

ASSEMBLY BILL NO. 174—ASSEMBLYMAN ARBERRY  
AND WILLIAMS

FEBRUARY 20, 2003

Referred to Committee on Government Affairs

SUMMARY—Requires certain preferences for underutilized businesses with respect to certain purchasing by local governments and certain contracts for public works and requires certain licensees of Nevada Gaming Commission to establish goals regarding hiring of underutilized businesses. (BDR 27-1004)

FISCAL NOTE: Effect on Local Government: Yes.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to underutilized businesses; requiring under certain circumstances a preference for such businesses with respect to purchasing by local governments and contracting for public works; requiring certain licensees of the Nevada Gaming Commission to establish goals concerning contracting with underutilized businesses; providing that certain public bodies may give a preference in selecting a professional engineer, professional land surveyor or registered architect who subcontracts with or receives supplies from underutilized businesses; and providing other matters properly relating thereto.

- 1 WHEREAS, The Clark County Department of General Services
- 2 contracted with BBC Research and Consulting of Denver, Colorado,
- 3 to perform a regional economic disparity study of Clark County; and
- 4 WHEREAS, BBC Research and Consulting is a nationally
- 5 recognized and respected research firm in the area of local
- 6 government and discrimination in governmental contracting; and
- 7 WHEREAS, The study performed by BBC Research and
- 8 Consulting with the assistance of the Minority Business Enterprise
- 9 Legal Defense and Education Fund, Inc., of Washington, D.C.,



1 released in July 1994 found that available quantitative and  
2 qualitative evidence indicates that Clark County played a passive  
3 role in a pattern of marketplace discrimination against minority  
4 businesses and businesses owned by women by infusing public  
5 funds into a discriminatory marketplace; and

6 WHEREAS, The study performed by BBC Research and  
7 Consulting concluded that the substantial evidence of significant  
8 statistical disparities between the utilization and availability of  
9 minority firms and firms owned by women in procurement and  
10 contracting by Clark County could not be explained solely by  
11 random events; and

12 WHEREAS, The study concluded, based on the decision of the  
13 Supreme Court of the United States in *City of Richmond v.*  
14 *J.A. Croson*, that sufficient factual bases existed to institute a  
15 statutory framework to remedy the significant statistical disparities  
16 found by the study; and

17 WHEREAS, A follow-up study conducted by the Blue Ribbon  
18 Committee on Race of the Clark County Urban Chamber of  
19 Commerce in 2002 found no appreciable positive change in the  
20 results reached by the study conducted by BBC Research and  
21 Consulting and found, in fact, evidence of increasing statistical  
22 disparities between the availability and utilization of minority firms  
23 and firms owned by women for procurement and contracting by  
24 agencies in Clark County; now, therefore,

25

26 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
27 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:  
28

29

30 **Section 1.** Chapter 332 of NRS is hereby amended by adding  
31 thereto the provisions set forth as sections 2 to 9, inclusive, of this  
32 act.

33 **Sec. 2.** *As used in sections 2 to 9, inclusive, of this act, unless*  
34 *the context otherwise requires, the words and terms defined in*  
35 *sections 3 and 4 of this act have the meanings ascribed to them in*  
36 *those sections.*

37 **Sec. 3.** *“Underutilized business” means any business in a*  
38 *county whose population is 400,000 or more:*

39 *1. In which a majority of the ownership interest is controlled*  
40 *by one or more underutilized persons;*

41 *2. Whose management and daily business operations are*  
42 *controlled by one or more underutilized persons; and*

43 *3. Which has, upon proof of previous discrimination, been*  
44 *designated as such by a local government or its authorized*  
*representative.*



1     **Sec. 4. "Underutilized person" means any person:**

2     1. Who is a woman or a member of a racial or ethnic  
3     minority;

4     2. Who has been subjected to racial or ethnic prejudice or  
5     cultural bias because of his identity as a member of a group,  
6     without regard to his individual qualities; and

7     3. Whose ability to compete in the system of free enterprise in  
8     this state has been impaired because of diminished capital and  
9     opportunities for credit through banks and other financial  
10    institutions compared to other persons who are not subject to such  
11    prejudice or bias.

12    **Sec. 5. In a county whose population is 400,000 or more, a**  
13    **person may apply to a governing body or its authorized**  
14    **representative for designation as an underutilized business. A**  
15    **designation as an underutilized business is effective for 2 years.**  
16    **Upon expiration of the 2-year period, a person may apply for**  
17    **renewal. A governing body or its authorized representative may**  
18    **not grant an application for designation as an underutilized**  
19    **business absent a determination that the access of the applicant to**  
20    **opportunities for contracting with local governments has been**  
21    **impaired by the effects of previous discrimination.**

22    **Sec. 6. 1. If the governing body of a local government in a**  
23    **county whose population is 400,000 or more conducts a study of**  
24    **an area within its jurisdiction which shows a significant statistical**  
25    **disparity between the number of underutilized businesses that are**  
26    **qualified to perform contracts pursuant to this chapter and the**  
27    **total value of such contracts which are awarded to such**  
28    **businesses, and that gender-neutral and race-neutral measures**  
29    **are unavailable as a matter of law or inadequate to eliminate the**  
30    **effects of previous discrimination suffered by such businesses, the**  
31    **governing body or its authorized representative:**

32    (a) In awarding a contract for \$100,000 or more to a vendor  
33    for the purchase of any materials, supplies or equipment, shall  
34    require the vendor to enter into subcontracts with underutilized  
35    businesses in that county for the performance of a specified  
36    percentage of the contract. The contract must contain a provision  
37    which specifies the percentage of the full contract price which  
38    must be subcontracted by the vendor to underutilized businesses.

39    (b) In determining the lowest responsive and responsible  
40    bidder on a contract for the purchase of any materials, supplies or  
41    equipment, shall give preference to a vendor who promises to  
42    enter into subcontracts with underutilized businesses in that  
43    county for the performance of a specified percentage of the  
44    contract, if the bid submitted by the vendor is not more than 5



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1 *percent higher than the amount bid by a competing vendor. The*  
2 *contract must contain a provision which specifies the percentage*  
3 *of the full contract price which the vendor has promised to*  
4 *subcontract to underutilized businesses.*

5 *(c) Shall require all bidders who are bidding on a contract for*  
6 *the purchase of any materials, supplies or equipment to*  
7 *demonstrate in their bidding materials that they have either*  
8 *subcontracted with an underutilized business or have made good*  
9 *faith efforts to subcontract with such a business to be eligible for*  
10 *award of the contract.*

11 *2. For the purposes of subsection 1, the specified percentage*  
12 *of the contract must be determined by the chief administrative*  
13 *officer of the governing body and be in an amount calculated to*  
14 *offset the effects of previous discrimination suffered by*  
15 *underutilized businesses in that county in obtaining contracts*  
16 *pursuant to this chapter.*

17 **Sec. 7.** *1. A vendor who enters into a contract pursuant to*  
18 *section 6 of this act which requires him to subcontract with*  
19 *underutilized businesses for the performance of a specified*  
20 *percentage of the full contract price may apply to the governing*  
21 *body or its authorized representative for a waiver of the*  
22 *requirement or a reduction of the percentage which the vendor*  
23 *must subcontract to underutilized businesses.*

24 *2. The governing body or its authorized representative may*  
25 *grant the application for a waiver or reduction if it determines that*  
26 *the vendor cannot obtain the required participation by*  
27 *underutilized businesses because there is a lack of qualified*  
28 *businesses available and willing to enter into subcontracts at a*  
29 *competitive price or the vendor is exempt pursuant to the*  
30 *provisions of NRS 332.115.*

31 **Sec. 8.** *In determining whether a vendor has made good faith*  
32 *efforts to comply with section 6 or 7 of this act, the governing body*  
33 *of the local government shall consider whether the vendor:*

34 *1. Has attended any meetings held by the local government*  
35 *regarding the policy of the local government and the law on*  
36 *subcontracting with underutilized businesses.*

37 *2. Has, if appropriate, subdivided its bid into specific*  
38 *subcontracts that may feasibly be performed by the particular*  
39 *businesses that the local government has identified as*  
40 *underutilized.*

41 *3. Has contacted specific underutilized businesses to inquire*  
42 *of their interest and ability to subcontract with the vendor.*

43 *4. Before opening the bidding process, advertised in one or*  
44 *more trade publications or other comparable advertising sources*  
45 *and at least two advertising sources which are likely to inform*



1 *underutilized businesses of the opportunity to bid for subcontracts*  
2 *with the vendor.*

3 *5. Responded promptly to inquiries by underutilized*  
4 *businesses by providing them with plans, specifications and*  
5 *requirements for participating in the bidding process.*

6 *6. Dealt in a fair and reasonable manner with the*  
7 *underutilized businesses which expressed interest in*  
8 *subcontracting with the vendor.*

9 *7. Requested assistance from any trade organizations that*  
10 *represent the needs of underutilized businesses in the process of*  
11 *trying to obtain participation by underutilized businesses.*

12 **Sec. 9.** *Each governing body in a county whose population is*  
13 *400,000 or more that has conducted a study within its jurisdiction*  
14 *which produces the results described in section 6 of this act:*

15 *1. Shall develop and operate a program to inform*  
16 *underutilized businesses in its jurisdiction of the provisions of*  
17 *sections 2 to 9, inclusive, of this act and to solicit applications for*  
18 *designation as an underutilized business pursuant to section 5 of*  
19 *this act.*

20 *2. Shall adopt such ordinances, rules and regulations as are*  
21 *necessary to administer the provisions of sections 2 to 9, inclusive,*  
22 *of this act. Such ordinances, rules or regulations must establish an*  
23 *application process for designation as an underutilized business*  
24 *and standards that the governing body will apply in determining*  
25 *whether an entity will be designated as an underutilized business.*

26 *3. Except as otherwise provided in this subsection, shall*  
27 *report annually to the Governor and the Legislature concerning*  
28 *the operation and effect of sections 2 to 9, inclusive, of this act.*  
29 *If the Legislature is not in session, the report must be submitted to*  
30 *the Governor and the Legislative Commission. The report must*  
31 *include any recommendations for legislation.*

32 **Sec. 10.** NRS 332.065 is hereby amended to read as follows:


33 332.065 1. If a governing body or its authorized  
34 representative has advertised for or requested bids in letting a  
35 contract, the governing body or its authorized representative must,  
36 except as otherwise provided in subsection 2 ~~and~~ *and section 6 of*  
37 *this act*, award the contract to the lowest responsive and responsible  
38 bidder. The lowest responsive and responsible bidder must be  
39 judged on the basis of price, conformance to specifications,  
40 qualifications, including, without limitation, past performance,  
41 quality and utility of services, supplies, materials or equipment  
42 offered and adaptability to the required purpose and the best  
43 interests of the public.

44 2. The governing body or its authorized representative:

45 (a) Shall give preference to recycled products if:



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- 1 (1) The product meets the applicable standards;
- 2 (2) The product can be substituted for a
- 3 comparable nonrecycled product; and
- 4 (3) The product costs no more than a comparable
- 5 nonrecycled product.
- 6 (b) May give preference to recycled products if:
- 7 (1) The product meets the applicable standards;
- 8 (2) The product can be substituted for a comparable
- 9 nonrecycled product; and
- 10 (3) The product costs no more than 5 percent more than a
- 11 comparable nonrecycled product.
- 12 (c) May purchase recycled paper products if the specific
- 13 recycled paper product is:
- 14 (1) Available at a price which is not more than 10 percent
- 15 higher than that of paper products made from virgin material;
- 16 (2) Of adequate quality; and
- 17 (3) Available to the purchaser within a reasonable period.
- 18 3. If after the lowest responsive and responsible bidder has
- 19 been awarded the contract, during the term of the contract he does
- 20 not supply goods or services in accordance with the bid
- 21 specifications, or if he repudiates the contract, the governing body
- 22 or its authorized representative may reaward the contract to the next
- 23 lowest responsive and responsible bidder without requiring that new
- 24 bids be submitted. Reawarding the contract to the next lowest
- 25 responsive and responsible bidder is not a waiver of any liability of
- 26 the initial bidder awarded the contract.
- 27 4. As used in this section:
- 28 (a) "Postconsumer waste" means a finished material which
- 29 would normally be disposed of as a solid waste having completed its
- 30 life cycle as a consumer item.
- 31 (b) "Recycled paper product" means all paper and wood-pulp
- 32 products containing in some combination at least 50 percent of its
- 33 total weight:
- 34 (1) Postconsumer waste; and
- 35 (2) Secondary waste,
- 36 but does not include fibrous waste generated during the
- 37 manufacturing process such as fibers recovered from wastewater or
- 38 trimmings of paper machine rolls, wood slabs, chips, sawdust or
- 39 other wood residue from a manufacturing process.
- 40 (c) "Secondary waste" means fragments of products or finished
- 41 products of a manufacturing process  which has converted a virgin
- 42 resource into a commodity of real economic value.



1     **Sec. 11.** Chapter 338 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 12 to 19, inclusive, of this  
3 act.

4     **Sec. 12.** *As used in sections 12 to 19, inclusive, of this act,*  
5 *unless the context otherwise requires, the words and terms defined*  
6 *in sections 13 and 14 of this act have the meanings ascribed to*  
7 *them in those sections.*

8     **Sec. 13.** *“Underutilized business” means any business in a*  
9 *county whose population is 400,000 or more:*

10     1. *In which a majority of the ownership interest is controlled*  
11 *by one or more underutilized persons;*

12     2. *Whose management and daily business operations are*  
13 *controlled by one or more underutilized persons; and*

14     3. *Which has, upon proof of previous discrimination, been*  
15 *designated as such by a public body.*

16     **Sec. 14.** *“Underutilized person” means any person:*

17     1. *Who is a woman or a member of a racial or ethnic*  
18 *minority;*

19     2. *Who has been subjected to racial or ethnic prejudice or*  
20 *cultural bias because of his identity as a member of a group,*  
21 *without regard to his individual qualities; and*

22     3. *Whose ability to compete in the system of free enterprise in*  
23 *this state has been impaired because of diminished capital and*  
24 *opportunities for credit through banks and other financial*  
25 *institutions compared to other persons who are not subject to such*  
26 *prejudice or bias.*

27     **Sec. 15.** *In a county whose population is 400,000 or more, a*  
28 *person may apply to a public body or its authorized representative*  
29 *for designation as an underutilized business. A designation as an*  
30 *underutilized business is effective for 2 years . Upon expiration of*  
31 *the 2-year period, a person may apply for renewal. A public body*  
32 *or its authorized representative may not grant an application for*  
33 *designation as an underutilized business absent a determination*  
34 *that the access of the applicant to opportunities for contracting for*  
35 *public works in the county has been impaired by the effects of*  
36 *previous discrimination.*

37     **Sec. 16.** 1. *If a public body in a county whose population is*  
38 *400,000 or more conducts a study of an area within its jurisdiction*  
39 *which shows:*

40     (a) *A significant statistical disparity between the number of*  
41 *underutilized businesses that are qualified to perform contracts*  
42 *pursuant to this chapter and the total value of such contracts that*  
43 *are awarded to such businesses; and*

44     (b) *That gender-neutral and race-neutral measures are*  
45 *unavailable as a matter of law or inadequate to eliminate*



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1 *the effects of previous discrimination suffered by such*  
2 *businesses,*  
3 *the public body or its authorized representative, in determining the*  
4 *lowest responsive and responsible bidder on a contract for a public*  
5 *work, shall give preference to a contractor who promises or has*  
6 *indicated in his bid that he will enter into subcontracts with*  
7 *underutilized businesses in that county for the performance of a*  
8 *specified percentage of the contract, if the bid submitted by the*  
9 *contractor is not more than 5 percent higher than the amount bid*  
10 *by a competing contractor. The contract must contain a provision*  
11 *which specifies the percentage of the full contract price which the*  
12 *contractor has promised to subcontract to underutilized*  
13 *businesses.*

14 *2. For the purposes of subsection 1, the specified percentage*  
15 *of the contract must be determined by the chief administrative*  
16 *officer of the public body and be in an amount calculated to offset*  
17 *the effects of previous discrimination suffered by underutilized*  
18 *businesses in that county in obtaining contracts pursuant to this*  
19 *chapter.*

20 **Sec. 17.** *1. A contractor who enters into a contract*  
21 *pursuant to section 16 of this act which requires him to*  
22 *subcontract with underutilized businesses for the performance of a*  
23 *specified percentage of the full contract price may apply to the*  
24 *public body for a waiver of the requirement or a reduction of the*  
25 *percentage which the contractor must subcontract to underutilized*  
26 *businesses.*

27 *2. The public body or its authorized representative may grant*  
28 *the application for a waiver or reduction if it determines that the*  
29 *contractor cannot obtain the required participation by*  
30 *underutilized businesses because there is a lack of qualified*  
31 *businesses available and willing to enter into subcontracts at a*  
32 *competitive price.*

33 **Sec. 18.** *In determining whether a vendor has made good*  
34 *faith efforts to comply with section 17 of this act, the public body*  
35 *shall consider whether the contractor:*

36 *1. Has attended any meetings held by the public body*  
37 *regarding the policy of the public body and the law on*  
38 *subcontracting with underutilized businesses.*

39 *2. Has, if appropriate, subdivided its bid into specific*  
40 *subcontracts that may feasibly be performed by the particular*  
41 *businesses that the public body has identified as underutilized.*

42 *3. Has contacted specific underutilized businesses to inquire*  
43 *of their interest and ability to subcontract with the public body.*

44 *4. Before opening the bidding process, advertised in one or*  
45 *more trade publications or other comparable advertising sources*



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1 *and at least two advertising sources which are likely to inform*  
2 *underutilized businesses of the opportunity to bid for subcontracts*  
3 *with the contractor.*

4 *5. Responded promptly to inquiries by underutilized*  
5 *businesses by providing them with plans, specifications and*  
6 *requirements for participating in the bidding process.*

7 *6. Dealt in a fair and reasonable manner with the*  
8 *underutilized businesses which expressed interest in*  
9 *subcontracting with the contractor.*

10 *7. Requested assistance from any trade organizations that*  
11 *represent the needs of underutilized businesses in the process of*  
12 *trying to obtain participation by underutilized businesses.*

13 **Sec. 19.** *Each public body in a county whose population is*  
14 *400,000 or more that has conducted a study within its jurisdiction*  
15 *which produces the results described in section 16 of this act:*

16 *1. Shall develop and operate a program to inform*  
17 *underutilized businesses in its jurisdiction of the provisions of*  
18 *sections 12 to 19, inclusive, of this act and to solicit applications*  
19 *for designation as an underutilized business pursuant to section*  
20 *15 of this act.*

21 *2. Shall adopt such ordinances, rules and regulations as are*  
22 *necessary to administer the provisions of sections 12 to 19,*  
23 *inclusive, of this act. Such ordinances, rules or regulations must*  
24 *establish an application process for designation as an*  
25 *underutilized business and standards that the public body will*  
26 *apply in determining whether an entity will be designated an*  
27 *underutilized business.*

28 *3. Except as otherwise provided in this subsection, shall*  
29 *report annually to the Governor and the Legislature concerning*  
30 *the operation and effect of sections 12 to 19, inclusive, of this act.*  
31 *If the Legislature is not in session, the report must be submitted to*  
32 *the Governor and the Legislative Commission. The report must*  
33 *include any recommendations for legislation.*

34 **Sec. 20.** NRS 338.125 is hereby amended to read as follows:

35 338.125 1. It is unlawful for any contractor in connection  
36 with the performance of work under a contract with the State, or any  
37 of its political subdivisions, when payment of the contract price, or  
38 any part of such payment, is to be made from public money, to  
39 refuse to employ or to discharge from employment any person  
40 because of his race, color, creed, national origin, sex, sexual  
41 orientation or age, or to discriminate against a person with respect to  
42 hire, tenure, advancement, compensation or other terms, conditions  
43 or privileges of employment because of his race, creed, color,  
44 national origin, sex, sexual orientation or age.



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1       2. Contracts negotiated between contractors and the State, or  
2 any of its political subdivisions, must contain the following  
3 contractual provisions:  
4

5               In connection with the performance of work under this  
6 contract, the contractor agrees not to discriminate against any  
7 employee or applicant for employment because of race, creed,  
8 color, national origin, sex, sexual orientation or age,  
9 including, without limitation, with regard to employment,  
10 upgrading, demotion or transfer, recruitment or recruitment  
11 advertising, layoff or termination, rates of pay or other forms  
12 of compensation, and selection for training, including,  
13 without limitation, apprenticeship.

14               The contractor further agrees to insert this provision in all  
15 subcontracts hereunder, except subcontracts for standard  
16 commercial supplies or raw materials.  
17

18       3. Any violation of such provision by a contractor constitutes a  
19 material breach of contract.

20       4. *The provisions of this section do not apply with respect to*  
21 *actions taken in compliance with sections 12 to 19, inclusive, of*  
22 *this act.*

23       5. As used in this section, "sexual orientation" means having or  
24 being perceived as having an orientation for heterosexuality,  
25 homosexuality or bisexuality.

26       **Sec. 21.** NRS 338.1389 is hereby amended to read as follows:

27       338.1389 1. Except as otherwise provided in NRS 338.1385  
28 and 338.1711 to 338.1727, inclusive, *and sections 12 to 19,*  
29 *inclusive, of this act,* a public body shall award a contract for a  
30 public work to the contractor who submits the best bid.

31       2. Except as otherwise provided in subsection 10 or limited by  
32 subsection 11, for the purposes of this section, a contractor who:

33       (a) Has been determined by the public body to be a qualified  
34 bidder pursuant to NRS 338.1379 or is exempt from meeting such  
35 requirements pursuant to NRS 338.1373 or 338.1383; and

36       (b) At the time he submits his bid, provides to the public body a  
37 copy of a certificate of eligibility to receive a preference in bidding  
38 on public works issued to him by the State Contractors' Board  
39 pursuant to subsection 3 or 4,

40 shall be deemed to have submitted a better bid than a competing  
41 contractor who has not provided a copy of such a valid certificate of  
42 eligibility if the amount of his bid is not more than 5 percent higher  
43 than the amount bid by the competing contractor.

44       3. The State Contractors' Board shall issue a certificate of  
45 eligibility to receive a preference in bidding on public works to a



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1 general contractor who is licensed pursuant to the provisions of  
2 chapter 624 of NRS and submits to the Board an affidavit from a  
3 certified public accountant setting forth that the general contractor  
4 has, while licensed as a general contractor in this state:

5 (a) Paid directly, on his own behalf:

6 (1) The sales and use taxes imposed pursuant to chapters  
7 372, 374 and 377 of NRS on materials used for construction in this  
8 state, including, without limitation, construction that is undertaken  
9 or carried out on land within the boundaries of this state that is  
10 managed by the Federal Government or is on an Indian reservation  
11 or Indian colony, of not less than \$5,000 for each consecutive  
12 12-month period for 60 months immediately preceding the  
13 submission of the affidavit from the certified public accountant;

14 (2) The governmental services tax imposed pursuant to  
15 chapter 371 of NRS on the vehicles used in the operation of his  
16 business in this state of not less than \$5,000 for each consecutive  
17 12-month period for 60 months immediately preceding the  
18 submission of the affidavit from the certified public accountant; or

19 (3) Any combination of such sales and use taxes and  
20 governmental services tax; or

21 (b) Acquired, by purchase, inheritance, gift or transfer through a  
22 stock option plan, all the assets and liabilities of a viable, operating  
23 construction firm that possesses a:

24 (1) License as a general contractor pursuant to the provisions  
25 of chapter 624 of NRS; and

26 (2) Certificate of eligibility to receive a preference in bidding  
27 on public works.

28 4. The State Contractors' Board shall issue a certificate of  
29 eligibility to receive a preference in bidding on public works to a  
30 specialty contractor who is licensed pursuant to the provisions of  
31 chapter 624 of NRS and submits to the Board an affidavit from a  
32 certified public accountant setting forth that the specialty contractor  
33 has, while licensed as a specialty contractor in this state:

34 (a) Paid directly, on his own behalf:

35 (1) The sales and use taxes pursuant to chapters 372, 374 and  
36 377 of NRS on materials used for construction in this state,  
37 including, without limitation, construction that is undertaken or  
38 carried out on land within the boundaries of this state that is  
39 managed by the Federal Government or is on an Indian reservation  
40 or Indian colony, of not less than \$5,000 for each consecutive  
41 12-month period for 60 months immediately preceding the  
42 submission of the affidavit from the certified public accountant;

43 (2) The governmental services tax imposed pursuant to  
44 chapter 371 of NRS on the vehicles used in the operation of his  
45 business in this state of not less than \$5,000 for each consecutive



1 12-month period for 60 months immediately preceding the  
2 submission of the affidavit from the certified public accountant; or

3 (3) Any combination of such sales and use taxes and  
4 governmental services tax; or

5 (b) Acquired, by purchase, inheritance, gift or transfer through a  
6 stock option plan, all the assets and liabilities of a viable, operating  
7 construction firm that possesses a:

8 (1) License as a specialty contractor pursuant to the  
9 provisions of chapter 624 of NRS; and

10 (2) Certificate of eligibility to receive a preference in bidding  
11 on public works.

12 5. For the purposes of complying with the requirements set  
13 forth in paragraph (a) of subsection 3 and paragraph (a) of  
14 subsection 4, a contractor shall be deemed to have paid:

15 (a) Sales and use taxes and governmental services taxes that  
16 were paid in this state by an affiliate or parent company of the  
17 contractor, if the affiliate or parent company is also a general  
18 contractor or specialty contractor, as applicable; and

19 (b) Sales and use taxes that were paid in this state by a joint  
20 venture in which the contractor is a participant, in proportion to the  
21 amount of interest the contractor has in the joint venture.

22 6. A contractor who has received a certificate of eligibility to  
23 receive a preference in bidding on public works from the State  
24 Contractors' Board pursuant to subsection 3 or 4 shall, at the time  
25 for the annual renewal of his contractor's license pursuant to NRS  
26 624.283, submit to the Board an affidavit from a certified public  
27 accountant setting forth that the contractor has, during the  
28 immediately preceding 12 months, paid the taxes required pursuant  
29 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as  
30 applicable, to maintain his eligibility to hold such a certificate.

31 7. A contractor who fails to submit an affidavit to the Board  
32 pursuant to subsection 6 ceases to be eligible to receive a preference  
33 in bidding on public works unless he reapplies for and receives a  
34 certificate of eligibility pursuant to subsection 3 or 4, as applicable.

35 8. If a contractor holds more than one contractor's license, he  
36 must submit a separate application for each license pursuant to  
37 which he wishes to qualify for a preference in bidding. Upon  
38 issuance, the certificate of eligibility to receive a preference in  
39 bidding on public works becomes part of the contractor's license for  
40 which the contractor submitted the application.

41 9. If a contractor who applies to the State Contractors' Board  
42 for a certificate of eligibility to receive a preference in bidding on  
43 public works submits false information to the Board regarding the  
44 required payment of taxes, the contractor is not eligible to receive a  
45 preference in bidding on public works for a period of 5 years after



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1 the date on which the Board becomes aware of the submission of the  
2 false information.

3 10. If any federal statute or regulation precludes the granting of  
4 federal assistance or reduces the amount of that assistance for a  
5 particular public work because of the provisions of subsection 2,  
6 those provisions do not apply insofar as their application would  
7 preclude or reduce federal assistance for that work. The provisions  
8 of subsection 2 do not apply to any contract for a public work which  
9 is expected to cost less than \$250,000.

10 11. If a bid is submitted by two or more contractors as a joint  
11 venture or by one of them as a joint venturer, the provisions of  
12 subsection 2 apply only if both or all of the joint venturers  
13 separately meet the requirements of that subsection.

14 12. The State Contractors' Board shall adopt regulations and  
15 may assess reasonable fees relating to the certification of contractors  
16 for a preference in bidding on public works.

17 13. A person or entity who believes that a contractor  
18 wrongfully holds a certificate of eligibility to receive a preference in  
19 bidding on public works may challenge the validity of the certificate  
20 by filing a written objection with the public body to which the  
21 contractor has submitted a bid or proposal on a contract for the  
22 construction of a public work. A written objection authorized  
23 pursuant to this subsection must:

24 (a) Set forth proof or substantiating evidence to support the  
25 belief of the person or entity that the contractor wrongfully holds a  
26 certificate of eligibility to receive a preference in bidding on public  
27 works; and

28 (b) Be filed with the public body at or after the time at which the  
29 contractor submitted the bid or proposal to the public body and  
30 before the time at which the public body awards the contract for  
31 which the bid or proposal was submitted.

32 14. If a public body receives a written objection pursuant to  
33 subsection 13, the public body shall determine whether the objection  
34 is accompanied by the proof or substantiating evidence required  
35 pursuant to paragraph (a) of that subsection. If the public body  
36 determines that the objection is not accompanied by the required  
37 proof or substantiating evidence, the public body shall dismiss  
38 the objection and may proceed immediately to award the contract. If  
39 the public body determines that the objection is accompanied by the  
40 required proof or substantiating evidence, the public body shall  
41 determine whether the contractor qualifies for the certificate  
42 pursuant to the provisions of this section and may proceed to award  
43 the contract accordingly.



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1     **Sec. 22.** NRS 338.141 is hereby amended to read as follows:

2     338.141 1. Except as otherwise provided in subsection 2,  
3 each bid submitted to any officer, department, board or commission  
4 for the construction of any public work or improvement must  
5 include:

6     (a) The name of each subcontractor who will provide labor or a  
7 portion of the work or improvement to the contractor for which he  
8 will be paid an amount exceeding 5 percent of the prime  
9 contractor's total bid. Within 2 hours after the completion of the  
10 opening of the bids, the contractors who submitted the three lowest  
11 bids must submit a list containing the name of each subcontractor  
12 who will provide labor or a portion of the work or improvement to  
13 the contractor for which he will be paid an amount exceeding 1  
14 percent of the prime contractor's total bid or \$50,000, whichever is  
15 greater, and the number of the license issued to the subcontractor  
16 pursuant to chapter 624 of NRS. If a contractor fails to submit such  
17 a list within the required time, his bid shall be deemed not  
18 responsive.

19     (b) A description of the portion of the work or improvement  
20 which each subcontractor named in the bid will complete.

21     (c) *If the bid is being submitted to an officer, department,*  
22 *board or commission that is subject to section 19 of this act, a*  
23 *designation of which, if any, subcontractors named in the bid have*  
24 *been designated as underutilized businesses by the public body*  
25 *pursuant to section 15 of this act.*

26     2. The contractor shall list in his bid pursuant to subsection 1  
27 the name of a subcontractor for each portion of the project that will  
28 be completed by a subcontractor.

29     3. A contractor whose bid is accepted shall not substitute any  
30 person for a subcontractor who is named in the bid, unless:

31     (a) The awarding authority objects to the subcontractor, requests  
32 in writing a change in the subcontractor and pays any increase in  
33 costs resulting from the change; or

34     (b) The substitution is approved by the awarding authority or an  
35 authorized representative of the awarding authority. The substitution  
36 must be approved if the awarding authority or authorized  
37 representative of the awarding authority determines that:

38     (1) The named subcontractor, after having a reasonable  
39 opportunity, fails or refuses to execute a written contract with the  
40 contractor which was offered to the subcontractor with the same  
41 general terms that all other subcontractors on the project were  
42 offered;

43     (2) The named subcontractor files for bankruptcy or becomes  
44 insolvent; or



1 (3) The named subcontractor fails or refuses to perform his  
2 subcontract within a reasonable time or is unable to furnish a  
3 performance bond and payment bond pursuant to NRS 339.025.

4 4. As used in this section, "general terms" means the terms and  
5 conditions of a contract that set the basic requirements for a project  
6 and apply without regard to the particular trade or specialty of a  
7 subcontractor, but does not include any provision that controls or  
8 relates to the specific portion of the project that will be completed  
9 by a subcontractor, including, without limitation, the materials to be  
10 used by the subcontractor or other details of the work to be  
11 performed by the subcontractor.

12 **Sec. 23.** NRS 338.147 is hereby amended to read as follows:

13 338.147 1. Except as otherwise provided in NRS 338.143  
14 and 338.1711 to 338.1727, inclusive, *and sections 12 to 19,*  
15 *inclusive, of this act,* a local government shall award a contract for a  
16 public work to the contractor who submits the best bid.

17 2. Except as otherwise provided in subsection 10 or limited by  
18 subsection 11, for the purposes of this section, a contractor who:

19 (a) Has been found to be a responsible and responsive contractor  
20 by the local government; and

21 (b) At the time he submits his bid, provides to the local  
22 government a copy of a certificate of eligibility to receive a  
23 preference in bidding on public works issued to him by the State  
24 Contractors' Board pursuant to subsection 3 or 4,  
25 shall be deemed to have submitted a better bid than a competing  
26 contractor who has not provided a copy of such a valid certificate of  
27 eligibility if the amount of his bid is not more than 5 percent higher  
28 than the amount bid by the competing contractor.

29 3. The State Contractors' Board shall issue a certificate of  
30 eligibility to receive a preference in bidding on public works to a  
31 general contractor who is licensed pursuant to the provisions of  
32 chapter 624 of NRS and submits to the Board an affidavit from a  
33 certified public accountant setting forth that the general contractor  
34 has, while licensed as a general contractor in this state:

35 (a) Paid directly, on his own behalf:

36 (1) The sales and use taxes imposed pursuant to chapters  
37 372, 374 and 377 of NRS on materials used for construction in this  
38 state, including, without limitation, construction that is undertaken  
39 or carried out on land within the boundaries of this state that is  
40 managed by the Federal Government or is on an Indian reservation  
41 or Indian colony, of not less than \$5,000 for each consecutive  
42 12-month period for 60 months immediately preceding the  
43 submission of the affidavit from the certified public accountant;

44 (2) The governmental services tax imposed pursuant to  
45 chapter 371 of NRS on the vehicles used in the operation of his





1 business in this state of not less than \$5,000 for each consecutive  
2 12-month period for 60 months immediately preceding the  
3 submission of the affidavit from the certified public accountant; or

4 (3) Any combination of such sales and use taxes and  
5 governmental services tax; or

6 (b) Acquired, by purchase, inheritance, gift or transfer through a  
7 stock option plan, all the assets and liabilities of a viable, operating  
8 construction firm that possesses a:

9 (1) License as a general contractor pursuant to the provisions  
10 of chapter 624 of NRS; and

11 (2) Certificate of eligibility to receive a preference in bidding  
12 on public works.

13 4. The State Contractors' Board shall issue a certificate of  
14 eligibility to receive a preference in bidding on public works to a  
15 specialty contractor who is licensed pursuant to the provisions of  
16 chapter 624 of NRS and submits to the Board an affidavit from a  
17 certified public accountant setting forth that the specialty contractor  
18 has, while licensed as a specialty contractor in this state:

19 (a) Paid directly, on his own behalf:

20 (1) The sales and use taxes pursuant to chapters 372, 374 and  
21 377 of NRS on materials used for construction in this state,  
22 including, without limitation, construction that is undertaken or  
23 carried out on land within the boundaries of this state that is  
24 managed by the Federal Government or is on an Indian reservation  
25 or Indian colony, of not less than \$5,000 for each consecutive  
26 12-month period for 60 months immediately preceding the  
27 submission of the affidavit from the certified public accountant;

28 (2) The governmental services tax imposed pursuant to  
29 chapter 371 of NRS on the vehicles used in the operation of his  
30 business in this state of not less than \$5,000 for each consecutive  
31 12-month period for 60 months immediately preceding the  
32 submission of the affidavit from the certified public accountant; or

33 (3) Any combination of such sales and use taxes and  
34 governmental services tax; or

35 (b) Acquired, by purchase, inheritance, gift or transfer through a  
36 stock option plan, all the assets and liabilities of a viable, operating  
37 construction firm that possesses a:

38 (1) License as a specialty contractor pursuant to the  
39 provisions of chapter 624 of NRS; and

40 (2) Certificate of eligibility to receive a preference in bidding  
41 on public works.

42 5. For the purposes of complying with the requirements set  
43 forth in paragraph (a) of subsection 3 and paragraph (a) of  
44 subsection 4, a contractor shall be deemed to have paid:



1 (a) Sales and use taxes and governmental services taxes paid in  
2 this state by an affiliate or parent company of the contractor, if the  
3 affiliate or parent company is also a general contractor or specialty  
4 contractor, as applicable; and

5 (b) Sales and use taxes paid in this state by a joint venture in  
6 which the contractor is a participant, in proportion to the amount of  
7 interest the contractor has in the joint venture.

8 6. A contractor who has received a certificate of eligibility to  
9 receive a preference in bidding on public works from the State  
10 Contractors' Board pursuant to subsection 3 or 4 shall, at the time  
11 for the annual renewal of his contractor's license pursuant to NRS  
12 624.283, submit to the Board an affidavit from a certified public  
13 accountant setting forth that the contractor has, during the  
14 immediately preceding 12 months, paid the taxes required pursuant  
15 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as  
16 applicable, to maintain his eligibility to hold such a certificate.

17 7. A contractor who fails to submit an affidavit to the Board  
18 pursuant to subsection 6 ceases to be eligible to receive a preference  
19 in bidding on public works unless he reapplies for and receives a  
20 certificate of eligibility pursuant to subsection 3 or 4, as applicable.

21 8. If a contractor holds more than one contractor's license, he  
22 must submit a separate application for each license pursuant to  
23 which he wishes to qualify for a preference in bidding. Upon  
24 issuance, the certificate of eligibility to receive a preference in  
25 bidding on public works becomes part of the contractor's license for  
26 which the contractor submitted the application.

27 9. If a contractor who applies to the State Contractors' Board  
28 for a certificate of eligibility to receive a preference in bidding on  
29 public works submits false information to the Board regarding the  
30 required payment of taxes, the contractor is not eligible to receive a  
31 preference in bidding on public works for a period of 5 years after  
32 the date on which the Board becomes aware of the submission of the  
33 false information.

34 10. If any federal statute or regulation precludes the granting of  
35 federal assistance or reduces the amount of that assistance for a  
36 particular public work because of the provisions of subsection 2,  
37 those provisions do not apply insofar as their application would  
38 preclude or reduce federal assistance for that work. The provisions  
39 of subsection 2 do not apply to any contract for a public work which  
40 is expected to cost less than \$250,000.

41 11. If a bid is submitted by two or more contractors as a joint  
42 venture or by one of them as a joint venturer, the provisions of  
43 subsection 2 apply only if both or all of the joint venturers  
44 separately meet the requirements of that subsection.



1       12. The State Contractors' Board shall adopt regulations and  
2 may assess reasonable fees relating to the certification of contractors  
3 for a preference in bidding on public works.

4       13. A person or entity who believes that a contractor  
5 wrongfully holds a certificate of eligibility to receive a preference in  
6 bidding on public works may challenge the validity of the certificate  
7 by filing a written objection with the public body to which the  
8 contractor has submitted a bid or proposal on a contract for the  
9 completion of a public work. A written objection authorized  
10 pursuant to this subsection must:

11       (a) Set forth proof or substantiating evidence to support the  
12 belief of the person or entity that the contractor wrongfully holds a  
13 certificate of eligibility to receive a preference in bidding on public  
14 works; and

15       (b) Be filed with the public body at or after the time at which the  
16 contractor submitted the bid or proposal to the public body and  
17 before the time at which the public body awards the contract for  
18 which the bid or proposal was submitted.

19       14. If a public body receives a written objection pursuant to  
20 subsection 13, the public body shall determine whether the objection  
21 is accompanied by the proof or substantiating evidence required  
22 pursuant to paragraph (a) of that subsection. If the public body  
23 determines that the objection is not accompanied by the required  
24 proof or substantiating evidence, the public body shall dismiss the  
25 objection and may proceed immediately to award the contract. If  
26 the public body determines that the objection is accompanied by the  
27 required proof or substantiating evidence, the public body shall  
28 determine whether the contractor qualifies for the certificate  
29 pursuant to the provisions of this section and may proceed to award  
30 the contract accordingly.

31       **Sec. 24.** Chapter 463 of NRS is hereby amended by adding  
32 thereto the provisions set forth as sections 25 to 33, inclusive, of this  
33 act.

34       **Sec. 25.** *As used in sections 25 to 33, inclusive, of this act,*  
35 *unless the context otherwise requires, the words and terms defined*  
36 *in sections 26, 27 and 28 of this act have the meanings ascribed to*  
37 *them in those sections.*

38       **Sec. 26.** *"Goods and services" does not include utilities and*  
39 *taxes, financing costs such as mortgages, loans or any other type*  
40 *of debt, medical insurance, fees and payments to a parent or*  
41 *affiliated company of the licensee other than those that represent*  
42 *fees and payments for goods and services supplied by nonaffiliated*  
43 *persons through an affiliated company for the use or benefit of*  
44 *the licensee, rents paid for real property and any payments*



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1 *constituting the price of an interest in real property as a result of a*  
2 *real estate transaction.*

3 **Sec. 27.** *“Underutilized business” means any business in a*  
4 *county whose population is 400,000 or more:*

5 *1. In which a majority of the ownership interest is controlled*  
6 *by one or more underutilized persons;*

7 *2. Whose management and daily business operations are*  
8 *controlled by one or more underutilized persons; and*

9 *3. Which has, upon proof of previous discrimination, been*  
10 *designated as such by the Commission.*

11 **Sec. 28.** *“Underutilized person” means any person:*

12 *1. Who is a woman or a member of a racial or ethnic*  
13 *minority;*

14 *2. Who has been subjected to racial or ethnic prejudice or*  
15 *cultural bias because of his identity as a member of a group,*  
16 *without regard to his individual qualities; and*

17 *3. Whose ability to compete in the system of free enterprise in*  
18 *that county has been impaired because of diminished capital and*  
19 *opportunities for credit compared to other persons who are not*  
20 *subject to such prejudice or bias.*

21 **Sec. 29.** *A business may apply to the Commission for*  
22 *designation as an underutilized business. A designation as an*  
23 *underutilized business is effective for 2 years. Upon expiration of*  
24 *the 2-year period, a person may apply for renewal. The*  
25 *Commission may not grant an application pursuant to this section*  
26 *absent a determination that the access of the applicant to*  
27 *opportunities for contracting with licensees has been impaired by*  
28 *the effects of previous discrimination.*

29 **Sec. 30.** *Each licensee in a county whose population is*  
30 *400,000 or more shall establish goals of expending at least:*

31 *1. Ten percent of the monetary value of its contracts for*  
32 *goods and services with underutilized businesses by the end of the*  
33 *second year immediately following the receipt of its initial license.*

34 *2. Fifteen percent of the monetary value of its contracts for*  
35 *goods and services with underutilized businesses by the end of the*  
36 *third year following the receipt of its initial license.*

37 *3. Twenty percent of the monetary value of its contracts for*  
38 *goods and services with underutilized businesses by the end of the*  
39 *sixth year following the receipt of its initial license.*

40 **Sec. 31.** *A licensee shall make a good faith effort to meet the*  
41 *goals established pursuant to section 30 of this act and shall*  
42 *present annually to the Commission a report on its efforts to meet*  
43 *those goals. The report must include the total monetary value of*  
44 *contracts awarded for goods or services and the percentage*  
45 *thereof awarded to underutilized businesses. In determining*



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1 *whether a licensee has made a good faith effort, the Commission*  
2 *shall consider whether the licensee:*

3 *1. Has attended any meetings held by the Commission*  
4 *regarding the policy of the Commission and the law on*  
5 *contracting with underutilized businesses.*

6 *2. Has contacted specific underutilized businesses to inquire*  
7 *of their interest and ability to contract with the licensee.*

8 *3. Before opening the bidding process, advertised in one or*  
9 *more trade publications or other comparable advertising sources*  
10 *and at least two sources designed to inform underutilized*  
11 *businesses of the opportunity to bid for contracts with the licensee.*

12 *4. Responded promptly to inquiries by underutilized*  
13 *businesses by providing them with plans, specifications and*  
14 *requirements for participating in the bidding process.*

15 *5. Dealt in a fair and reasonable manner with the*  
16 *underutilized businesses in the process of trying to obtain*  
17 *participation by underutilized businesses.*

18 *6. Requested assistance from any trade organizations that*  
19 *represent the needs of underutilized businesses in the process of*  
20 *trying to obtain participation by underutilized businesses.*

21 **Sec. 32.** *The Commission shall supply licensees with a list of*  
22 *businesses which have been designated as underutilized*  
23 *businesses. The Commission shall review the list annually to*  
24 *determine which of those businesses should continue to be*  
25 *designated as underutilized businesses.*

26 **Sec. 33.** *The Commission:*

27 *1. Shall develop and operate a program to inform*  
28 *underutilized businesses of the provisions of section 25 to 33,*  
29 *inclusive, of this act and to solicit applications for designation as*  
30 *an underutilized business pursuant to section 29 of this act.*

31 *2. Shall adopt such rules and regulations as are necessary to*  
32 *administer the provisions of sections 25 to 33, inclusive, of this act.*  
33 *Such rules or regulations must establish an application process*  
34 *for the designation of a business as an underutilized business and*  
35 *standards that the Commission will apply in determining whether*  
36 *an entity will be designated an underutilized business.*

37 *3. Except as otherwise provided in this subsection, shall*  
38 *report annually to the Governor and the Legislature concerning*  
39 *the operation and effect of sections 25 to 33, inclusive, of this act.*  
40 *If the Legislature is not in session, the report must be submitted to*  
41 *the Governor and the Legislative Commission. The report must*  
42 *include any recommendations for legislation.*

43 **Sec. 34.** *NRS 625.530 is hereby amended to read as follows:*

44 *625.530 Except as otherwise provided in NRS 338.1711 to*  
45 *338.1727, inclusive, and 408.3875 to 408.3887, inclusive:*



1       1. The State of Nevada or any of its political subdivisions,  
2 including a county, city or town, shall not engage in any public  
3 work requiring the practice of professional engineering or land  
4 surveying ~~[-]~~ unless the maps, plans, specifications, reports and  
5 estimates have been prepared by, and the work executed under the  
6 supervision of, a professional engineer, professional land surveyor  
7 or registered architect.

8       2. The provisions of this section do not:

9       (a) Apply to any public work wherein the expenditure for the  
10 complete project of which the work is a part does not exceed  
11 \$35,000.

12       (b) Include any maintenance work undertaken by the State of  
13 Nevada or its political subdivisions.

14       (c) Authorize a professional engineer, registered architect or  
15 professional land surveyor to practice in violation of any of the  
16 provisions of chapter 623 of NRS or this chapter.

17       (d) Require the services of an architect registered pursuant to the  
18 provisions of chapter 623 of NRS for the erection of buildings or  
19 structures manufactured in an industrial plant, if those buildings or  
20 structures meet the requirements of local building codes of the  
21 jurisdiction in which they are being erected.

22       3. ~~[-]~~ *Except as otherwise provided in subsection 4, the*  
23 selection of a professional engineer, professional land surveyor or  
24 registered architect to perform services pursuant to subsection 1  
25 must be made on the basis of the competence and qualifications of  
26 the engineer, land surveyor or architect for the type of services to be  
27 performed and not on the basis of competitive fees. If, after  
28 selection of the engineer, land surveyor or architect, an agreement  
29 upon a fair and reasonable fee cannot be reached with him, the  
30 public agency may terminate negotiations and select another  
31 engineer, land surveyor or architect.

32       4. *A public body in a county whose population is 400,000 or*  
33 *more may, in selecting a registered professional engineer,*  
34 *professional land surveyor or registered architect for a public*  
35 *work wherein the expenditure for the complete project of which*  
36 *the work is a part exceeds \$100,000, give preference to a person*  
37 *who subcontracts with or receives his supplies from a business*  
38 *which has been designated as an underutilized business pursuant*  
39 *to section 15 of this act.*

