

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

**Seventy-Fifth Session
April 24, 2009**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:05 a.m. on Friday, April 24, 2009, 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/75th2009/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
Assemblyman David P. Bobzien, Vice Chair
Assemblyman Paul Aizley
Assemblyman Chad Christensen
Assemblyman Jerry D. Claborn
Assemblyman Ed A. Goedhart
Assemblywoman April Mastroluca
Assemblyman Harvey J. Munford
Assemblywoman Peggy Pierce
Assemblyman James A. Settelmeyer
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblyman Kelvin Atkinson (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Cyndie Carter, Committee Manager
Denise Sins, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Gustavo (Gus) Nuñez, P.E., Manager, State Public Works Board
J. Stephen Weaver, Chief, Planning and Development, Division of State
Parks, Department of Conservation and Natural Resources
Richard (Rick) J. Nelson, P.E., Assistant Director, Operations,
Department of Transportation
Richard L. Haskins II, Deputy Director, Department of Wildlife, Reno,
Nevada
David Kersh, Government Affairs Representative, Carpenters/Contractors
Cooperation Committee, Inc., Los Angeles, California
Patrick T. Sanderson, representing Laborers' International Union,
Local 872, Carson City, Nevada

Chair Kirkpatrick:

[Roll taken.] We will open the hearing on Senate Bill 42 (1st Reprint).

Senate Bill 42 (1st Reprint): Exempts from the authority of the State Public Works Board and the deputy manager for compliance and code enforcement certain projects, improvements and buildings administered by other agencies. (BDR 28-326)

Gustavo (Gus) Nuñez, P.E., Manager, Nevada State Public Works Board:

Senate Bill 42 (R1) was requested by the State Public Works. It is a clean-up bill for Senate Bill No. 387 of the 74th Session. It will ensure consistency within the statutes regarding what authority may be delegated and what authority may not be delegated. It maintains the Board's ultimate authority to accept all state buildings. It also requires reporting obligations for the building officials, similar to those of the manager. It eliminates the language that requires the Board to report to the building official.

There was an amendment that was brought forward by the Department of Conservation and Natural Resources, the Department of Transportation (NDOT), and the Department of Wildlife (NDOW) which is now incorporated into this bill. There are representatives here from those departments to answer any questions you may have.

Chair Kirkpatrick:

Does anyone have any questions? Mr. Nuñez, I am guessing from the minutes that the NDOW clarification was for things such as boat ramps, picnic shelters, and those types of things? Is that what that covers?

Gus Nuñez:

That is what they testified to. They are here if you wish to question them.

Assemblywoman Pierce:

I want to know why you want to do this.

Gus Nuñez:

Again, this bill is a housekeeping bill for the State Public Works Board with respect to what occurred during the 2007 Session with S.B. No. 387, which created a position of deputy manager for compliance and code enforcement. The way the law was finalized and codified, it had the Board reporting to the building official when it should be the other way around.

Other exceptions included in the bill have been requested by those other agencies to have the ability to handle agency projects in-house because it would be more expedient for them not to have to go through Public Works.

Chair Kirkpatrick:

Does anyone else have any questions? Is there anyone who would like to testify in support of S.B. 42 (R1)?

J. Stephen Weaver, Chief, Planning and Development, Division of State Parks, Department of Conservation and Natural Resources:

[Mr. Weaver read from prepared text ([Exhibit C](#)).] The second to the last paragraph goes into some detail about the types of projects that would be exempted and it is spelled out completely in the bill. This would include picnic shelters, prefabricated restrooms, and boat ramps and docks.

Chair Kirkpatrick:

Was there a problem with the bill that needed to be cleaned up? Was it unclear or is there a situation that occurred?

Stephen Weaver:

There are some inconsistencies and even contradictions between the *Nevada Revised Statutes* (NRS) and the International Building Code, which gives building officials authority over many types of projects. The Attorney General had an opinion that stated all construction projects should go through the State Public Works Board (SPWB), which was too much for the agency to handle. We felt we had to eliminate the contradictions and come to an agreement on what needed to go to the SPWB and what should not. We think we have a reasonable compromise that works for all of us.

Chair Kirkpatrick:

What is the average cost of one of these projects, like building a boat ramp? The bill says major repair. What are the checks and balances?

Stephen Weaver:

It runs the whole gamut, from replacing a broken water pipe to building a boat ramp, parking area, and dock, which could cost as much as \$1.5 million. A campground with utility hookups and other amenities could cost a couple of million dollars. Of course, NDOT has many multimillion dollar projects. Their scope is much bigger than NDOW or State Parks.

Chair Kirkpatrick:

Are any of your dollars federal dollars?

Stephen Weaver:

Yes. We use a lot of federal dollars. We match our bond monies and dedicated state funds with federal dollars whenever possible.

Chair Kirkpatrick:

Do we have the trained staff to do those major types of jobs?

Stephen Weaver:

Yes. All three agencies have licensed professionals.

Assemblyman Claborn:

Are you trying to separate maintenance from new construction? Is that the idea?

Stephen Weaver:

Part of the problem was that the International Building Code addresses maintenance as well as new construction, so it is both. We are not trying to separate the two. We are trying to separate the larger projects wherein building codes become more complicated and it is a good idea to have scrutiny by a

third party—that is, the state building official within the SPWB—from smaller projects that we can handle readily by ourselves with our own licensed personnel.

Assemblyman Claborn:

Do those projects have a threshold?

Stephen Weaver:

We use 1,000 square feet as the threshold.

Assemblyman Claborn:

Maintenance does not fall under the prevailing wage anyway.

Stephen Weaver:

That is generally true, yes.

Assemblyman Claborn:

New construction, of course, does fall under the prevailing wage. If you are bumping up against the threshold then you are bumping up against the prevailing rate. I do not think that is what you are trying to do. I am trying to get a handle on what you are attempting to do.

Stephen Weaver:

Almost any building over 1,000 square feet is going to cost more than \$100,000, which is the threshold that kicks in the prevailing wage rates.

Richard (Rick) J. Nelson, P.E., Assistant Director, Operations, Department of Transportation:

I want to echo Mr. Weaver's testimony. I thank the SPWB for working with us to generate the language of this amendment.

Chair Kirkpatrick:

Did you have a situation that this clarifies?

Rick Nelson:

We were caught up in the situation of the conflicting Attorney General's opinions. Our construction is covered under NRS Chapter 408, which provides an exemption for buildings that are used in the maintenance of highways. This amendment clarifies what is going to fall under NRS Chapter 408 and what falls under NRS Chapter 338.

Chair Kirkpatrick:

I am going to ask Mr. Nuñez why we have an Attorney General's opinion, because something must have occurred to warrant that.

Richard L. Haskins II, Deputy Director, Department of Wildlife, Reno, Nevada:
We support the amendment as written.

Chair Kirkpatrick:

Is there anyone else who would like to testify on S.B. 42 (R1)? [There was no one.] Is there anyone who is neutral on S.B. 42 (R1)? [There was no one.] Is there anyone in opposition to S.B. 42 (R1)? [There was no one.] Mr. Nuñez, would you come back up? Do you know why we even have an Attorney General's opinion? Why was it requested?

Gus Nuñez:

My predecessor was the one who asked for the Attorney General's opinion. It came out after I became the manager.

Chair Kirkpatrick:

I know you were here last session. The part of this bill that you are referring to, the technical part, only passed last session, so we should have known about it then.

Gus Nuñez:

The Attorney General's opinion dealt with a concern about the SPWB and the way the current law was being applied by the various agencies. We wanted to make sure that we were doing what we were supposed to do with respect to the law and the authority given within NRS Chapter 341.

There seemed to be a disagreement within the various state agencies as to what that meant, so the prior manager asked for that Attorney General's opinion. When it came out, it caught us by surprise as to how the current law was being interpreted. It meant that the building official function of the SPWB had authority to enforce the building codes that we adopt.

It also raised concern about the many things required by the code. The code does get into certain types of maintenance. If you have broken a pipe and you just want to fix the leak, you would not be required to go through the building department. If you have a boiler or major mechanical component in a building and it needs to be replaced, that replacement would require an independent third party review by the building official.

As a result, there are a lot of agencies that do projects in-house without going through the SPWB process.

Chair Kirkpatrick:

We spent a lot of time with the Senate last session changing things that had to do with the SPWB. Was Ms. Mastos the Attorney General who issued that after session, or was it during session?

Gus Nuñez:

The Attorney General's opinion came out after the end of the last session.

Chair Kirkpatrick:

It was requested two years prior?

Gus Nuñez:

It was requested prior to the session and came out after the session.

Chair Kirkpatrick:

We did so much to change the way SPWB works last time; how could we miss something so significant?

Assemblywoman Pierce:

We are talking about buildings that are not going to be occupied, correct?

Gus Nuñez:

I believe that is the case for State Parks and for Wildlife. With respect to NDOT, there are buildings that are used for maintaining highways that would be occupied and exempt.

Assemblywoman Pierce:

These buildings are primarily where people are coming in and going out, not where people are sitting all day at a desk, correct?

Gus Nuñez:

That would be my understanding. From what I have seen, there usually are several bays for equipment and a small office and break rooms. Typically, those employees will be out in the field the majority of the time maintaining the buildings.

Chair Kirkpatrick:

Do you have anything else for us, Mr. Nuñez? We will close the hearing on S.B. 42 (R1) and open the hearing on Senate Bill 43 (1st Reprint). Good morning, Mr. Nuñez.

Senate Bill 43 (1st Reprint): Revises the criteria that the State Public Works Board is required to adopt to determine the qualification of bidders on contracts for public works. (BDR 28-323)

Gustavo (Gus) Nuñez, Manager, P.E., State Public Works Board:

The purpose of this request to amend *Nevada Revised Statutes* (NRS) Chapter 338 is to allow the State Public Works Board (SPWB) to consider whether a contractor has been disciplined or fined by the State Contractors' Board when applying for prequalifications. In NRS Chapter 338 there is a requirement for the SPWB to pass regulations for qualifications of bidders that include certain criteria that we must look at in prequalifying contractors. We have developed regulations. We have had this system since 2003, when the regulations were passed, and it has been working quite well. This is just fine-tuning as a result of a situation that occurred recently with respect to qualifications of a particular contractor. It was brought to the Board's attention, and they felt they should have the ability to review disciplinary action by the Contractors' Board as part of the qualifications review of the contractor and take that into consideration.

Assemblyman Aizley:

The wording in subsection 3 says criteria "must be adopted," but the part you are talking about says "may include." Why would you not say "must include"?

Chair Kirkpatrick:

I think that is probably a legal way to interpret it. It is usually "may" or "shall."

Assemblyman Aizley:

The way it reads, you would not have to do that.

Chair Kirkpatrick:

Mr. Nuñez, can you explain and go through the point system for us?

Gus Nuñez:

The "may include only" is current language in the bill. We have included four points: the financial ability, the qualifications of principal personnel, whether the applicant has breeched any contracts with any other public bodies, and whether the applicant has been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.13895, which deals with prevailing wage. All of those items have been included in the regulations. We take all of those items into consideration.

Each applicant gets 150 points to start. We review their qualifications, financial ability, qualifications of principal personnel, and any other issues such as

violations of prevailing wage, discrimination, or violation of any other type of labor laws. As violations are found, points are taken away. They are allowed to lose up to 30 points. If they lose more than 30 points they become disqualified. We look back at these items for five years. Violations that become older than five years are expunged from their record. Contractors can then come back and reapply. It allows them to correct their prior actions, and if they continue to comply with all of the requirements, they can continue to do business with the state.

Chair Kirkpatrick:

That probably does not answer your question, Mr. Aizley, but I think they are just looking for the ability to include this as part of their determination on whether or not the company is qualified to work in the state.

Gus Nuñez:

That is correct. We would be adding a fifth item to those four items for qualification of approved contractors.

Assemblyman Aizley:

The concern was that if some people had a problem in the past, and you looked at them and saw another person with the same problem, you might not consider them because it says "may" instead of "must."

Gus Nuñez:

Once the regulations are passed and become part of the process, we look at everyone the same way. It is consistent across the board for every applicant.

Chair Kirkpatrick:

It sounds as if there was an attempted amendment proposed on the Senate side, but this looks like it was a Do Pass.

Gus Nuñez:

Yes. If you go back and look at the minutes of the Senate hearings, and the way the current language was put together by Public Works in presenting the intent of the amendment, you will see that everyone is in agreement with the current language.

Chair Kirkpatrick:

But what I am seeing is a vote to Do Pass. We need to be clear that if you have a complaint with the Contractors' Board, it has to be substantiated before it can be held against them, right?

Gus Nuñez:

That is correct.

Chair Kirkpatrick:

Sometimes people file a complaint just to file a complaint. We do not want to harm someone who is trying to do the right thing.

Gus Nuñez:

Right. What we look at is the nature of the complaint in order to determine whether or not a point should be deducted from their score.

Chair Kirkpatrick:

Does anyone have any questions? [There were none.] Is there anyone who would like to testify in support of S.B. 43 (R1)?

David Kersh, Government Affairs Representative, Carpenters/Contractors Cooperation Committee, Inc., Los Angeles, California:

The Carpenters have been involved in the prequalification process from the very beginning. We worked with the Association of General Contractors (AGC) and the Associated Builders and Contractors (ABC). We have always looked at prequalification as a way of dealing with problematic situations at the front end, as opposed to having the problems arise later or even when the bids are submitted.

In regards to this bill, this was prompted by a situation where a contractor had issues with the license board and they were not taken into consideration in the rating system.

We fully support the language. The only issue we see occurred in the Senate, not with the language per se, but with a letter that had been submitted along with that language clarifying what the intent was. Another letter was submitted from the SPWB clarifying the intent. This had to do with the issue of settlements. We wanted to make sure that settlements in which there has been a fine or disciplinary action taken would be counted as part of the rating system. There were some issues regarding the letter, but it has all been taken care of.

Assemblywoman Spiegel:

Was there any discussion about settlements where the settlement included no fine or disciplinary action?

David Kersh:

I believe the letter that was submitted indicated that the underlying action in the settlement would be examined. If a contractor was fined or disciplined for hiring unlicensed subcontractors but ultimately reached a settlement, the SPWB would still consider the fine a discipline. My understanding is that if there is a settlement and there is no fine or discipline, then that would not be counted. It goes back to the language in the bill which says to be fined or disciplined.

Chair Kirkpatrick:

Looking at the minutes, it does not look like there was ever a letter of intent submitted through the Senate Government Affairs Committee. It is not listed as an exhibit anywhere, so where is that letter? I did not see it when I pulled the minutes.

David Kersh:

I have a copy of a letter from March 16 indicating that it was part of the March 16 work session, where it was introduced.

Chair Kirkpatrick:

Could you give us a copy so we can put it in the record as an exhibit for the legislative history?

David Kersh:

Yes.

Patrick T. Sanderson, representing Laborers' International Union, Local 872, Carson City, Nevada:

This is a common sense bill. It is a very few contractors who come back time and again, have bad subcontractors, and have these problems. There has not been any discipline that has been effective.

What usually happens is the contractors run out of luck in being able to bid, either public works or highways, so they move to other locations and start doing the same things. It really hurts the overall work and what the residents of the State of Nevada receive.

Chair Kirkpatrick:

Thank you. Does anyone have any questions? [There were none.]

I have a copy of the March 16 letter which I will submit into the record ([Exhibit D](#)).

Is there anyone who would like to testify on S.B. 43 (R1)? [There was no one.]
Is there anyone who is neutral on S.B. 43 (R1)? [There were none.] We will
close the hearing on S.B. 43 (R1). Is there anything from the public? [None.]
will meet on Monday at 9:00 a.m.

[Meeting adjourned at 9:41 a.m.]

RESPECTFULLY SUBMITTED:

Denise Sins
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: April 24, 2009

Time of Meeting: 9:05 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 42 (R1)	C	Stephen Weaver	Testimony on <u>Senate Bill 42</u>
S.B. 43 (R1)	D	David Kersh	March 16 Letter of Clarification of Intent for Proposed Amendment for <u>S.B. 43</u>