking about a road that takes five years to plan, then perhaps it [time restriction] should be three years. Yet, if you are dealing with someone selling paper, perhaps the time frame should be more flexible.

Chair Kirkpatrick:

Mr. McKenna, can you speak to that?

Scott McKenna, Committee Counsel:

Mr. Settelmeyer's point is well taken. There certainly are different case-law decisions dealing with the right to pursue employment and to not have it be unreasonably restricted as to time or place. From what I have looked at on this topic, I do not see a particular problem with a one-year restriction. In fact, if you look on page 4, closer to the top, in the existing language of Section 6, is more from the perspective of the employer; it has a one-year limitation. I am not aware of any particular problem with a one-year limitation, but if the Committee were to decide that it would be for the best, things could be made more flexible. It would be a policy decision.

Chair Kirkpatrick:

Mr. McKenna, my question refers to Section 5, page 5. Does it not give them an opportunity to go to the Ethics Commission for resolution? In my opinion, we are very lax in our State regarding some of our purchasing rules. I think this is a step toward being consistent with our eastern states. We have more and more companies coming to Nevada from the eastern states. As an example, Smith and Woolensky, a restaurant in Clark County, is based on the East Coast. Their standards are very strict and many of the companies are following rules from New York, New Jersey, and Maryland. I believe companies are expecting this and I believe it is all about transparency. I like this bill the way it is.

Senator Titus:

I would like to respond to that. Certainly I respect the judgment of this Committee but the one year comes, as you see in Section 6, from existing language, as your attorney pointed out. This one year applies to the Public Utilities Commission (PUC), the State Gaming Control Board, and certain executive positions. It is the standard. I do not see it as being a problem and it seems to be appropriate to be consistent.

Chair Kirkpatrick:

Mr. Settelmeyer, do you want to follow up?

Assemblyman Settelmeyer:

I completely concur that people should not be taking, per se, forms of bribes that attempt to induce contracts. Yet, let us say you have an employee, for instance, of a conservation district in a smaller county. Let us suppose he is the head of that conservation district and, for whatever reason, he no longer has that job, but this bill says he cannot take a job at Staples because he bought paper from them or entered into a contract with them. This [bill] bothers me from that aspect. I question if sometimes you may be doing contracts that could affect your ability to get a job. I need to mull it over.

Chair Kirkpatrick:

Mr. McKenna, can you clarify some of that [language]?

Scott McKenna:

Again, I would be referring to Section 6, page 4, subsection 4, and as pointed out previously, to trigger the prohibition all three criteria would have to be met. Regarding the hypothetical case presented by Mr. Settelmeyer, I would just point out that per paragraph (c) in subsection 4, the prohibition would only apply if the person had been in a position with the governmental entity and was basically able to influence the contracting decisions, perhaps in favor of the company, like Staples. I just want to provide that clarification.

Chair Kirkpatrick:

Does that answer your question, Mr. Settelmeyer?

Assemblyman Settelmeyer:

I am still concerned. Twenty five thousand dollars seems low. I have another example: one buys a seeder that is worth \$45,000 and later is no longer employed with that district, but he cannot get a job working for that company as an equipment salesperson, even though the contract had gone out for public bid.

Senator Titus:

I think that is exactly what we are trying to get at. If one is in a position to buy a seeder from a company for \$45,000 and leaves that agency, one should not go to work for the company that sold that seeder. That is exactly the problem, and if you do not think it is a problem that is another thing. However, that is the problem and is why I brought the bill.

Chair Kirkpatrick:

To give you a different side of it, I know if you are in sales, working for one particular company, you must sign a "no compete" clause. This is similar to what is happening everyday. For instance, because I sold cheese, and I am no longer with that cheese company, whether I was terminated or whether I decided to go somewhere else, I cannot work for a business that sells cheese, even if it only sells 1 piece of cheese or 5,000 pieces of cheese. This bill is pretty consistent with what I think is being done.

Mr. Settelmeyer:

I completely concur with that. It is something an individual understands when he takes that job. I question if a state employee would know that.

Senator Titus:

This will become part of policy and the employees who are in positions to be involved with procurement will know this. It will be part of the handbook and part of the training. You can hear that from the procurement officers. There will be no question that this is part of what they are bound by. It will not come as a surprise to anybody in that position.

Chair Kirkpatrick:

Is there anybody to speak in favor of S.B. 307 (R1)?

Greg Smith, Administrator, Division of Purchasing:

I would like to speak in favor of this legislation. First, to Assemblyman Settelmeyer's question regarding Douglas County: Jim Keenan, the Purchasing Director of Douglas County, is not here today and I do not represent his feelings regarding his saying "ethical issues." I think he [Jim Keenan] means it in a positive way. He did attend the Senate side and did speak in favor of this bill. I think he meant it clears up some ethical issues.

I am well aware that you are often faced with bureaucrats who come before you and say they could not possibly do their jobs any better if you put in this type of legislation. It would hinder or prohibit their performance on the job. In this case nothing is farther from the truth. This is good, solid, honest, ethical legislation that will, in fact, help us do our jobs.

We have a number of in-house policies and a code of ethics that all our employees sign when they come to work. However, having legislation such as this, codified in statute, simply lends much more credence to it. We support this legislation wholeheartedly.

Ted Olivas, representing the City of Las Vegas and the Nevada Public Purchasing Study Commission:

I want to thank Senator Titus for this legislation. It is good procurement policy. We are in support of Senate Bill 307 (R1).

Chair Kirkpatrick:

Is there anybody else who would like to testify in support of S.B. 307 (R1)?

Steve Walker, representing Truckee Meadows Water Authority:

To be consistent, we testified in favor of this bill in the Senate and we would also like to testify in favor of this bill in the Assembly.

Chair Kirkpatrick:

Are there any questions? Is there anyone neutral on S.B. 307 (R1)? Is there anyone in opposition to S.B. 307 (R1)? [There were none.]

Assemblyman Bobzien:

I just need a little clarification on Section 6, subsection 4 (c): "The position held by the former public officer or employee at the time the contract was awarded allowed him to affect, influence or otherwise provide input." Does the "allowed" part refer to something that has actually happened or is that contemplating that someone could potentially do that? I am thinking of a scenario in which you are a public employee, perhaps having had dealings with a certain contractor at some point, and the contractor might think he could ask for input on a contract you are about to award. I wonder if this language is included because a person actually used their position to say, "Yes, that contractor is no good. This contractor is good." Or is it just the potential that a public employee might be approached because they might know something about the contract?

Scott McKenna:

Mr. Bobzien, the language you refer to in Section 6, line 43, says, "allowed him to affect." It is written as you suggested. If you were in a position that you could have "affected, influenced, or otherwise provided input," the prohibition applies, provided that criteria (a) and (b) are also satisfied. I believe the reason this was written in this specific way was to address the possible instance in which the person has the power to influence a contract and perhaps tries to shield what they are doing through third parties. The idea was to not let that "out of the net," if you will. Yes, it is the ability to do those things, not the actual occurrence of it, as presently written.

Chair Kirkpatrick:

For example, if, as a legislator, I go to the State Purchasing Division and I request information. I get that information and, after the Legislature ends three months later, I have that information from the purchasing department by maybe misleading them about what my intentions were. Is this what the bill clarifies? Mr. McKenna, is this example correct?

Scott McKenna:

Yes, I think that situation could apply here.

Assemblyman Settelmeyer:

You researched all the other states having a similar provision. What monetary number did they utilize?

Senator Titus:

The \$25,000 provision is pretty standard. We looked at the others, as you just heard in testimony from the national association. This is pretty standard language. I have a list that comes from the American Bar Association (ABA) Model Procurement Code. That is the standard they use. Alaska, Arizona, Arkansas, Colorado, Hawaii, Indiana, Kentucky, Louisiana, Maryland, Montana, New Mexico, Rhode Island, South Carolina...

Assemblyman Settlemeyer:

May I have a copy of that? Thank you.

Senator Titus:

Even the Territory of Guam has this, Madam Chairwoman.

Chair Kirkpatrick:

Thank you, Senator. That was the last purchasing bill for this session, I believe. I will close the public hearing on Senate Bill 307 (R1). Is there any public comment? [There was none.] Is there any comment from the Committee? [There was none.]

[The meeting was adjourned at 9:51 a.m.]

RESPECTFULLY SUBMITTED:

Emilie Reafs
Transcribing Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: May 2, 2007

Time of Meeting: 9:03 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Record
S.B. 137 (R1)	C	John Balentine, Washoe County	Prepared Statement
S.B. 307 (R1)	D	Senator Dina Titus, Clark County District No. 7	Prepared Statement