

ASSEMBLY BILL NO. 41—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE PURCHASING DIVISION)

PREFILED DECEMBER 20, 2012

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions relating to state purchasing. (BDR 27-283)

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 purchasing; revising provisions governing contracts to provide services to state agencies; revising the thresholds governing certain actions relating to contracts for services, formal contracts and local purchasing; revising provisions concerning purchases and contracts which are contrary to the provisions governing state purchasing; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits a department, division or other agency of the Executive Department of the State Government from entering into certain contracts to provide services unless approved by the State Board of Examiners. (NRS 284.1729) This bill repeals NRS 284.1729 but replaces that section with **section 1** of this bill, to be added to chapter 333 of NRS, which relates to state purchasing. The new section contains the same provisions as existing law except that the new section amends that existing law by: (1) requiring the using agency to submit a written disclosure to the Board regarding the services to be provided; and (2) specifying when approval by the Board must occur.

Existing law defines a “using agency” to include certain state agencies and elected officers of the Executive Department of the State Government which derive their support from public money in whole or in part. (NRS 333.020) **Sections 2-4** of this bill raise the threshold for: (1) the estimated value of contracts for services that the Administrator of the Purchasing Division of the Department of Administration is required to contract for from \$100,000 or more to \$250,000 or more; (2) requiring formal contracts for purchases by the State from \$25,000 to



\$50,000; and (3) local purchasing by using agencies which the Administrator may authorize from \$5,000 to \$10,000 per order.

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 333.700) **Section 5** of this bill: (1) authorizes the Board to prescribe the amount rather than the relevant amount being specified in statute; and (2) provides that contracts for amounts below the amount prescribed by the Board are excepted from certain requirements, including being in writing and being filed with the Legislative Counsel Bureau and the Clerk of the Board.

Section 6 of this bill provides that purchases for services made or contracts entered into for purchases of services by certain state agencies and elected officers are void if they are contrary to the statutory and regulatory provisions governing state purchasing. **Section 6** further provides that the head of the using agency and the employee who made such a purchase or entered into such a contract are personally liable for the costs of those services.

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 a new section to read as follows:

1. Except as otherwise provided in this section, a using agency shall not enter into a contract with a person to provide services for the using agency if:

(a) The person is a current employee of an agency of this State;

(b) The person is a former employee of an agency of this State and less than 2 years have expired since the termination of the person's employment with the State; or

(c) The person is employed by the Department of Transportation for a transportation project that is entirely funded by federal money and the term of the contract is for more than 4 years,

↪ unless the using agency submits a written disclosure to the State Board of Examiners indicating the services to be provided pursuant to the contract and the person who will be providing those services and, after reviewing the disclosure, the State Board of Examiners approves entering into a contract with the person. The requirements of this subsection apply to any person employed by a business or other entity that enters into a contract to provide services for a using agency if the person will be performing or producing the services for which the business or entity is employed.

2. The provisions of paragraph (b) of subsection 1 apply to employment through a temporary employment service. A temporary employment service providing employees for a using



1 agency shall provide the using agency with the names of the
2 employees to be provided to the agency. The State Board of
3 Examiners shall not approve a contract pursuant to paragraph (b)
4 of subsection 1 unless the Board determines that one or more of
5 the following circumstances exist:

6 (a) The person provides services that are not provided by any
7 other employee of the using agency or for which a critical labor
8 shortage exists; or

9 (b) A short-term need or unusual economic circumstance
10 exists for the using agency to contract with the person.

11 3. The approval by the State Board of Examiners to contract
12 with a person pursuant to subsection 1:

13 (a) May occur at the same time and in the same manner as the
14 approval by the State Board of Examiners of a proposed contract
15 pursuant to subsection 7 of NRS 333.700; and

16 (b) Must occur before the date on which the contract becomes
17 binding on the using agency.

18 4. A using agency may contract with a person pursuant to
19 paragraph (a) or (b) of subsection 1 without obtaining the
20 approval of the State Board of Examiners if the term of the
21 contract is for less than 4 months and the head of the using
22 agency determines that an emergency exists which necessitates the
23 contract. If a using agency contracts with a person pursuant to
24 this subsection, the using agency shall submit a copy of the
25 contract and a description of the emergency to the State Board of
26 Examiners, which shall review the contract and the description of
27 the emergency and notify the using agency whether the State
28 Board of Examiners would have approved the contract if it had
29 not been entered into pursuant to this subsection.

30 5. Except as otherwise provided in subsection 9, a using
31 agency shall, not later than 10 days after the end of each fiscal
32 quarter, report to the Interim Finance Committee concerning all
33 contracts to provide services for the using agency that were
34 entered into by the using agency during the fiscal quarter with a
35 person who is a current or former employee of a department,
36 division or other agency of this State.

37 6. Except as otherwise provided in subsection 9, a using
38 agency shall not contract with a temporary employment service
39 unless the contracting process is controlled by rules of open
40 competitive bidding.

41 7. Each board or commission of this State and each
42 institution of the Nevada System of Higher Education that
43 employs a consultant shall, at least once every 6 months, submit to
44 the Interim Finance Committee a report setting forth:



1 (a) *The number of consultants employed by the board,*
2 *commission or institution;*

3 (b) *The purpose for which the board, commission or institution*
4 *employs each consultant;*

5 (c) *The amount of money or other remuneration received by*
6 *each consultant from the board, commission or institution; and*

7 (d) *The length of time each consultant has been employed by*
8 *the board, commission or institution.*

9 8. *A using agency, board or commission of this State and*
10 *each institution of the Nevada System of Higher Education:*

11 (a) *Shall make every effort to limit the number of contracts it*
12 *enters into with persons to provide services which have a term of*
13 *more than 2 years and which are in the amount of less than*
14 *\$1,000,000; and*

15 (b) *Shall not enter into a contract with a person to provide*
16 *services without ensuring that the person is in active and good*
17 *standing with the Secretary of State.*

18 9. *The provisions of subsections 1 to 6, inclusive, do not apply*
19 *to:*

20 (a) *The Nevada System of Higher Education or a board or*
21 *commission of this State.*

22 (b) *The employment of professional engineers by the*
23 *Department of Transportation if those engineers are employed for*
24 *a transportation project that is entirely funded by federal money.*

25 (c) *Contracts in the amount of \$1,000,000 or more entered*
26 *into:*

27 (1) *Pursuant to the State Plan for Medicaid established*
28 *pursuant to NRS 422.271.*

29 (2) *For financial services.*

30 (3) *Pursuant to the Public Employees' Benefits Program.*

31 (d) *The employment of a person by a business or entity which*
32 *is a provider of services under the State Plan for Medicaid and*
33 *which provides such services on a fee-for-service basis or through*
34 *managed care.*

35 **Sec. 2.** NRS 333.165 is hereby amended to read as follows:

36 333.165 1. Except as otherwise provided by specific statute,
37 the Administrator shall contract for services whose estimated value
38 is ~~\$100,000~~ **\$250,000** or more, and may authorize a using agency
39 to contract for such services if he or she determines that to do so
40 would be in the best interests of the State.

41 2. A using agency may contract for services if the estimated
42 value of the services is less than ~~\$100,000~~ **\$250,000**. The
43 Administrator may, upon the request of a using agency, contract for
44 such services on behalf of the agency if he or she determines that to
45 do so would be in the best interests of the State.



3. The Administrator shall, upon the request of a using agency, provide assistance to the using agency for any contract for services whose estimated value is less than ~~100,000~~ 250,000.

4. For the purposes of this section, a contract for goods and services whose estimated value:

(a) Is ~~100,000~~ 250,000 or more shall be deemed a contract for services; or

(b) Is less than ~~100,000~~ 250,000 shall be deemed a contract for goods with respect to that part of the contract that represents goods. Those goods must be procured in a manner authorized by the Administrator.

Sec. 3. NRS 333.300 is hereby amended to read as follows:

333.300 1. Except as otherwise provided in NRS 333.375, the Administrator shall give reasonable notice, by advertising and by written notice provided to persons in a position to furnish the classes of commodities involved, as shown by its records, of all proposed purchases of supplies, materials and equipment to be purchased in accordance with a schedule prepared in conformity with the provisions of NRS 333.250.

2. All such materials, supplies and equipment, except as otherwise provided in this section, if the estimated cost thereof exceeds ~~25,000~~ 50,000 must be purchased by formal contract from the lowest responsible bidder after notice inviting the submission of sealed proposals to the Administrator of the Purchasing Division at the date, hour and location set forth in the proposal, and at that date, hour and location the proposals must be publicly opened. The Purchasing Division may reject any or all proposals, or may accept the proposal determined best for the interest of the State. The notice must be published as prescribed in NRS 333.310.

3. In case of emergencies caused by acts of God or the national defense or other unforeseeable circumstances, the provisions for advertisements on competitive bids may be waived by the Administrator, but every effort must be made to secure the maximum competitive bidding under the circumstances. In no case may contracts be awarded until every possible effort has been made to secure at least three bona fide competitive bids.

4. In awarding contracts for the purchase of supplies, materials and equipment, if two or more lowest bids are identical, the Administrator shall:

(a) If the lowest bids are by bidders resident in the State of Nevada, accept the proposal which, in the discretion of the Administrator, is in the best interests of this State.

(b) If the lowest bids are by bidders resident outside the State of Nevada:



(1) Accept the proposal of the bidder who will furnish goods or commodities produced or manufactured in this State; or

(2) Accept the proposal of the bidder who will furnish goods or commodities supplied by a dealer resident in the State of Nevada.

Sec. 4. NRS 333.390 is hereby amended to read as follows:

333.390 1. Except as otherwise provided in NRS 333.435, the Administrator may authorize local purchasing by using agencies, in accordance with the rules of procedure, of individual orders for items not scheduled for quantity purchasing, not to exceed ~~+\$5,000+~~ **\$10,000** for each order, except for the repair, replacement and installation of parts for heavy equipment, not to exceed \$15,000 for each order, at no higher prices than specified in the orders authorizing the local purchasing. The Administrator may authorize purchasing at higher prices if perishable articles are involved and to meet other emergency requirements.

2. The prices of the local purchases must be based on considerations of equal service and economy as compared with those in furnishing the same items of equal quality through the regular purchasing procedure.

3. Each authorization must:

(a) Be revocable.

(b) Specify the limit of spending for individual orders not to exceed ~~+\$5,000+~~ **\$10,000**, except for the repair, replacement and installation of parts referred to in subsection 1.

(c) Specify the articles to be purchased.

(d) Be operative for not longer than 1 year after the date of issue.

4. A using agency that receives an authorization shall keep a record of:

(a) Its accounts and expenditures pursuant to that authority; and

(b) Evidence indicating that every effort has been made to secure competitive bidding to the extent practicable.

Sec. 5. NRS 333.700 is hereby amended to read as follows:

333.700 1. Except as otherwise provided in ~~NRS 284.1729,~~ **section 1 of this act**, 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, 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.

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 ~~{State Board of Examiners may waive the}~~ requirements of this subsection ~~{in the case of}~~ ***do not apply to*** contracts which are for amounts less than ~~{ \$2,000; }~~ ***the amount prescribed by the State Board of Examiners.***

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 a 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; }~~ ***the amount prescribed by the State Board of Examiners;*** 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 Division of the Department of Administration 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.

9. The State Board of Examiners shall review each contract submitted for approval pursuant to subsection 7 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 State Board of Examiners shall ask each agency to ensure that the State is receiving the services that the contract purports to provide.

10. 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 that the independent contractor identify in all pleadings the specific state agency which he or she is representing.

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

Sec. 6. NRS 333.810 is hereby amended to read as follows:

333.810 1. Any purchase and any contract for the purchase of any *service*, supplies, materials or equipment, made or entered into by any state officer, department, institution, board, commission or agency contrary to the provisions of this chapter and the rules and regulations of the Administrator promulgated pursuant thereto, shall be void; but the head of the using agency and the employee who actually made such purchase or entered into such contract shall be personally liable for the costs of any *service*, supplies, materials or equipment delivered pursuant to such purchase or contract.

2. Any contract made with any person, firm or corporation shall be void if any member, officer or employee of any using agency taking part in the making of such contract is also an officer



1 or employee or owner of a substantial part or interest in such firm or
2 corporation.

3 **Sec. 7.** NRS 218E.405 is hereby amended to read as follows:

4 218E.405 1. Except as otherwise provided in subsection 2,
5 the Interim Finance Committee may exercise the powers conferred
6 upon it by law only when the Legislature is not in a regular or
7 special session.

8 2. During a regular or special session, the Interim Finance
9 Committee may also perform the duties imposed on it by subsection
10 5 of NRS 284.115, NRS ~~284.1729,~~ 285.070, subsection 2 of
11 NRS 321.335, NRS 322.007, subsection 2 of NRS 323.020, NRS
12 323.050, subsection 1 of NRS 323.100, subsection 3 of NRS
13 341.126, NRS 341.142, paragraph (f) of subsection 1 of
14 NRS 341.145, NRS 353.220, 353.224, 353.2705 to 353.2771,
15 inclusive, 353.288, 353.335, 353C.226, paragraph (b) of subsection
16 4 of NRS 407.0762, NRS 428.375, 439.4905, 439.620, 439.630,
17 445B.830 and 538.650. In performing those duties, the Senate
18 Standing Committee on Finance and the Assembly Standing
19 Committee on Ways and Means may meet separately and transmit
20 the results of their respective votes to the Chair of the Interim
21 Finance Committee to determine the action of the Interim Finance
22 Committee as a whole.

23 3. The Chair of the Interim Finance Committee may appoint a
24 subcommittee consisting of six members of the Committee to
25 review and make recommendations to the Committee on matters of
26 the State Public Works Division of the Department of
27 Administration that require prior approval of the Interim Finance
28 Committee pursuant to subsection 3 of NRS 341.126, NRS 341.142
29 and paragraph (f) of subsection 1 of NRS 341.145. If the Chair
30 appoints such a subcommittee:

31 (a) The Chair shall designate one of the members of the
32 subcommittee to serve as the chair of the subcommittee;

33 (b) The subcommittee shall meet throughout the year at the
34 times and places specified by the call of the chair of the
35 subcommittee; and

36 (c) The Director or the Director's designee shall act as the
37 nonvoting recording secretary of the subcommittee.

38 **Sec. 8.** NRS 284.1729 is hereby repealed.

39 **Sec. 9.** This act becomes effective upon passage and approval.



TEXT OF REPEALED SECTION

284.1729 Limitations and requirements; approval by State Board of Examiners; emergencies; reports to Interim Finance Committee; applicability of state purchasing provisions; exceptions.

1. Except as otherwise provided in this section, a department, division or other agency of this State shall not enter into a contract with a person to provide services for the agency if:

(a) The person is a current employee of an agency of this State;

(b) The person is a former employee of an agency of this State and less than 2 years have expired since the termination of the person's employment with the State; or

(c) The person is employed by the Department of Transportation for a transportation project that is entirely funded by federal money and the term of the contract is for more than 4 years,

↳ unless, before the contract is executed by the agency, the State Board of Examiners approves the employment of the person. The requirements of this subsection apply to any person employed by a business or other entity that enters into a contract to provide services for a department, division or agency of this State if the person will be performing or producing the services for which the business or entity is employed.

2. The provisions of paragraph (b) of subsection 1 apply to employment through a temporary employment service. A temporary employment service providing employees for a state agency shall provide the agency with the names of the employees to be provided to the agency. The State Board of Examiners shall not approve a contract pursuant to paragraph (b) of subsection 1 unless the Board determines that one or more of the following circumstances exist:

(a) The person provides services that are not provided by any other employee of the agency or for which a critical labor shortage exists; or

(b) A short-term need or unusual economic circumstance exists for the agency to contract with the person.

3. A department, division or other agency of this State may contract with a person pursuant to paragraph (a) or (b) of subsection 1 without obtaining the approval of the State Board of Examiners if the term of the contract is for less than 4 months and the executive head of the department, division or agency determines that an emergency exists which necessitates the contract. If a department,



division or agency contracts with a person pursuant to this subsection, the department, division or agency shall submit a copy of the contract and a description of the emergency to the State Board of Examiners, which shall review the contract and the description of the emergency and notify the department, division or agency whether the State Board of Examiners would have approved the contract if it had not been entered into pursuant to this subsection.

4. Except as otherwise provided in subsection 9, a department, division or other agency of this State shall, not later than 10 days after the end of each fiscal quarter, report to the Interim Finance Committee concerning all contracts to provide services for the agency that were entered into by the agency during the fiscal quarter with a person who is a current or former employee of a department, division or other agency of this State.

5. Except as otherwise provided in subsection 9, a department, division or other agency of this State shall not contract with a temporary employment service unless the contracting process is controlled by rules of open competitive bidding.

6. Each board or commission of this State and each institution of the Nevada System of Higher Education that employs a consultant shall, at least once every 6 months, submit to the Interim Finance Committee a report setting forth:

(a) The number of consultants employed by the board, commission or institution;

(b) The purpose for which the board, commission or institution employs each consultant;

(c) The amount of money or other remuneration received by each consultant from the board, commission or institution; and

(d) The length of time each consultant has been employed by the board, commission or institution.

7. A department, division or other agency of this State, including a board or commission of this State and each institution of the Nevada System of Higher Education:

(a) Shall make every effort to limit the number of contracts it enters into with persons to provide services which have a term of more than 2 years and which are in the amount of less than \$1 million; and

(b) Shall not enter into a contract with a person to provide services without ensuring that the person is in active and good standing with the Secretary of State.

8. The provisions of chapter 333 of NRS that are not in conflict or otherwise inconsistent with this section apply to a contract entered into pursuant to this section.

9. The provisions of subsections 1 to 5, inclusive, do not apply to:



(a) The Nevada System of Higher Education or a board or commission of this State.

(b) The employment of professional engineers by the Department of Transportation if those engineers are employed for a transportation project that is entirely funded by federal money.

(c) Contracts in the amount of \$1 million or more entered into:

(1) Pursuant to the State Plan for Medicaid established pursuant to NRS 422.271.

(2) For financial services.

(3) Pursuant to the Public Employees' Benefits Program.

(d) The employment of a person by a business or entity which is a provider of services under the State Plan for Medicaid and which provides such services on a fee-for-service basis or through managed care.

