

Amendment No. 725

Assembly Amendment to Senate Bill No. 31 First Reprint (BDR 27-305)

Proposed by: Assembly Committee on Government Affairs**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) ***green bold dashed underlining*** is newly added transitory language.

SJA/EGO



Date: 5/17/2009

S.B. No. 31—Revises provisions governing certain independent contractors with the State. (BDR 27-305)



SENATE BILL NO. 31—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE PURCHASING DIVISION)

PREFILED DECEMBER 5, 2008

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing certain independent contractors with the State. (BDR 27-305)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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 state governmental administration; revising provisions governing independent contractors with the State; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, elective officers and the heads of departments, boards, commissions and institutions of the Executive Department of State Government are authorized to contract for the services of independent contractors, including the provision of security services for state agencies. (NRS 284.173, 284.174) With limited exceptions, existing law requires contracts with independent contractors to be approved by the State Board of Examiners, but the Clerk of the Board may approve contracts that are for less than a certain specified amount. (NRS 284.173) This bill repeals NRS 284.173 and 284.174 but replaces those sections with **sections 2 and 3** of this bill which are added to chapter 333 of NRS, which relates to state purchasing. The new sections contain the same provisions as existing law except that the new sections ~~1. (1)~~ require that if the contract is for services for which a license, certificate or other authorization is required by law, the independent contractor hold the appropriate current authorization required by law for the services. ~~1. (2) authorize the State Board of Examiners to determine the relevant amount rather than the relevant amount being specified in statute; and (3) require the State Board of Examiners to prescribe a minimum amount of money under which such a contract is not required to be written or filed with the Legislative Counsel Bureau and the Clerk of the State Board of Examiners rather than the amount of \$2,000 being specified in statute.~~

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

Section 1. Chapter 333 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *A using agency may contract for the services of a person as an independent contractor. Except as otherwise provided by specific statute, each such contract must be awarded pursuant to this chapter.*

2. An independent contractor is a natural person, firm or corporation who agrees to perform services for a fixed price according to his or its own methods and without subjection to the supervision or control of the other contracting party, except as to the results of the work, and not as to the means by which the services are accomplished.

3. For the purposes of this section:

(a) Travel, subsistence and other personal expenses may be paid to an independent contractor, if provided for in the contract, in such amounts as provided for in the contract. Those expenses must not be paid pursuant to the provisions of NRS 281.160.

(b) There must be no:

- (1) Withholding of income taxes by the State;
- (2) Coverage for industrial insurance provided by the State;
- (3) Participation in group insurance plans which may be available to employees of the State;
- (4) Participation or contributions by either the independent contractor or the State to the Public Employees' Retirement System;
- (5) Accumulation of vacation leave or sick leave; or
- (6) Coverage for unemployment compensation provided by the State if the requirements of NRS 612.085 for independent contractors are met.

4. An independent contractor is not in the classified or unclassified service of the State and has none of the rights or privileges available to officers or employees of the State of Nevada.

5. If the contract is for services for which a license, certificate, registration, permit or other type of authorization is required by law, an independent contractor must hold the appropriate, current authorization that is required by law for the services.

6. Except as otherwise provided in this subsection, each contract for the services of an independent contractor must be in writing. The form of the contract must be first approved by the Attorney General, and except as otherwise provided in subsection 8, an executed copy of each contract must be filed with the Fiscal Analysis Division of the Legislative Counsel Bureau and the Clerk of the State Board of Examiners. ~~The requirements of this subsection do not apply to contracts which are for less than the amount prescribed by the State Board of Examiners.~~ The State Board of Examiners may waive the requirements of this subsection in the case of contracts which are for amounts less than \$2,000.

7. Except as otherwise provided in subsection 8, and except for contracts entered into by the Nevada System of Higher Education, each proposed contract with an independent contractor must be submitted to the State Board of Examiners. The contracts do not become effective without the prior approval of the State Board of Examiners, except that the State Board of Examiners may authorize its Clerk or his designee to approve contracts which are:

(a) For amounts less than ~~the amount prescribed by the State Board of Examiners,~~ \$10,000 or, in contracts necessary to preserve life and property, for amounts less than \$25,000; or

(b) Entered into by the State Gaming Control Board for the purposes of investigating an applicant for or holder of a gaming license.

8. Copies of the following types of contracts need not be filed or approved as provided in subsections 6 and 7:

(a) Contracts executed by the Department of Transportation for any work of construction or reconstruction of highways.

(b) Contracts executed by the State Public Works Board or any other state department or agency for any work of construction or major repairs of state

1 *buildings, if the contracting process was controlled by the rules of open*
2 *competitive bidding.*

3 *(c) Contracts executed by the Housing Division of the Department of*
4 *Business and Industry.*

5 *(d) Contracts executed with business entities for any work of maintenance or*
6 *repair of office machines and equipment.*

7 *9. The State Board of Examiners shall review each contract submitted for*
8 *approval pursuant to subsection 7 to consider:*

9 *(a) Whether sufficient authority exists to expend the money required by the*
10 *contract; and*

11 *(b) Whether the service which is the subject of the contract could be provided*
12 *by a state agency in a more cost-effective manner.*

13 *↳ If the contract submitted for approval continues an existing contractual*
14 *relationship, the State Board of Examiners shall ask each agency to ensure that*
15 *the State is receiving the services that the contract purports to provide.*

16 *10. If the services of an independent contractor are contracted for to*
17 *represent an agency of the State in any proceeding in any court, the contract*
18 *must require that the independent contractor identify in all pleadings the specific*
19 *state agency which he is representing.*

20 *11. The State Board of Examiners may adopt regulations to carry out of the*
21 *provisions of this section.*

22 **Sec. 3.** *1. If personnel of the Capitol Police Division of the Department of*
23 *Public Safety are not available to provide security services for a building, office*
24 *or other facility of a using agency, the using agency may, pursuant to section 2 of*
25 *this act, contract with one or more independent contractors to provide such*
26 *services.*

27 *2. An independent contractor with whom a using agency contracts pursuant*
28 *to subsection 1 must:*

29 *(a) Be licensed as a private patrolman pursuant to chapter 648 of NRS or*
30 *employed by a person so licensed; and*

31 *(b) Possess the skills required of and meet the same physical requirements as*
32 *law enforcement personnel certified by the Peace Officers' Standards and*
33 *Training Commission created pursuant to NRS 289.500.*

34 **Sec. 4.** *NRS 41.0307 is hereby amended to read as follows:*

35 *41.0307 As used in NRS 41.0305 to 41.039, inclusive:*

36 *1. "Employee" includes an employee of a:*

37 *(a) Part-time or full-time board, commission or similar body of the State or a*
38 *political subdivision of the State which is created by law.*

39 *(b) Charter school.*

40 *(c) University school for profoundly gifted pupils described in chapter 392A of*
41 *NRS.*

42 *2. "Employment" includes any services performed by an immune contractor.*

43 *3. "Immune contractor" means any natural person, professional corporation or*
44 *professional association which:*

45 *(a) Is an independent contractor with the State pursuant to ~~NRS 284.173;~~*
46 *section 2 of this act; and*

47 *(b) Contracts to provide medical services for the Department of Corrections.*

48 *↳ As used in this subsection, "professional corporation" and "professional*
49 *association" have the meanings ascribed to them in NRS 89.020.*

50 *4. "Public officer" or "officer" includes:*

51 *(a) A member of a part-time or full-time board, commission or similar body of*
52 *the State or a political subdivision of the State which is created by law.*

(b) A public defender and any deputy or assistant attorney of a public defender or an attorney appointed to defend a person for a limited duration with limited jurisdiction.

(c) A district attorney and any deputy or assistant district attorney or an attorney appointed to prosecute a person for a limited duration with limited jurisdiction.

Sec. 5. NRS 176.0129 is hereby amended to read as follows:

176.0129 The Department of Administration shall, on an annual basis, contract for the services of an independent contractor, in accordance with the provisions of ~~NRS 284.173,~~ *section 2 of this act*, to:

1. Review sentences imposed in this State and the practices of the State Board of Parole Commissioners and project annually the number of persons who will be:

(a) In a facility or institution of the Department of Corrections;

(b) On probation;

(c) On parole; and

(d) Serving a term of residential confinement,

↳ during the 10 years immediately following the date of the projection; and

2. Review preliminary proposals and information provided by the Commission and project annually the number of persons who will be:

(a) In a facility or institution of the Department of Corrections;

(b) On probation;

(c) On parole; and

(d) Serving a term of residential confinement,

↳ during the 10 years immediately following the date of the projection, assuming the preliminary proposals were recommended by the Commission and enacted by the Legislature.

Sec. 6. NRS 232.548 is hereby amended to read as follows:

232.548 1. Except if a particular procedure for resolving a dispute is required by a specific statute, and except as otherwise provided in subsection 2, the Director may authorize any entity within the Department or any natural person who is subject to the authority of the Director to use alternative means of dispute resolution in any proceeding if the alternative means can be:

(a) Carried out by the available personnel of the Department or persons under contract with the Department; and

(b) Paid for with money that is available in the existing budget of the affected entity of the Department.

2. Before authorizing an entity of the Department to use alternative means of dispute resolution, the Director must notify the Attorney General. The Attorney General, within 30 days after his receipt of the notification from the Director, shall respond to the Director concerning the advisability of using alternative means of dispute resolution to resolve the dispute at issue. The Director shall consider the advice of the Attorney General but may authorize an entity of the Department to use alternative means of dispute resolution unless the Attorney General indicates in his response that he officially opposes the use of such means. If the Attorney General fails to respond within 30 days after his receipt of the notification, the Director may authorize the use of alternative means of dispute resolution.

3. The alternative means of dispute resolution may include, without limitation, evaluation of the facts and issues in a dispute by a neutral person, fact-finding, mediation, arbitration or other collaborative problem-solving processes designed to encourage persons to work together to develop agreeable solutions to disputes in lieu of litigation or adjudication of contested cases in administrative hearings.

4. Any entity which, or natural person who, has received authorization from the Director to use alternative means of dispute resolution may enter into a contract to facilitate the use of such means, subject to the approval of the Attorney General, the limitations set forth in subsection 1 and the provisions of ~~NRS 284.173.~~ *section 2 of this act.*

Sec. 7. NRS 590.505 is hereby amended to read as follows:

590.505 1. The Board may adopt a seal for its own use which must have imprinted thereon the words "Board for the Regulation of Liquefied Petroleum Gas." The care and custody of the seal is the responsibility of the Secretary-Treasurer of the Board.

2. The Board may appoint an Executive Secretary and may employ or, pursuant to ~~NRS 284.173,~~ *section 2 of this act,* contract with such other technical, clerical or investigative personnel as it deems necessary. The Board shall fix the compensation of the Executive Secretary and all other employees and independent contractors. Such compensation must be paid out of the money of the Board. The Board may require the Executive Secretary and any other employees and independent contractors to give a bond to the Board for the faithful performance of their duties, the premiums on the bond being paid out of the money of the Board.

3. In carrying out the provisions of NRS 590.465 to 590.645, inclusive, and holding its regular or special meetings, the Board:

(a) Shall adopt written policies setting forth procedures and methods of operation for the Board.

(b) May adopt such regulations as it deems necessary.

4. The Board shall submit to the Legislature and the Governor a biennial report before September 1 of each even-numbered year, covering the biennium ending June 30 of that year, of its transactions during the preceding biennium, including a complete statement of the receipts and expenditures of the Board during the period and any complaints received by the Board.

5. The Board shall keep accurate records, minutes and audio recordings or transcripts of all meetings and, except as otherwise provided in NRS 241.035, the records, minutes, audio recordings and transcripts so kept must be open to public inspection at all reasonable times. The Board shall also keep a record of all applications for licenses and licenses issued by it. The record of applications and licenses is a public record.

Sec. 8. NRS 284.173 and 284.174 are hereby repealed.

Sec. 9. This act becomes effective on July 1, 2009.

TEXT OF REPEALED SECTIONS

284.173 Definition; contracts for services.

1. Elective officers and heads of departments, boards, commissions or institutions may contract for the services of persons as independent contractors. Except as otherwise provided by specific statute, each contract for services must be awarded pursuant to the provisions of chapter 333 of NRS.

2. An independent contractor is a natural person, firm or corporation who agrees to perform services for a fixed price according to his or its own methods and without subjection to the supervision or control of the other contracting party, except as to the results of the work, and not as to the means by which the services are accomplished.

3. For the purposes of this section:

(a) Travel, subsistence and other personal expenses may be paid to an independent contractor, if provided for in the contract, in such amounts as provided for in the contract. Those expenses must not be paid pursuant to the provisions of NRS 281.160.

(b) There must be no:

- (1) Withholding of income taxes by the State;
- (2) Coverage for industrial insurance provided by the State;
- (3) Participation in group insurance plans which may be available to employees of the State;
- (4) Participation or contributions by either the independent contractor or the State to the Public Employees' Retirement System;
- (5) Accumulation of vacation leave or sick leave; or
- (6) Coverage for unemployment compensation provided by the State if the requirements of NRS 612.085 for independent contractors are met.

4. An independent contractor is not in the classified or unclassified service of the State, and has none of the rights or privileges available to officers or employees of the State of Nevada.

5. Except as otherwise provided in this subsection, each contract for the services of an independent contractor must be in writing. The form of the contract must be first approved by the Attorney General, and except as otherwise provided in subsection 7, an executed copy of each contract must be filed with the Fiscal Analysis Division of the Legislative Counsel Bureau and the Clerk of the State Board of Examiners. The State Board of Examiners may waive the requirements of this subsection in the case of contracts which are for amounts less than \$2,000.

6. Except as otherwise provided in subsection 7, and except contracts entered into by the Nevada System of Higher Education, each proposed contract with an independent contractor must be submitted to the State Board of Examiners. The contracts do not become effective without the prior approval of the State Board of Examiners, except that the State Board of Examiners may authorize its clerk or his designee to approve contracts which are:

(a) For amounts less than \$10,000 or, in contracts necessary to preserve life and property, for amounts less than \$25,000.

(b) Entered into by the State Gaming Control Board for the purposes of investigating an applicant for or holder of a gaming license.

➤ The State Board of Examiners shall adopt regulations to carry out the provisions of this section.

7. Copies of the following types of contracts need not be filed or approved as provided in subsections 5 and 6:

(a) Contracts executed by the Department of Transportation for any work of construction or reconstruction of highways.

(b) Contracts executed by the State Public Works Board or any other state department or agency for any work of construction or major repairs of state buildings if the contracting process was controlled by the rules of open competitive bidding.

(c) Contracts executed by the Housing Division of the Department of Business and Industry.

(d) Contracts executed with business entities for any work of maintenance or repair of office machines and equipment.

8. The State Board of Examiners shall review each contract submitted for approval pursuant to subsection 6 to consider:

(a) Whether sufficient authority exists to expend the money required by the contract; and

(b) Whether the service which is the subject of the contract could be provided by a state agency in a more cost-effective manner.

☞ If the contract submitted for approval continues an existing contractual relationship, the Board shall ask each agency to ensure that the State is receiving the services that the contract purports to provide.

9. If the services of an independent contractor are contracted for to represent an agency of the State in any proceeding in any court, the contract must require the independent contractor to identify in all pleadings the specific state agency which he is representing.

284.174 Contracts for security services when personnel of Capitol Police Division not available.

1. If personnel of the Capitol Police Division of the Department of Public Safety are not available to provide security services for a building, office or other facility of a state agency, the state agency may, pursuant to NRS 284.173, contract with one or more independent contractors to provide such services.

2. An independent contractor with whom a state agency contracts pursuant to subsection 1 must:

(a) Be licensed as a private patrolman pursuant to chapter 648 of NRS or employed by a person so licensed; and

(b) Possess the skills required of and meet the same physical requirements as law enforcement personnel certified by the Peace Officers' Standards and Training Commission created pursuant to NRS 289.500.