

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.

~

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 12** 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. **Section 3** of this bill clarifies that members and employees of the Board are entitled to receive per diem allowances and travel expenses to the extent money is available for such payments. (NRS 341.050)

Sections 4, 7 and 8 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. (NRS 341.090, 341.142, 341.145) **Section 10** of this bill authorizes the Interim Finance Committee to appoint a subcommittee to approve certain matters of the Board that require prior approval of the Committee. (NRS 218.6827)



* S B 3 8 7 R 1 *

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 5** of this bill requires the Board to appoint a Manager and a deputy manager for compliance and code enforcement, each of whom must be approved by the Governor. (NRS 341.100) **Section 5** also requires the Manager, with the approval of the Board, to appoint certain deputy managers. Additionally, **section 5** revises the recipients of and expands the information that must be included in monthly reports by the Manager concerning progress on current public works projects. **Section 5** also transfers the duty to serve as the state building official from the Manager to the deputy manager for compliance and code enforcement. **Sections 5 and 8** transfer final authority to approve the architecture of state buildings, plans, designs, types of construction, major repairs and designs of landscaping from the Board to the Manager. (NRS 341.100, 341.145)

Section 8 of this bill revises the authority of the Board concerning the negotiation of revised bids on certain contracts and change orders. (NRS 341.145) **Section 9** of this bill revises the order in which money from multiple sources must be expended on public works projects. (NRS 341.146)

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.



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

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

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

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

9 341.041 1. If ~~[an appointed]~~ a member of the Board fails to
10 attend three successive meetings of the Board, the Board shall
11 ~~[notify the Governor]~~ *provide notice* of that fact, in writing, *to the*
12 *appointing authority who appointed that member.*

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

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

20 **Sec. 3.** NRS 341.050 is hereby amended to read as follows:

21 341.050 1. Each member of the Board is entitled to receive a
22 salary of not more than \$80 per day, as fixed by the Board, while
23 engaged in the business of the Board.

24 2. ~~[While]~~ *Except as otherwise provided in this subsection,*
25 *while* engaged in the business of the Board, each member and
26 employee of the Board is entitled to receive the per diem allowance
27 and travel expenses provided for state officers and employees
28 generally. The per diem allowances and travel expenses must be
29 paid from money appropriated for the use of the Board ~~[.]~~ *, to the*
30 *extent such money is available.*

31 **Sec. 4.** NRS 341.090 is hereby amended to read as follows:

32 341.090 1. Except as *otherwise* provided in subsections 2 and
33 3, the Board may make expenditures necessary to carry into effect
34 the purposes of its acts.

35 2. All expenditures made by the Board must be within the
36 limits of the appropriation provided for the use of the Board, or
37 provided from money appropriated or authorized for expenditure by
38 the Legislature for construction work or major repairs.

39 3. The Board may, with the *prior* approval of the Interim
40 Finance Committee , ~~[when the Legislature is not in regular or~~
41 ~~special session, or with the approval of the Legislature by~~
42 ~~concurrent resolution when the Legislature is in regular or special~~
43 ~~session,]~~ expend money obtained from any source for advance
44 planning of projects of capital improvement. For the purposes of this
45 subsection, "advance planning" means the preparation of floor



1 plans, cross sections, elevations, outlines of specifications, estimates
2 of cost by category of work and perspective renderings of the
3 project.

4 **Sec. 5.** NRS 341.100 is hereby amended to read as follows:

5 341.100 1. The Board ~~{may}~~ *shall* appoint a Manager ~~{who}~~
6 *and a deputy manager for compliance and code enforcement, each*
7 *of whom must be approved by the Governor. The Manager*
8 ~~{serves}~~ *and the deputy manager for compliance and code*
9 *enforcement serve* at the pleasure of the Board and the Governor.
10 ~~{The Board or the Governor may remove the Manager for~~
11 ~~inefficiency, neglect of duty, malfeasance or for other just cause.}~~

12 2. The Manager, with the approval of the Board, ~~{may}~~ *shall*
13 appoint : ~~{a}~~

14 (a) A deputy *manager* for professional services ~~{and a}~~ ; and

15 (b) A deputy *manager* for administrative, fiscal and
16 constructional services. ~~{In addition, the}~~

17 *↪ Each deputy manager appointed pursuant to this subsection*
18 *serves at the pleasure of the Manager.*

19 3. *The* Manager may appoint such other technical and clerical
20 assistants as may be necessary to carry into effect the provisions of
21 this chapter.

22 ~~{3.}~~ 4. The Manager and ~~{his deputies}~~ *each deputy manager*
23 are in the unclassified service of the State. Except as otherwise
24 provided in NRS 284.143, the Manager and each deputy *manager*
25 shall devote his entire time and attention to the business of his office
26 and shall not pursue any other business or occupation or hold any
27 other office of profit.

28 ~~{4.}~~ 5. The Manager and ~~{his}~~ *the* deputy *manager* for
29 professional services must each be a licensed professional engineer
30 pursuant to the provisions of chapter 625 of NRS or an architect
31 registered pursuant to the provisions of chapter 623 of NRS.

32 6. The deputy manager for administrative, fiscal and
33 constructional services must have a comprehensive knowledge of
34 *the* principles of administration and a working knowledge of *the*
35 principles of engineering or architecture as determined by the
36 Board.

37 ~~{5.}~~ 7. *The deputy manager for compliance and code*
38 *enforcement must have a comprehensive knowledge of building*
39 *codes and a working knowledge of the principles of engineering or*
40 *architecture as determined by the Board.*

41 8. The Manager shall:

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

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

44 (c) Represent the Board before the Legislature.



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

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

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

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

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

(1) Changes in the scope of the design or construction of the project or any substantial component of the project which increase or decrease the total awarded contract price of the project by 15 percent or more or \$200,000 or more, whichever is greater;

(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.

(h) Have final authority to approve the architecture of all buildings, plans, designs, types of construction, major repairs and designs of landscaping.

9. 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. 6. 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 9* 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 shall give such a proceeding priority over other civil matters that are not expressly given priority by law. Any attorney's fees and costs awarded by the court in favor of the State and any penalties collected in the action must be deposited with the State Treasurer for credit to the State General Fund.

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

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

Sec. 7. NRS 341.142 is hereby amended to read as follows:

341.142 The Board may, with the *prior* approval of the Interim Finance Committee , ~~[when the Legislature is not in regular or special session, or with the approval of the Legislature by concurrent resolution when the Legislature is in regular or special session,]~~ plan a project in advance by preparing floor plans, cross sections, elevations, outlines of specifications, estimates of cost by category of work and perspective renderings of the project. The



Board may submit preliminary or advance plans or designs to qualified architects or engineers for preparation of detailed plans and specifications if the Board considers it desirable. The cost of preparation of preliminary or advance plans or designs, the cost of detailed plans and specifications, and the cost of all architectural and engineering services are charges against the appropriations made by the Legislature for any state buildings or projects, or buildings or projects planned or contemplated by any state agency for which the Legislature has appropriated or may appropriate money. The costs must not exceed the limitations that are or may be provided by the Legislature.

Sec. 8. NRS 341.145 is hereby amended to read as follows:

341.145 The Board:

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

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

~~[3.]~~ 2. Shall solicit bids for and let all contracts for new construction or major repairs.

~~[4.]~~ 3. May negotiate with ~~the lowest~~ any responsible and responsive 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~~ All the bids received on the contract exceeded the relevant budget item for that building project as established by the Board by more than 10 percent.

~~[5.]~~ 4. May reject any or all bids.

~~[6.]~~ 5. 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.]~~ 6. 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.~~



* S B 3 8 7 R 1 *

~~8. May~~ , if the change increases or decreases the total awarded contract price of the project by 15 percent or more or \$200,000 or more, whichever is greater.

7. Except for changes that require prior approval pursuant to subsection 6, 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~~ 15 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~~ \$50,000 and the change represents an increase not exceeding the amount of the total awarded contract price.

~~9.~~ (d) In any amount, where additional money was authorized or appropriated by the Legislature and issuing a new contract would not be in the best interests of the State.

8. 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.~~ 9. 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. 9. 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. 10. 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 6 of NRS 341.145*, NRS 353.220, 353.224, 353.2705 to 353.2771, inclusive, and 353.335, paragraph (b) of subsection 4 of NRS 407.0762, NRS 428.375, 439.620, 439.630, 445B.830 and 538.650. In performing those duties, the Senate Standing Committee on Finance and the Assembly Standing Committee on Ways and Means may meet separately and transmit the results of their respective votes to the Chairman of the Interim Finance Committee to determine the action of the Interim Finance Committee as a whole.

3. The Interim Finance Committee may appoint a subcommittee consisting of six members of the Committee to approve matters of the State Public Works Board that require prior approval of the Interim Finance Committee pursuant to subsection 3 of NRS 341.090, NRS 341.142 and subsection 6 of NRS 341.145.

Sec. 11. NRS 341.030 is hereby repealed.



* S B 3 8 7 R 1 *

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

5 2. Each appointing authority described in NRS 341.020, as
6 amended by section 1 of this act, shall, as soon as practicable after
7 the effective date of this section, make his respective appointment of
8 members to the State Public Works Board as required by that
9 section. The term of each member so appointed begins on July 1,
10 2007.

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

15 **Sec. 13.** 1. This section and section 12 of this act become
16 effective upon passage and approval.

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

20 3. Sections 2 to 11, inclusive, of this act become effective on
21 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.

