

**MINUTES OF THE
SENATE COMMITTEE ON FINANCE
SUBCOMMITTEE ON STATEWIDE CONTRACTING**

**Seventy-sixth Session
March 25, 2011**

The Senate Committee on Finance Subcommittee was called to order by Chair Sheila Leslie at 2:12 p.m. on Friday, March 25, 2011, in Room 1214 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

SUBCOMMITTEE MEMBERS PRESENT:

Senator Sheila Leslie, Chair
Senator David R. Parks
Senator Ben Kieckhefer

GUEST LEGISLATORS PRESENT:

Senator Steven A. Horsford, Clark County Senatorial District No. 4
Senator Moises (Mo) Denis, Clark County Senatorial District No. 2
Assemblyman Joseph M. Hogan, Assembly District No. 10
Assemblywoman Lucy Flores, Assembly District No. 28
Assemblywoman Dina Neal, Assembly District No. 7
Assemblywoman Olivia Diaz, Assembly District No. 11
Senator Ruben J. Kihuen, Clark County Senatorial District No. 10

STAFF MEMBERS PRESENT:

Brenda J. Erdoes, Legislative Counsel
Mark Krmpotic, Senate Fiscal Analyst
Patricia O'Flinn, Committee Secretary

OTHERS PRESENT:

Gustavo Nuñez, P.E., Manager, State Public Works Board
Yvette Williams, Chair, Clark County Democratic Black Caucus
Roosevelt Thompson, Clark County Democratic Black Caucus

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Bob Daniel, Chair, Economic Empowerment Committee, 100 Black Men of Las Vegas
C. Lavonne Laughinghouse, Clark County Democratic Black Caucus
Dennis Toles, Clark County Democratic Black Caucus
Devin Brooks, Clark County Democratic Black Caucus
Stephan Taylor, Clark County Democratic Black Caucus
Damone Williams, Corresponding Secretary, Clark County Democratic Black Caucus
Katherine Duncan, Ward 5 Chamber of Commerce
Jan Gilbert, Progressive Leadership Alliance of Nevada
Michael Tanchek, Labor Commissioner, Office of Labor Commissioner
Anthony Rogers, Bricklayers and Allied Craft Workers of Southern and Northern Nevada
Jack Mallory, Director of Government Affairs, International Union of Painters and Allied Trades, District Council 15; Southern Nevada Building and Construction Trades Council
Marlene Lockard, Nevada Women's Lobby
Scott Rawlins, P.E., C.P.M., Deputy Director, Department of Transportation
Robert Chisel, Assistant Director, Department of Transportation

CHAIR LESLIE:

We will open the hearing to review Senate Bill (S.B.) 359.

[SENATE BILL 359](#): Revises provisions relating to contracts with a governmental entity. (BDR 23-973)

SENATOR STEVEN A. HORSFORD (Clark County Senatorial District No. 4):
Senate Bill 359 goes to the heart of one of the things we have been trying to accomplish this Legislative Session: good government and government efficiency. As we address the critical need for new revenue to support education and vital social services, we must also face the question of whether government is delivering services as efficiently as possible. Every dollar saved through efficiency measures is a dollar in new revenue we do not have to raise. Efficiency in government is not confined to State government. Every taxpayer-supported agency in this State should be held to the same standard of delivering services in the most cost-effective manner. Nevadans do not distinguish between spending at the State and local level; one way or another, they will pay for it.

This is particularly relevant in this Legislative Session when local governments are being asked to do more with the resources they have, to share more of the responsibility with the State of providing basic services to all of our constituents. Furthermore, government spending at all levels should be transparent. Citizens should know exactly how their tax dollars are being spent. Senate Bill 359 addresses these issues: efficiency, transparency and accountability. Millions of dollars in contracts are awarded each year by government agencies to independent contractors to perform services the agencies cannot perform themselves. Nevadans are impacted by these contracts, both as taxpayers and consumers who must sometimes pay for these contracts through fees.

In a previous hearing, the Senate Committee on Finance examined several State contracts that lacked efficiency, transparency and accountability. Sole-source contracts were rolled over year after year without consideration of other vendors who might be able to do the same work at a lower cost. We found multiyear contracts that were extended without a competitive bid process. We found the need to periodically revisit contracts because of changes in economic conditions that could result in lower-cost contracts. In terms of transparency, some of the contracts we reviewed contained fees charged to consumers that were not adequately disclosed in the contracts themselves. Senate Bill 359 is aimed at achieving comprehensive contract reform at every level of government in Nevada. Issues of efficiency, accountability and transparency apply to all contracts, from the smallest local improvement district to the largest State agency.

Section 3 of S.B. 359 defines the types of contracts to which the bill applies. Those contracts are awarded to independent contractors, a person or company, which provide services to an agency. This does not apply to purchased goods. Sections 8, 9 and 10 relate to the issues of ethics and transparency in contracting. Specifically, these sections aim to ensure contracts are negotiated and carried out ethically. The State Purchasing Division would develop a code of conduct for vendors. These regulations would include: requirements to know and abide by State ethics laws, a provision preventing public employees from benefiting from the contracts they negotiate, and maintenance of records of work performed so it can be audited for performance.

These sections also require full disclosure of any fees charged to consumers as part of a contract, whether by a contractor or subcontractors. The Senate Committee on Finance learned of fees charged to recipients of unemployment insurance benefits for taking withdrawals out of the accounts the State had established for them. We learned that recipients of Temporary Assistance to Needy Families benefits were also charged fees. Under S.B. 359 all fees would be disclosed, along with who will be charged and what would trigger the fee.

Section 11 contains reforms of the contracting process: limits sole-source contracts to two years, after which they must be renegotiated; requires all existing contracts to be competitively bid at the end of the current term; requires review of contracts every two years to take into account economic conditions that could result in better pricing. At the State level, we have identified approximately \$6 million to \$7 million in savings through renegotiation of contracts over the last two years. Sections 12 and 13 ensure oversight of the contracting process by requiring government agencies to report annually to the State Purchasing Division on the contracts they have negotiated and the savings they have achieved through renegotiation. The Purchasing Division will report these results to the Interim Finance Committee. This information should already be collected by the local governments and State agencies that enter into contracts with independent contractors.

Section 15 is intended to lay the foundation for contracting in public works projects. The first step is to make a determination about whether all elements of Nevada's population are proportionally represented in public works projects. One of the issues of this Legislative Session is whether we can establish preferences in hiring based on race and gender. From a legal standpoint, a determination of disparity must be made. Section 15 requires contractors to report data about whom they are hiring. This information will be reported to the State Public Works Board (SPWB) which will report to the Legislature. Section 17 improves oversight of contracts entered into by the Nevada Department of Transportation (NDOT), by requiring an additional review of NDOT contracts by the State Board of Examiners, which reviews other State contracts.

CHAIR LESLIE:

At a time when we need to assure every penny counts, this bill is timely.

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SENATOR MOISES (Mo) DENIS (Clark County Senatorial District No. 2):
Senate Bill 359 will help create good government and efficiency. It provides for fairness in the opportunity to work. I support S.B. 359.

ASSEMBLYMAN JASON FRIERSON (Assembly District No. 8):
Any effort to increase transparency, accountability, efficiency and fairness has my whole-hearted support.

ASSEMBLYMAN JOSEPH M. HOGAN (Assembly District No. 10):
I support S.B. 359.

CHAIR LESLIE:
We will start with section 15. Before we get to the public comment, I would like to hear from SPWB.

GUSTAVO NUÑEZ, P.E. (Manager, State Public Works Board):
Regarding section 15, my only concern is the impact on our staff. Currently, SPWB does not have enough staff to process the information required in S.B. 359. Further, the volume of information may necessitate purchasing software and a server.

CHAIR LESLIE:
Are you referring to subsection 3 on page 6, line 13?

MR. NUÑEZ:
Yes, I am referring to the section that begins "3. The State Public Works Board shall: (a) Compile and maintain the information reported by a public body pursuant to subsection 1." Personal information would have to be removed as required by *Nevada Revised Statutes* (NRS) 603A.040 before it could be released to the public and reported to the Legislative Counsel Bureau (LCB). These requirements will be difficult for us given the reductions in staffing.

CHAIR LESLIE:
You will not be gathering information, you will be compiling it.

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MR. NUÑEZ:

That is correct. The information would be reported to us and we would have to redact the personal information, put it into a database and create a report that is acceptable to LCB, and make it publicly available.

CHAIR LESLIE:

Provide the Subcommittee a written outline of this process and the resources you would need to implement S.B. 359.

MR. NUÑEZ:

Yes, I will get that information to the Subcommittee.

The information required by S.B. 359 would have to be requested ahead of time.

CHAIR LESLIE:

Would this be a change in practice?

MR. NUÑEZ:

Yes, it would be.

SENATOR KIECKHEFER:

Do you currently collect data about every public works project issued in the State regardless of the level of government?

MR. NUÑEZ:

No, we do not collect data from other governmental agencies. We only collect and maintain data on State projects and report that to LCB monthly.

SENATOR KIECKHEFER:

How many public works projects are there statewide?

MR. NUÑEZ:

I do not know, but I imagine it is a considerable number.

ASSEMBLYWOMAN LUCY FLORES (Assembly District No. 28):

I support S.B. 359, especially the requirements for the collection of data in section 15. This is important to the minority community, not because it remedies past policies, but because it will give us data with which to support

the claims of underrepresentation that we know exists, but for which we only have anecdotal evidence. The first step toward redress is to ensure the reality mirrors the anecdote. If it does not, it is important to know that as well. Most of the information specified in section 15 is already being collected. The federal government already certifies organizations as minority owned. It is disingenuous to say section 15 would create a burden; it is a matter of checking a few more boxes, gathering the information and making it available for analysis. It does not seem that burdensome to me, and the results serve an important purpose.

ASSEMBLYWOMAN DINA NEAL (Assembly District No.7):

The reason for the data collection is to lay the foundation for creating opportunities for minority- and woman-owned businesses in Nevada. It is important to start the conversation about opportunities for business owners, not just wage earners.

ASSEMBLYWOMAN OLIVIA DIAZ (Assembly District No. 11):

I support S.B. 359 as written.

YVETTE WILLIAMS (Chair, Clark County Democratic Black Caucus):

Although we had hoped that all contractors would be required to have a diversity program in place, the transparency and accountability required by S.B. 359 will positively impact the outcome of minority participation in contracts and in the workforce. Regarding the impact to the SPWB budget and staff to implement section 15 of this bill, without this legislation there is only 1 percent of minority participation in contracts and construction jobs. We need our government to protect minorities who are underrepresented. The data collected will empower you, our elected representatives, to make appropriate policy decisions in 2013.

ROOSEVELT THOMPSON (Clark County Democratic Black Caucus):

We support the U.S. Constitution, especially the 14th Amendment. Because all are created equal, any violation of this amendment should be prohibited. A lack of access to jobs is a direct violation of the 14th Amendment. Therefore, we strongly support an inclusive statewide diversity program whereby all citizens of Nevada are fairly represented in the economy of this State, both in employment and contract opportunities. Set-asides do not go far enough to ensure opportunities for all minority and ethnic groups and other underrepresented communities. Equal access to quality education and health care, justice and

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jobs, fair and livable wages is strongly supported in this legislation. I strongly support S.B. 359.

BOB DANIEL (Chair, Economic Empowerment Committee, 100 Black Men of Las Vegas):

It is critical to have information to make intelligent decisions. The data collection required in section 15 will assist in that process. I have submitted bids in the past and most of the information requested in section 15 is already being collected. Taking the information and putting it into a report is not an issue, it is a red herring. As a veteran, it is interesting to note there is a preference given in the State of Nevada for veterans. I am curious how the decision to give preferential status to veterans was made without a clear understanding of the percentage of veterans who were being awarded bids.

C. LAVONNE LAUGHINGHOUSE (Clark County Democratic Black Caucus):

I have lived in various states and have been a business owner, architect and educator. It has been my observation that minority and ethnic groups are underrepresented as owners of businesses in many industries, not only construction. Just as important, these groups are also underrepresented as salary earners rather than wage earners; there are fewer minorities in the management and executive ranks. I support S.B. 359.

SENATOR RUBEN KIHUEN (Clark County Senatorial District No. 10):
I support S.B. 359.

DENNIS TOLES (Clark County Democratic Black Caucus):

I support S.B. 359. I hear some administrative push-back based on administrative efficacy. The State should be modernized and the Department of Information Technology should be able to deal with the kind of data capture discussed in this bill. We are talking about social equity. When taxes are collected in this State, they are collected from everyone. When revenue is generated and work is available, it should be distributed equally as well. Expectations of inclusion and fair play should not be overlooked due to considerations of administrative efficacy.

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DEVIN BROOKS (Clark County Democratic Black Caucus):

I am a 24 year-old future entrepreneur. I want to be able to see my community grow. The data requested by section 15 in S.B. 359 will give us the opportunity to ensure equity. I support S.B. 359.

STEPHAN TAYLOR (Clark County Democratic Black Caucus):

I support S.B. 359. One of the problems with diversity legislation is companies fill the diversity requirements with only one ethnicity or gender. We would like to see a true diversity. Another issue is the need for clear definitions and enforcement of consequences if diversity requirements are not followed.

DAMONE WILLIAMS (Corresponding Secretary, Clark County Democratic Black Caucus):

I support S.B. 359. On behalf of the chair of the Clark County Democratic Black Caucus, we would like to thank Assemblyman Joe Hogan for his wisdom, insight and leadership on the NDOT pilot project which helped to bring this issue forward.

KATHERINE DUNCAN (Ward 5 Chamber of Commerce):

I support S.B. 359. I believe this bill will give some teeth to NRS 621 which requires 51 percent participation from those persons living in the redevelopment area. The reporting requirements of section 15 will support other statutes already in place.

CHAIR LESLIE:

Why is there a preference for veterans under current State law?

BRENDA J. ERDOES (Legislative Counsel, Legal Division, Legislative Counsel Bureau):

Disabled veterans are not a protected class under the 14th Amendment; therefore, the test is different. Courts have held that strict scrutiny applies and the State must narrowly define the preference.

SENATOR KIECKHEFER:

Does the same apply to the blind vendors who serve in State buildings?

MRS. ERDOES:

That preference is a different analysis.

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JAN GILBERT (Progressive Leadership Alliance of Nevada):
We support S.B. 359. It is a racial justice issue. We will be grading this bill on our racial equity report card.

MICHAEL TANCHEK (Labor Commissioner, Office of Labor Commissioner):
I am testifying on section 16 which is the enforcement provision for section 15. Subsection 1 of section 16 makes it a misdemeanor not to comply with section 15. In addition, the Labor Commissioner can impose an administrative penalty equal to the investigative and prosecuting costs based in NRS 338. We are analyzing the bill to determine if other remedies available through NRS 338 would apply.

CHAIR LESLIE:
Would you need an amendment to do that?

MR. TANCHEK:
I do not think so. The language in subsection 2 of section 16 states the "Labor Commissioner, in addition to any other remedy or penalty provided in this chapter." We are examining how the remedies in NRS 338 would be applicable to this bill.

From a workload standpoint, subsection 2 of section 16 would create the most trouble for my office and the vendors.

In response to Senator Kieckhefer's earlier question regarding the number of public works projects in the State, the Office of Labor Commissioner issues about 800 public works project numbers a year. At any given point in time, we are tracking approximately 1,500 to 2,000 individual projects.

CHAIR LESLIE:
Are those numbers both State and local government projects?

MR. TANCHEK:
Yes, they are.

ANTHONY ROGERS (Bricklayers and Allied Craft Workers of Southern and Northern Nevada):
We support S.B. 359 and section 15.

JACK MALLORY (Director of Government Affairs, International Union of Painters and Allied Trades, District Council 15; Southern Nevada Building and Construction Trades Council):

The issues of transparency, efficiency and regulation of sole-source contracts are important to us and we strongly support those provisions in S.B. 359. Our commitment to diversity is exercised through our apprenticeship programs. As an organization, District Council 15, and its three affiliated local unions, has a total minority percentage of 52.8 percent. We have three different apprenticeship programs which have a total minority participation of 85.5 percent, including women. Additionally, approximately one-third of our contractor partners, both large and small, are minority owned. Employers have the information requested in section 15 of S.B. 359. It is a matter of compiling the information. The data that would be obtained by this bill is critical for the implementation of other preference bills like A.B. 361 which was presented by Assemblywoman Neal this morning.

ASSEMBLY BILL 361: Revises provisions relating to preferences in bidding on smaller public works contracts. (BDR 28-1053)

MARLENE LOCKARD (Nevada Women's Lobby):

We strongly support S.B. 359. There are so many anecdotal assumptions, it is imperative to collect the data to make responsible policy decisions.

SENATOR KIECKHEFER:

I am trying to ensure we are trying to collect the right information and that I am reading the bill correctly. Subsection 1 of section 15 requires everyone who bids on a public work to submit their individual race, ethnicity and gender. I understand this to be just the owner of the general contracting company. Subsection 2 requires the person or company awarded the contract to submit the same information about all of the employees and any subcontractors. According to the bill, we will collect robust data about those companies that are awarded contracts, but limited data on those that lose in the bid process. I am not sure this will give us all the data to answer all the questions we want to ask.

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SENATOR HORSFORD:

I would like to ask legal counsel to verify, but I think that all of the information would be collected from all bidders as well as those awarded contracts.

MRS. ERDOES:

Subsection 1 of section 15 focuses on obtaining information from all bidders. Subsection 2 requires those who are awarded contracts to provide the same information about their employees and subcontractors as they begin to hire for the project.

SENATOR KIECKHEFER:

There is a difference in the language between subsection 1 and subsection 2. Subsection 1 states "every person" without a definition, but subsection 2 enumerates each "subcontractor and other person who provides labor equipment, materials, supplies or services." Because of the difference in language, it seems we will be collecting different data.

MRS. ERDOES:

The reason it reads differently is because it is tailored to the different types of entities involved. The definition of "person" is in the preliminary chapter which provides that a "person" includes any business entity other than a governmental entity. I can assure you we are intending to gather all the data we need.

CHAIR LESLIE:

Is there any further public testimony on section 15? We will revisit it next week when we meet again. We will move to section 17.

SCOTT RAWLINS, P.E., C.P.M., (Deputy Director, Department of Transportation):

The majority of NDOT contracts are presented to the NDOT Board of Directors rather than the Board of Examiners per statutory authority in NRS 408 and the opinion of the State Attorney General. One reason for this is that two of the three members of the Board of Examiners sit on the Department of Transportation Board of Directors. Sole-source contracts that are not directly related to highway purposes are submitted to the Board of Examiners for approval. The NDOT would like an amendment to section 17 to revert that requirement back to the Transportation Board.

CHAIR LESLIE:

What line of the bill are you referencing?

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MR. RAWLINS:
That would be lines 14 through 16 on page 7.

CHAIR LESLIE:
What is the reason for this request?

MR. RAWLINS:
Two out of the three Board of Examiners members sit on the Transportation Board. It is a more appropriate place for examination of these contracts. Lines 18 and 26 should also be changed.

SENATOR KIECKHEFER:
The definition of "professional" includes architects, attorneys, engineers, landscape architects and surveyors. How many of those types of professions do you maintain on staff?

MR. RAWLINS:
We have all those technical expertise professions represented on staff. There are approximately 400 engineers out of a total staff of about 1,750.

SENATOR KIECKHEFER:
How often do you contract out for engineer work?

ROBERT CHISEL (Assistant Director, Department of Transportation):
In general, we issue about 1,000 service contracts every year. Of those, approximately 300 are for professional services of some sort.

SENATOR KIECKHEFER:
Do you conduct a formal analysis of in-house capacity before you send a contract out to bid?

MR. RAWLINS:
This is always more work than staff, but outsourcing of services fluctuates. During the major construction season, for example, there is more need for oversight. We supplement internal resources quite often.

SENATOR KIECKHEFER:

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Do you have less money than five years ago? Has the number of contracts decreased?

MR. RAWLINS:

Due to federal funding, our money has increased. We have also issued bonds we are now beginning to pay back. Although the level of funding has fluctuated over the last four to five years, we have had approximately \$400 million to \$500 million in capacity projects each year.

CHAIR LESLIE:

Are your service contracts more for capacity or expertise?

MR. RAWLINS:

They are both. It depends on the complexity of the project. If the project has a special bridge design or we need some right-of-way appraisals, we contract for the expertise. We do move our construction crews around the State based on the project location, but we are limited on the amount of staff for construction oversight. Based on American Recovery and Reinvestment Act of 2009 requirements, we had to supplement our staff for those projects.

CHAIR LESLIE:

Does NDOT object to anything else in section 17 of S.B. 359?

MR. RAWLINS:

No, it does not.

SENATOR KIECKHEFER:

How often does the Transportation Board meet?

MR. RAWLINS:

The Board meets about quarterly.

SENATOR KIECKHEFER:

Do you have the ability to process these contracts in a timely manner, or do you have standard contracts that are signed as needed?

MR. RAWLINS:

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The Governor has asked us to review our contracting practices and how contracts are executed. We may need to increase the Transportation Board meetings from quarterly to monthly.

MS. WILLIAMS:

Members of the Clark County Democratic Black Caucus are concerned that if NDOT contracts remain under the jurisdiction of the Transportation Board, rather than the Board of Examiners, the accountability will be compromised. Why is NDOT requesting this change in S.B. 359?

CHAIR LESLIE:

So far it is just a suggestion, but as I understand it, NDOT would prefer their contracts to go to the Transportation Board because they have more expertise plus, two of the three members of the Board of Examiners also sit on the Transportation Board.

MR. RAWLINS:

That is correct.

CHAIR LESLIE:

Do you think there is sufficient oversight with the Board of Transportation?

MR. RAWLINS:

Yes, there are more members on the Transportation Board.

SENATOR HORSFORD:

The rationale for having NDOT contracts reviewed by the Board of Examiners is to create a second review. I understand the position of NDOT as far as consistency, but there is a need for checks and balances on the Transportation Board just like other State agencies. There has not been enough review in the past. We can improve both procurement and employment. With the pilot program Assemblyman Hogan has been successful in implementing, there has been progress on the employment side, but we still face the same challenges on the procurement side. I would be open to considering other models for an additional review.

CHAIR LESLIE:

We are not making a decision today, we are just gathering information.

MR. TOLES:

Twenty-five percent of NDOT staff is professional engineers which seems pretty high, considering usually just a few are used to sign off on all the engineering work that is done. We do not want to get the work corralled into only NDOT's lane. It seems that S.B. 359 starts out speaking about governmental entities. If you start looking at allocations to large departments like the Department of Conservation and Natural Resources, however, there may be some exclusivity in terms of the type of oversight.

I am concerned that the penalties for noncompliance outlined in section 16 will not be a deterrent. We have seen, especially regarding the U.S. Environmental Protection Agency, that when fines are not sufficient deterrents, companies will incorporate the fines into their cost of doing business and continue to break the law.

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CHAIR LESLIE:

We will post an agenda as soon as we determine when we will meet next week.
This meeting is adjourned at 3:34 p.m.

RESPECTFULLY SUBMITTED:

Patricia O'Flinn,
Committee Secretary

APPROVED BY:

Senator Sheila Leslie, Chair

DATE: _____

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<u>EXHIBITS</u>			
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	A		Agenda
	B		Attendance Roster