

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; increasing the threshold for requiring formal contracts for certain purchases by the State; 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) **Section 3** of this bill raises the threshold for requiring formal contracts for certain purchases by the State from \$25,000 to \$50,000.

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 amounts less than \$10,000, or amounts less than \$25,000 for contracts necessary to preserve life and property.



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(NRS 333.700) **Section 5** of this bill provides that the Clerk of the Board or a designee may approve contracts for amounts below \$50,000, including those contracts necessary to preserve life and property. **Section 5** also authorizes a contract for the services of an independent contractor to be performed in parts or phases, except that **section 5** prohibits splitting such a contract into separate contracts for the purpose of avoiding any requirements for competitive bidding.

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. **Section 6** also excludes contracts for the purchase of any service, supplies, materials or equipment for a public work that are awarded in compliance with the provisions governing public works from the provisions of **section 6**.

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 agency shall provide the using agency with the names of the



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

27 (2) *For financial services.*

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

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

33 **Sec. 2.** (Deleted by amendment.)

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

35 333.300 1. Except as otherwise provided in NRS 333.375,
36 the Administrator shall give reasonable notice, by advertising and
37 by written notice provided to persons in a position to furnish the
38 classes of commodities involved, as shown by its records, of all
39 proposed purchases of supplies, materials and equipment to be
40 purchased in accordance with a schedule prepared in conformity
41 with the provisions of NRS 333.250.

42 2. All such materials, supplies and equipment, except as
43 otherwise provided in this section, if the estimated cost thereof
44 exceeds ~~1~~~~\$25,000~~ **\$50,000** must be purchased by formal contract
45 from the lowest responsible bidder after notice inviting the



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1 submission of sealed proposals to the Administrator of the
2 Purchasing Division at the date, hour and location set forth in
3 the proposal, and at that date, hour and location the proposals must
4 be publicly opened. The Purchasing Division may reject any or all
5 proposals, or may accept the proposal determined best for the
6 interest of the State. The notice must be published as prescribed in
7 NRS 333.310.

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

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

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

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

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

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

27 **Sec. 4.** (Deleted by amendment.)

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

29 333.700 1. Except as otherwise provided in ~~NRS 284.1729,~~
30 *section 1 of this act*, a using agency may contract for the services of
31 a person as an independent contractor. Except as otherwise provided
32 by specific statute, each such contract must be awarded pursuant to
33 this chapter.

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

40 3. For the purposes of this section:

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

45 (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 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 a designee to approve contracts which are:

(a) For amounts less than ~~1\$10,000 or, in contracts necessary to preserve life and property, for amounts less than \$25,000;~~ **\$50,000;** 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 Division of the Department of Administration or any other state department or



1 agency for any work of construction or major repairs of state
2 buildings, if the contracting process was controlled by the rules of
3 open competitive bidding.

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

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

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

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

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

15 ➔ If the contract submitted for approval continues an existing
16 contractual relationship, the State Board of Examiners shall ask each
17 agency to ensure that the State is receiving the services that the
18 contract purports to provide.

19 10. If the services of an independent contractor are contracted
20 for to represent an agency of the State in any proceeding in any
21 court, the contract must require that the independent contractor
22 identify in all pleadings the specific state agency which he or she is
23 representing.

24 11. *Except as otherwise provided in this subsection, a*
25 *contract for the services of an independent contractor may be*
26 *performed in parts or phases. A contract for the services of an*
27 *independent contract must not be split into separate contracts for*
28 *the purpose of avoiding any requirements for competitive bidding.*

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

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

32 333.810 1. ~~Any~~ *Except as otherwise provided in*
33 *subsection 3, any* purchase and any contract for the purchase of any
34 *service*, supplies, materials or equipment, made or entered into by
35 any state officer, department, institution, board, commission or
36 agency contrary to the provisions of this chapter and the rules and
37 regulations of the Administrator promulgated pursuant thereto, shall
38 be void; but the head of the using agency and the employee who
39 actually made such purchase or entered into such contract shall be
40 personally liable for the costs of any *service*, supplies, materials or
41 equipment delivered pursuant to such purchase or contract.

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



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

3 ***3. The provisions of this section do not apply to a contract for***
4 ***the purchase of any service, supplies, materials or equipment for a***
5 ***public work that is awarded in compliance with chapter 338 of***
6 ***NRS.***

7 ***4. As used in this section, "public work" has the meaning***
8 ***ascribed to it in NRS 338.010.***

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

10 218E.405 1. Except as otherwise provided in subsection 2,
11 the Interim Finance Committee may exercise the powers conferred
12 upon it by law only when the Legislature is not in a regular or
13 special session.

14 2. During a regular or special session, the Interim Finance
15 Committee may also perform the duties imposed on it by subsection
16 5 of NRS 284.115, NRS ~~284.1729,~~ 285.070, subsection 2 of
17 NRS 321.335, NRS 322.007, subsection 2 of NRS 323.020, NRS
18 323.050, subsection 1 of NRS 323.100, subsection 3 of NRS
19 341.126, NRS 341.142, paragraph (f) of subsection 1 of
20 NRS 341.145, NRS 353.220, 353.224, 353.2705 to 353.2771,
21 inclusive, 353.288, 353.335, 353C.226, paragraph (b) of subsection
22 4 of NRS 407.0762, NRS 428.375, 439.4905, 439.620, 439.630,
23 445B.830 and 538.650. In performing those duties, the Senate
24 Standing Committee on Finance and the Assembly Standing
25 Committee on Ways and Means may meet separately and transmit
26 the results of their respective votes to the Chair of the Interim
27 Finance Committee to determine the action of the Interim Finance
28 Committee as a whole.

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

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

39 (b) The subcommittee shall meet throughout the year at the
40 times and places specified by the call of the chair of the
41 subcommittee; and

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

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

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



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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,



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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:



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(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.

