

SENATE BILL NO. 387—SENATORS RAGGIO, TOWNSEND, CEGAVSKE, HECK, BEERS, AMODEI, COFFIN, HARDY, HORSFORD, LEE, MATHEWS, MCGINNESS, NOLAN, RHOADS, SCHNEIDER, TITUS, WASHINGTON, WIENER AND WOODHOUSE

MARCH 19, 2007

Referred to Committee on Government Affairs

SUMMARY—Revises various provisions governing public works and the State Public Works Board. (BDR 28-904)

FISCAL NOTE: Effect on Local Government: No.
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 public works; revising the membership of the State Public Works Board; revising the duties of the Manager appointed by the Board; providing for the appointment by the Board of a deputy manager for compliance and code enforcement; revising the order in which money received by the Board for a capital improvement project must be expended; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the State Public Works Board consists of the Director of the Department of Administration and six members appointed by the Governor. (NRS 341.020) **Section 10** of this bill provides for the abolishment of the current Board, and **section 1** of this bill provides for the appointment of a new Board consisting of five members appointed by the Governor, one member appointed by the Majority Leader of the Senate and one member appointed by the Speaker of the Assembly. Each member serves at the pleasure of the appointing authority.

Sections 3, 6 and 7 of this bill clarify that the approval required for expenditure of money for advanced planning and changes in the scope of a project is to be obtained from the Interim Finance Committee before money is committed or other action is taken.

Under existing law, the Board may appoint a Manager who, with the approval of the Board, is authorized to appoint two deputy managers. (NRS 341.100) **Section 4** of this bill requires the Board to appoint a Manager who is approved by the Governor. **Section 4** also provides the Board with the authority to appoint deputy managers and requires the Board to appoint a deputy manager for



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compliance and code enforcement who is in the unclassified service of the State. Additionally, **section 4** expands the information that must be included in monthly reports to the Board, the Governor and the Interim Finance Committee concerning progress on current public works projects.

Section 8 of this bill revises the order in which money from multiple sources must be expended on public works projects.

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

Section 1. NRS 341.020 is hereby amended to read as follows:

341.020 1. The State Public Works Board ~~[, consisting of the Director of the Department of Administration and six members appointed by the Governor,]~~ is hereby created . ~~[within the Department of Administration.~~

~~—2. At least one of the appointed members must have a comprehensive knowledge of the principles of administration and at least one of the appointed members must have a working knowledge of the principles of engineering or architecture.]~~

2. *The Board consists of seven members appointed as follows:*

(a) *The Governor shall appoint:*

(1) One member who has education or experience, or both, regarding the principles of engineering or architecture;

(2) One member who has education or experience, or both, regarding the principles of financing or managing public or private construction projects;

(3) One member who is licensed to practice law in this State and who has experience in the practice of construction law; and

(4) Two members who are licensed in this State as a general building contractor or general engineering contractor pursuant to chapter 624 of NRS.

(b) The Majority Leader of the Senate shall appoint one member who is licensed in this State as a general building contractor or general engineering contractor pursuant to chapter 624 of NRS.

(c) The Speaker of the Assembly shall appoint one member who is licensed in this State as a general building contractor or general engineering contractor pursuant to chapter 624 of NRS.

3. *Each member of the Board serves at the pleasure of the appointing authority.*

4. *A vacancy on the Board must be filled by the appointing authority in the same manner as the original appointment.*

Sec. 2. NRS 341.041 is hereby amended to read as follows:

341.041 1. If ~~[an appointed]~~ a member of the Board fails to attend three successive meetings of the Board, the Board shall



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1 ~~[notify the Governor]~~ *provide notice* of that fact, in writing, *to the*
2 *appointing authority who appointed that member.*

3 *2. The notice must be provided to the appointing authority*
4 within 5 days after the third successive meeting that the member
5 fails to attend.

6 *3. Upon receipt of the notice, the [Governor] appointing*
7 *authority may appoint a person to replace the member [for the*
8 ~~unexpired term of that member.] in the same manner as filling a~~
9 *vacancy on the Board.*

10 **Sec. 3.** NRS 341.090 is hereby amended to read as follows:

11 341.090 1. Except as *otherwise* provided in subsections 2 and
12 3, the Board may make expenditures necessary to carry into effect
13 the purposes of its acts.

14 2. All expenditures made by the Board must be within the
15 limits of the appropriation provided for the use of the Board, or
16 provided from money appropriated or authorized for expenditure by
17 the Legislature for construction work or major repairs.

18 3. The Board may, with the *prior* approval of the Interim
19 Finance Committee , ~~[when the Legislature is not in regular or~~
20 ~~special session, or with the approval of the Legislature by~~
21 ~~concurrent resolution when the Legislature is in regular or special~~
22 ~~session,]~~ expend money obtained from any source for advance
23 planning of projects of capital improvement. For the purposes of this
24 subsection, "advance planning" means the preparation of floor
25 plans, cross sections, elevations, outlines of specifications, estimates
26 of cost by category of work and perspective renderings of the
27 project.

28 **Sec. 4.** NRS 341.100 is hereby amended to read as follows:

29 341.100 1. The Board ~~[may]~~ *shall* appoint a Manager who
30 *must be approved by the Governor. The Manager* serves at the
31 pleasure of the Board and the Governor. ~~[The Board or the~~
32 ~~Governor may remove the Manager for inefficiency, neglect of duty,~~
33 ~~malfeasance or for other just cause.]~~

34 2. The ~~[Manager, with the approval of the Board, may appoint~~
35 ~~a]~~ *Board shall appoint the following deputy managers who must*
36 *be approved by the Governor:*

37 (a) A deputy *manager* for professional services ~~[and a]~~ ;

38 (b) A deputy *manager* for administrative, fiscal and
39 constructional services ~~[- In addition, the]~~ ; *and*

40 (c) *A deputy manager for compliance and code enforcement.*

41 *3. Each deputy manager serves at the pleasure of the Board*
42 *and the Governor.*

43 *4. The* Manager may appoint such other technical and clerical
44 assistants as may be necessary to carry into effect the provisions of
45 this chapter.



1 ~~[3-]~~ 5. The Manager and ~~[his-deputies]~~ *each deputy manager*
2 are in the unclassified service of the State. Except as otherwise
3 provided in NRS 284.143, the Manager and each deputy *manager*
4 shall devote his entire time and attention to the business of his office
5 and shall not pursue any other business or occupation or hold any
6 other office of profit.

7 ~~[4-]~~ 6. The Manager and ~~[his]~~ *the* deputy *manager* for
8 professional services must each be a licensed professional engineer
9 pursuant to the provisions of chapter 625 of NRS or an architect
10 registered pursuant to the provisions of chapter 623 of NRS.

11 7. The deputy manager for administrative, fiscal and
12 constructional services must have a comprehensive knowledge of
13 *the* principles of administration and a working knowledge of *the*
14 principles of engineering or architecture as determined by the
15 Board.

16 ~~[5-]~~ 8. *The deputy manager for compliance and code*
17 *enforcement must have a comprehensive knowledge of building*
18 *codes and a working knowledge of the principles of engineering or*
19 *architecture as determined by the Board.*

20 9. The Manager shall:

21 (a) Serve as the Secretary of the Board.

22 (b) Manage the daily affairs of the Board.

23 (c) Represent the Board before the Legislature.

24 (d) Prepare and submit to the Board, for its approval, the
25 recommended priority for proposed capital improvement projects
26 and provide the Board with an estimate of the cost of each project.

27 (e) Make recommendations to the Board for the selection of
28 architects, engineers and contractors.

29 (f) Make recommendations to the Board concerning the
30 acceptance of completed projects.

31 (g) ~~[Advise]~~ *Submit in writing to* the Board, *the Governor* and
32 the ~~[Legislature, or the]~~ Interim Finance Committee ~~[if the~~
33 ~~Legislature is not in session, on]~~ a monthly ~~[basis of the progress of]~~
34 *report regarding* all public works projects which are a part of the
35 approved capital improvement program.

36 ~~[(h) Serve]~~ *For each such project, the monthly report must*
37 *include, without limitation, a detailed description of the progress*
38 *of the project which highlights any specific events, circumstances*
39 *or factors that may result in:*

40 (1) *Changes in the scope of the design or construction of*
41 *the project or any substantial component of the project which*
42 *increases or decreases the square footage of the project by 10*
43 *percent or more;*



(2) *Increased or unexpected costs in the design or construction of the project or any substantial component of the project which materially affect the project;*

(3) *Delays in the completion of the design or construction of the project or any substantial component of the project; or*

(4) *Any other problems which may adversely affect the design or construction of the project or any substantial component of the project.*

10. *The deputy manager for compliance and code enforcement shall serve* as the building official for all buildings and structures on property of the State or held in trust for any division of the State Government.

Sec. 5. NRS 341.105 is hereby amended to read as follows:

341.105 1. When acting in the capacity of building official pursuant to ~~[paragraph (h) of subsection 5]~~ *subsection 10* of NRS 341.100, the ~~[Manager]~~ *deputy manager for compliance and code enforcement* or his designated representative may issue an order to compel the cessation of work on all or any portion of a building or structure based on health or safety reasons or for violations of applicable building codes or other laws or regulations.

2. If a person receives an order issued pursuant to subsection 1, the person shall immediately cease work on the building or structure or portion thereof.

3. Any person who willfully refuses to comply with an order issued pursuant to subsection 1 or who willfully encourages another person to refuse to comply or assists another person in refusing to comply with such an order is guilty of a misdemeanor and shall be punished as provided in NRS 193.150. Any penalties collected pursuant to this subsection must be deposited with the State Treasurer for credit to the State General Fund.

4. In addition to the criminal penalty set forth in subsection 3, the ~~[Manager]~~ *deputy manager for compliance and code enforcement* may impose an administrative penalty of not more than \$1,000 per day for each day that a person violates subsection 3.

5. If a person wishes to contest an order issued to him pursuant to subsection 1, the person may bring an action in district court. The court shall give such a proceeding priority over other civil matters that are not expressly given priority by law. An action brought pursuant to this subsection does not stay enforcement of the order unless the district court orders otherwise.

6. If a person refuses to comply with an order issued pursuant to subsection 1, the ~~[Manager]~~ *deputy manager for compliance and code enforcement* may bring an action in the name of the State of Nevada in district court to compel compliance and to collect any administrative penalties imposed pursuant to subsection 4. The court



1 shall give such a proceeding priority over other civil matters that are
2 not expressly given priority by law. Any attorney's fees and costs
3 awarded by the court in favor of the State and any penalties
4 collected in the action must be deposited with the State Treasurer for
5 credit to the State General Fund.

6 7. No right of action exists in favor of any person by reason of
7 any action or failure to act on the part of the Board, the ~~[Manager]~~
8 *deputy manager for compliance and code enforcement* or any
9 officers, employees or agents of the Board in carrying out the
10 provisions of this section.

11 8. As used in this section, "person" includes a government and
12 a governmental subdivision, agency or instrumentality.

13 **Sec. 6.** NRS 341.142 is hereby amended to read as follows:

14 341.142 The Board may, with the *prior* approval of the Interim
15 Finance Committee , ~~[when the Legislature is not in regular or
16 special session, or with the approval of the Legislature by
17 concurrent resolution when the Legislature is in regular or special
18 session,]~~ plan a project in advance by preparing floor plans, cross
19 sections, elevations, outlines of specifications, estimates of cost by
20 category of work and perspective renderings of the project. The
21 Board may submit preliminary or advance plans or designs to
22 qualified architects or engineers for preparation of detailed plans
23 and specifications if the Board considers it desirable. The cost of
24 preparation of preliminary or advance plans or designs, the cost of
25 detailed plans and specifications, and the cost of all architectural and
26 engineering services are charges against the appropriations made by
27 the Legislature for any state buildings or projects, or buildings or
28 projects planned or contemplated by any state agency for which the
29 Legislature has appropriated or may appropriate money. The costs
30 must not exceed the limitations that are or may be provided by the
31 Legislature.

32 **Sec. 7.** NRS 341.145 is hereby amended to read as follows:

33 341.145 The Board:

34 1. Has final authority to approve the architecture of all
35 buildings, plans, designs, types of construction, major repairs and
36 designs of landscaping.

37 2. Shall determine whether any rebates are available from a
38 public utility for installing devices in any state building which are
39 designed to decrease the use of energy in the building. If such a
40 rebate is available, the Board shall apply for the rebate.

41 3. Shall solicit bids for and let all contracts for new
42 construction or major repairs.

43 4. May negotiate with the lowest responsible and responsive
44 bidder on any contract to obtain a revised bid if:



(a) The bid is less than the appropriation made by the Legislature for that building project; and

(b) The bid does not exceed the relevant budget item for that building project as established by the Board by more than 10 percent.

5. May reject any or all bids.

6. After the contract is let, shall supervise and inspect construction and major repairs. The cost of supervision and inspection must be financed from the capital construction program approved by the Legislature.

7. Shall obtain *prior* approval from the Interim Finance Committee ~~[when the Legislature is not in regular or special session, or from the Legislature by concurrent resolution when the Legislature is in regular or special session, for] before authorizing~~ any change in the scope of the design or construction of a project as that project was authorized by the Legislature ~~[- The Board shall adopt by regulation criteria for determining whether a change in the scope of the design or construction of a project requires such approval.~~

~~8. May]~~, *if the change increases or decreases the square footage of the project by 10 percent or more.*

8. *Except for changes that require prior approval pursuant to subsection 7, may* authorize change orders, before or during construction:

(a) In any amount, where the change represents a reduction in the total awarded contract price.

(b) Except as otherwise provided in paragraph (c), not to exceed in the aggregate 10 percent of the total awarded contract price, where the change represents an increase in that price.

(c) In any amount, where the total awarded contract price is less than \$10,000 and the change represents an increase not exceeding the amount of the total awarded contract price.

9. Shall specify in any contract with a design professional the period within which the design professional must prepare and submit to the Board a change order that has been authorized by the design professional. As used in this subsection, "design professional" means a person with a professional license or certificate issued pursuant to chapter 623, 623A or 625 of NRS.

10. Has final authority to accept each building or structure, or any portion thereof, on property of the State or held in trust for any division of the State Government as completed or to require necessary alterations to conform to the contract or to codes adopted by the Board, and to file the notice of completion and certificate of occupancy for the building or structure.



Sec. 8. NRS 341.146 is hereby amended to read as follows:

341.146 1. The Board shall establish funds for projects of capital construction necessary to account for the program of capital construction approved by the Legislature. These funds must be used to account for all revenues, appropriations and expenditures restricted to constructing buildings and other projects which come under the supervision of the Board.

2. If a state department, board, commission or agency provides to the Board money that has not been appropriated by the Legislature for a capital improvement project, any interest earned on that money accrues to the benefit of the project. Upon a determination by the Board that the project is completed, the Board shall return any principal and interest remaining on that money to the department, board, commission or agency that had provided the money to the Board.

3. Except as otherwise provided in subsection 4, if the money actually received by the Board for a capital improvement project includes money from more than one source, the money must be expended in the following order:

(a) Money received for the project from the Federal Government;

(b) Money generated by the state department, board, commission or agency for whom the project is being performed;

(c) Money that was approved for the same or a different project during a previous biennium that has been reallocated during the current biennium for the project;

(d) ~~Proceeds~~ *Except as otherwise provided in paragraphs (e), (f) and (g), money received for the project from any other source;*

(e) Money from the issuance of general obligation bonds;

~~(e)~~ (f) *Money from the State Highway Fund; and*

(g) Money from the State General Fund . ~~[-; and~~

~~-(f) Any other source of money for the project.]~~

4. The provisions of subsection 3 do not apply if the receipt of any money from the Federal Government for the project is conditioned upon a different order of expenditure.

Sec. 9. NRS 218.6827 is hereby amended to read as follows:

218.6827 1. Except as otherwise provided in subsection 2, the Interim Finance Committee may exercise the powers conferred upon it by law only when the Legislature is not in regular or special session.

2. During a regular or special session, the Interim Finance Committee may also perform the duties imposed on it by subsection 5 of NRS 284.115, subsection 2 of NRS 321.335, NRS 322.007, subsection 2 of NRS 323.020, NRS 323.050, subsection 1 of NRS 323.100, *subsection 3 of NRS 341.090, NRS 341.142, subsection 7*



1 *of NRS 341.145*, NRS 353.220, 353.224, 353.2705 to 353.2771,
2 inclusive, and 353.335, paragraph (b) of subsection 4 of NRS
3 407.0762, NRS 428.375, 439.620, 439.630, 445B.830 and 538.650.
4 In performing those duties, the Senate Standing Committee on
5 Finance and the Assembly Standing Committee on Ways and Means
6 may meet separately and transmit the results of their respective
7 votes to the Chairman of the Interim Finance Committee to
8 determine the action of the Interim Finance Committee as a whole.

9 **Sec. 10.** NRS 341.030 is hereby repealed.

10 **Sec. 11.** 1. Notwithstanding the provisions of any specific
11 statute to the contrary, the term of each person serving as a member
12 of the State Public Works Board on June 30, 2007, expires on that
13 date.

14 2. Each appointing authority described in NRS 341.020, as
15 amended by section 1 of this act, shall, as soon as practicable after
16 the effective date of this section, make his respective appointment of
17 members to the State Public Works Board as required by that
18 section. The term of each member so appointed begins on July 1,
19 2007.

20 3. A person serving as a member of the State Public Works
21 Board before July 1, 2007, may be appointed to the Board pursuant
22 to NRS 341.020, as amended by section 1 of this act, if the person
23 has the qualifications for membership set forth in that section.

24 **Sec. 12.** 1. This section and section 11 of this act become
25 effective upon passage and approval.

26 2. Section 1 of this act becomes effective upon passage and
27 approval for the purpose of appointing members to the State Public
28 Works Board, and on July 1, 2007, for all other purposes.

29 3. Sections 2 to 10, inclusive, of this act become effective on
30 July 1, 2007.

TEXT OF REPEALED SECTION

341.030 Terms of members.

1. The members of the Board shall be appointed for terms of 4 years.

2. The term of office of each member shall begin July 1 of the year of his appointment.

