

Amendment No. 791

Senate Amendment to Senate Bill No. 359 (BDR 23-973)

Proposed by: Senate Committee on Finance

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the unfunded mandate not requested by the affected local government to S.B. 359 (§ 15).

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____

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 underlining* is newly added transitory language.

TMC/BJE



Date: 5/26/2011

S.B. No. 359—Revises provisions relating to contracts with a governmental entity.
(BDR 23-973)



SENATE BILL NO. 359--SENATORS HORSFORD,
DENIS, KIHUEN, LESLIE AND PARKS

MARCH 21, 2011

JOINT SPONSORS: ASSEMBLYMEN FLORES, FRIERSON, BROOKS; ATKINSON,
BUSTAMANTE ADAMS, HORNE AND NEAL

Referred to Committee on Finance

SUMMARY—Revises provisions relating to contracts with a governmental entity.
(BDR 23-973)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

CONTAINS UNFUNDED MANDATE (§ 15)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

~

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

AN ACT relating to public financial administration; prohibiting a governmental entity from entering into a contract with an independent contractor unless the independent contractor agrees to a code of conduct; requiring an independent contractor to disclose certain information relating to a contract with a governmental entity; limiting the duration of a sole source contract with a governmental entity ~~[; prohibiting a governmental entity from extending a contract with an independent contractor unless the contract is first opened to competitive bidding; requiring the periodic renegotiation of contracts with a governmental entity that exceed 2 years;]~~ under certain circumstances; prohibiting the renewal of a sole source contract unless the renewal is approved by a two-thirds vote; limiting the duration of a contract with an independent contractor, other than a sole source contract, and authorizing the extension of such a contract upon the approval of the extension by a two-thirds vote; requiring the reporting and posting of certain information relating to sole source contracts; requiring a person who is awarded a contract for a public work to ~~gather and~~ report to the public body which awards the contract certain information concerning the race, ethnicity, age and gender of certain employees and applicants for employment on the public work; requiring a public body which awards a contract for a public work to gather and report ~~to~~ on the Internet website of the State Public Works Board certain information concerning the bidders for the contract; requiring the State Public Works

Board to ~~gather and maintain certain information concerning public works reported to it by various public bodies;~~ provide for the reporting of such information on its Internet website; requiring the ~~State Board of Examiners to review and approve in advance each contract~~ Department of Transportation to post on its website certain information about certain contracts for the provision of professional services entered into by the Department; ~~of Transportation;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 8 of this bill requires the Purchasing Division of the Department of Administration to prescribe a code of conduct for independent contractors who enter into a contract with a public body which requires such an independent contractor to abide by all state ethics laws, maintain records of all work done pursuant to such a contract and make these records available for audit. **Section 9** of this bill requires an independent contractor to disclose any fees charged to ~~consumers;~~ persons who are not a party to the contract under a contract with a public body and to annually report ~~such income;~~ the total dollar amount of such fees. **Section 10** of this bill requires an independent contractor to disclose certain information relating to any subcontractors used to perform a contract with a public body. **Section 14** of this bill provides that if an independent contractor violates any provision of **sections 8-10**, the public body may terminate the contract. ~~and the independent contractor is permanently prohibited from entering into a contract with a public body.~~

Section 11 of this bill: (1) prohibits a public body from entering into a sole source contract for a period exceeding 2 years, ~~+- unless the longer period is necessary for the recovery of capital costs; and~~ (2) prohibits a public body from ~~extending~~ renewing a sole source contract unless the governing body of the public body approves the renewal by a two-thirds vote. Section 11.5 of this bill authorizes a public body to enter into a contract with an independent contractor, other than a sole source contract, for a period of not more than 4 years and to extend the period of ~~an existing~~ such a contract ~~without opening the contract to competitive bidding; and~~ (3) requires a public body to renegotiate every 2 years ~~any contract that exceeds 2 years;~~ if the governing body of the public body approves the extension by a two-thirds vote.

Section 12 of this bill requires each public body that enters into a sole source contract to disclose certain information to the Purchasing Division, which must then post that information on its Internet website. **Section 13** of this bill requires each public body that enters into a sole source contract or that renegotiates a contract with an independent contractor to report information relating to the number and dollar amount of the sole source contracts and competitively bid contracts with an independent contractor ~~+- as well as the amount of savings generated by renegotiation of the contracts;~~ to the Purchasing Division, which must then report that information to the Interim Finance Committee.

Section 15 of this bill requires a person who is awarded a contract for a public work to ~~gather, maintain and~~ report to the public body awarding the contract certain information concerning the ~~hiring, wages;~~ race, ethnicity, age and gender of certain employees and applicants for employment on the public work. **Section 15** also requires that a public body awarding a contract for a public work must gather, compile, maintain and ~~report to~~ enter on the Internet website of the State Public Works Board certain information concerning the cost of the public work, the awarding of the contract, the race, ethnicity, age, gender, number of employees and length of time in business of the bidders for the contract, and the information received from the person awarded the contract concerning the applicants for employment on the public work. Finally, **section 15** requires that the State Public Works Board ~~must compile and maintain~~ create an application on its Internet website for the entry of the information ~~received by the Board;~~ that each public body is required to enter on the Internet website in accordance with **section 15**, make the information available to the public and report the information annually to the Director of the Legislative Counsel Bureau.

Section 17 of this bill requires the ~~State Board of Examiners to review and approve in advance each contract for the provision of professional services entered into by the~~ Department of Transportation ~~+-~~ to post certain information relating to certain contracts

for the provision of professional services entered into by the Department on or after July 1, 2011.

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

Section 1. Chapter 281 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this act.

Sec. 2. *As used in sections 2 to 14, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Independent contractor” means a natural person, firm or corporation who agrees to perform services for a fixed price according to his, her 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.*

Sec. 4. *“Public body” means ~~a state, county or municipal department, housing authority, agency or board. The term includes, without limitation, any~~ a:*

1. County;

2. City;

3. School district; or

4. State agency, bureau, board, commission, department or division or any other unit of the Legislative, Judicial or Executive Department of the State Government, including the Nevada System of Higher Education.

Sec. 5. *“Purchasing Division” means the Purchasing Division of the Department of Administration.*

Sec. 6. *“Sole source contract” means a contract entered into between a public body and an independent contractor to provide services for which the independent contractor is the only source capable of providing the services.*

Sec. 7. *Sections 2 to 14, inclusive, of this act ~~apply~~:*

1. Apply to any contract for services of a person as an independent contractor entered into between a public body and an independent contractor ~~for~~, unless the contract for services is negotiated as part of a contract for the sale of goods with the same independent contractor.

2. Do not apply to any contract:

(a) For a public work governed by the provisions of chapter 338 of NRS; or

(b) Relating to a franchise entered into by a local government.

Sec. 8. 1. *The Purchasing Division shall prescribe by regulation a code of conduct for independent contractors. The code of conduct must include, without limitation, provisions stating that the independent contractor:*

(a) Knows and agrees to abide by all applicable state ethics laws;

(b) Agrees to maintain accurate internal records of all work done pursuant to a contract with a public body; and

(c) Agrees to make the records kept pursuant to paragraph (b) available for inspection or audit by the Legislative Auditor and the Division of Internal Audits of the Department of Administration.

2. *A public body may not enter into a contract with an independent contractor unless the independent contractor signs and agrees to abide by the code of conduct for contractors prescribed by the Purchasing Division pursuant to this section.*

1 **Sec. 9.** *An independent contractor who enters into a contract with a public*
2 *body shall:*

3 1. *Fully disclose to the public body any fees that will be charged to*
4 *~~consumers~~ persons who are not a party to the contract as a part of the contract*
5 *with the public body.*

6 2. *Report annually to the public body the total dollar amount ~~of income~~*
7 *generated by such fees.*

8 **Sec. 10.** *An independent contractor who enters into a contract with a public*
9 *body shall:*

10 1. *Fully disclose to the public body:*

11 (a) *All subcontractors used ~~for intended to be used~~ by the independent*
12 *contractor to perform the contract.*

13 (b) *The dollar amount that each subcontractor will be paid by the*
14 *independent contractor.*

15 (c) *Any fees that will be charged to ~~consumers~~ persons who are not a party*
16 *to the contract by each subcontractor as part of the contract with the public body.*

17 2. *Report annually to the public body the total dollar amount ~~of income~~*
18 *generated by the fees disclosed pursuant to paragraph (c) of subsection 1.*

19 **Sec. 11.** 1. *~~Except as otherwise provided in subsection 2, a public~~*
20 *body may not enter into a sole source contract unless the period of the sole source*
21 *contract does not exceed 2 years.*

22 2. *~~A public body may not extend the period of an existing contract with an~~*
23 *~~independent contractor unless the public body first opens the contract to~~*
24 *~~competitive bidding.~~*

25 3. *~~If a public body enters into a contract with an independent contractor~~*
26 *~~with a period that exceeds 2 years, the public body and the independent~~*
27 *~~contractor shall renegotiate the terms of the contract on the second anniversary~~*
28 *~~of the date that the contract was entered into and every 2 years thereafter.~~* *A*
29 *public body may enter into a sole source contract whose period exceeds 2 years if*
30 *the longer period is necessary for the recovery of capital costs through extended*
31 *amortization.*

32 3. *A public body may not renew a sole source contract unless the governing*
33 *body of the public body approves the renewal by a two-thirds vote. For the*
34 *purposes of this subsection, the governing body of a state agency is the State*
35 *Board of Examiners.*

36 **Sec. 11.5.** *A public body may enter into a contract with an independent*
37 *contractor, other than a sole source contract, for a period of not more than 4*
38 *years. Such a contract may be extended if the governing body of the public body*
39 *that awarded the contract approves the extension by a two-thirds vote. For the*
40 *purposes of this section, the governing body of a state agency is the State*
41 *Board of Examiners.*

42 **Sec. 12.** 1. *A public body that enters into a sole source contract shall*
43 *transmit to the Purchasing Division information relating to the sole source*
44 *contract, including, without limitation, the name of the public body, the name of*
45 *the independent contractor and a brief description of the services for which the*
46 *public body entered into the sole source contract.*

47 2. *The Purchasing Division shall post any information received pursuant to*
48 *this section on its Internet website.*

49 **Sec. 13.** 1. *A public body that enters into a sole source contract or*
50 *renegotiates a contract with an independent contractor shall report to the*
51 *Purchasing Division before August 1 of each year, for the preceding fiscal year:*

52 (a) *The number of sole source contracts entered into by the public body;*

(b) The number of competitively bid contracts with an independent contractor entered into by the public body;

(c) The dollar amount of each sole source contract entered into by the public body;

(d) The dollar amount of each competitively bid contract with an independent contractor entered into by the public body; and

(e) The dollar amount of savings generated by renegotiations of all contracts with an independent contractor.

2. The Purchasing Division shall, on or before September 1 of each year, prepare and submit to the Interim Finance Committee a report detailing the information received pursuant to subsection 1 for the previous fiscal year for all public bodies.

Sec. 14. If an independent contractor violates any provision of section 8, 9 or 10 of this act ~~+~~

~~1. The, the~~ public body may terminate the contract with the independent contractor. ~~+~~ and

~~2. The independent contractor is permanently prohibited from entering into a contract with a public body.~~

Sec. 15. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A public body which awards a contract for a public work shall:

(a) Gather and maintain, for every person who submits a bid or otherwise competes for the contract, the following information:

(1) The cost of the public work;

(2) Whether the person was awarded the contract;

(3) The race, ethnicity, age and gender of the person;

(4) The number of employees of the person at the time the person submitted the bid; and

(5) The length of time for which the person had been in business at the time the person submitted the bid;

(b) Include in the contract a clause requiring the person who is awarded the contract to:

(1) Gather and maintain the information required by subsection 2; and

(2) Report and update the information as required by subsection 2;

(c) Compile and maintain the information reported to the public body pursuant to subsection 2 by the person who is awarded the contract; ~~and~~

(d) ~~Report to~~ Enter or cause to be entered through the application on the Internet website of the State Public Works Board created pursuant to paragraph (a) of subsection 3 the information which the public body:

(1) Gathers and maintains pursuant to paragraph (a) ~~+~~ within 30 days after the opening of bids; and

(2) Compiles and maintains pursuant to paragraph (c) ~~+~~ and

(e) Deem a bid that does not contain the information that the public body is required to gather and maintain pursuant to paragraph (a) to be not responsive.

2. The person who is awarded the contract by the public body shall ~~+~~

~~(a) Gather and maintain, for every applicant for employment on the public work with the person who is awarded the contract and with every~~ require each contractor, subcontractor and other person who provides labor, equipment, materials, supplies or services for the public work ~~+, the following information:~~

~~(1) The wages being offered for the job;~~

~~(2) Whether the applicant was hired for the job; and~~

~~(3) The race, ethnicity and gender of the applicant; and~~

~~(b) Report to the public body the information gathered and maintained pursuant to paragraph (a); to:~~

(a) Identify the race, ethnicity, age and gender, if known, of every person reported on the certified payroll of the contractor, subcontractor or other person; and

(b) Submit a report to the public body following the conclusion of the public work which identifies the race, ethnicity, age and gender, if known, of each person who, during the duration of the contract for the public work, applied for employment on the public work and the wage or salary of the job for which the person applied.

↳ The provisions of this subsection apply only with respect to employees and applicants for employment who applied directly to the contractor, subcontractor or other person for employment rather than applying for employment through another entity such as an employment agency or trade union.

3. The State Public Works Board shall:

~~(a) [Compile and maintain the information reported by a public body pursuant to subsection 1.];~~ Create an application on its Internet website for a public body to enter or cause to be entered the information gathered and maintained by the public body pursuant to subsection 1 that does not allow for the entry of any personal information, as that term is defined in NRS 603A.040;

~~(b) Make available to the public the information [compiled and maintained] entered pursuant to paragraph (a) [after removing any personal information, as that term is defined in NRS 603A.040.]; and~~

~~(c) Report annually the information [compiled and maintained]~~ entered pursuant to paragraph (a) to the Director of the Legislative Counsel Bureau in any format requested by the Director.

4. For the purposes of subsection 1, if a person who submits a bid or otherwise competes for the contract is:

(a) A design-build team, the public body must gather and maintain the required information for each member of the design-build team.

(b) Not a natural person, the public body must gather and maintain the required information, if known, for each natural person who ~~owns or controls all or a portion of~~ holds a controlling interest in the person who submits the bid or otherwise competes for the contract.

Sec. 16. (Deleted by amendment.)

Sec. 17. Chapter 408 of NRS is hereby amended by adding thereto a new section to read as follows:

1. ~~[Before the Department enters into a contract with a professional who is not a member of a design-build team for the provision of services, the Department must submit the proposed contract to the State Board of Examiners. The contract does not become effective without the prior approval of the State Board of Examiners.]~~

2. ~~The State Board of Examiners shall review each contract submitted for approval pursuant to subsection 1 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 or employee in a more cost-effective manner.~~

↳ ~~If the contract submitted for approval continues an existing contractual relationship, the State Board of Examiners shall require the Department to ensure that the Department is receiving the services that the contract purports to provide.~~

~~3.1~~ For any contract with a professional who is not a member of a design-build team for the provision of services entered into by the Department on or after July 1, 2011, within 30 days after entering into the contract, the Department shall post information relating to the contract on its Internet website, including, without limitation, the name of the professional, a brief description of the services for which the Department entered into the contract and the cost of the contract.

2. As used in this section, "professional" includes, without limitation, an architect, an attorney, an engineer, a landscape architect and a surveyor.

Sec. 18. The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

Sec. 18.5. 1. Contracts entered into before October 1, 2011, are not subject to the provisions of sections 1 to 14, inclusive, of this act.

2. Contracts entered into before July 1, 2011, are not subject to the provisions of sections 15 and 17 of this act.

Sec. 19. Before October 1, 2011, the Purchasing Division of the Department of Administration shall adopt any regulations required by section 8 of this act.

Sec. 20. 1. This section and sections 18, 18.5 and 19 of this act become effective upon passage and approval.

2. Sections 1 to 14, inclusive, of this act become effective:

(a) Upon passage and approval for the purposes of adopting regulations and performing any other preparatory administrative tasks; and

(b) On October 1, 2011, for all other purposes.

3. Sections ~~15, 16~~ and 17 of this act become effective on July 1, 2011.