

## Amendment No. 258

Assembly Amendment to Assembly Bill No. 247

(BDR 28-190)

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

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/JWP



Date: 4/12/2013

A.B. No. 247—Enacts the Nevada Buy American Act. (BDR 28-190)



ASSEMBLY BILL NO. 247—ASSEMBLYMEN CARLTON, KIRKPATRICK, SPIEGEL, HARDY, HICKEY; AIZLEY, ELLIOT ANDERSON, BENITEZ-THOMPSON, BOBZIEN, BUSTAMANTE ADAMS, CARRILLO, DALY, DIAZ, EISEN, FRIERSON, HANSEN, HEALEY, HORNE, LIVERMORE, MARTIN, PIERCE AND SWANK

MARCH 13, 2013

JOINT SPONSORS: SENATORS MANENDO, SEGERBLOM,  
PARKS, WOODHOUSE AND DENIS

Referred to Committee on Government Affairs

SUMMARY—Enacts the Nevada Buy American Act. (BDR 28-190)

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

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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 public works; requiring under certain circumstances that any iron or steel products ~~for manufactured goods~~ used or supplied for a public work or in the performance of a contract for a project of the Department of Transportation be manufactured in the United States; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing federal law requires any steel, iron and manufactured products used in certain transportation projects that receive federal funding to be produced in the United States unless: (1) the use of such materials would be inconsistent with the public interest; (2) such materials are not produced in the United States in sufficient quantity and of sufficient quality; or (3) the use of such materials would increase the cost of the project by more than 25 percent. (23 U.S.C. § 313) **Sections 4 and 15** of this bill require any iron or steel products ~~for manufactured goods~~ used in this State for a public work or a project of the Department of Transportation to be manufactured in the United States. **Sections 4 and 15** also allow a contractor or subcontractor to apply for a waiver of this requirement if: (1) the use of such ~~materials~~ **products** would be inconsistent with the public interest; (2) such ~~materials~~ **products** are not produced in the United States in sufficient quantity and of sufficient quality; or (3) the use of such ~~materials~~ **products** would increase the cost of the project by more than 25 percent. Further, **sections 4 and 15** allow the public body awarding the contract to waive the requirement after providing notice and an opportunity for public comment by publishing a detailed justification of the waiver.

**Sections 7, 8, 9 and 16** of this bill permanently prohibit a contractor who intentionally mislabels or misrepresents such ~~materials~~ **products** as being manufactured in the United States if they were not so manufactured from bidding on or being awarded a contract for a public work or a project of the Department of Transportation.

**Section 17** of this bill provides that the requirement to use iron or steel products ~~for manufactured goods~~ which are manufactured in the United States ~~apply~~ **applies** to any

public work or project of the Department of Transportation that is first advertised for bid on or after July 1, 2013. **Section 17** also declares that any contract for such a public work or project that fails to comply with this bill is void.

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

**Section 1.** Chapter 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

**Sec. 2. 1. The Legislature hereby finds that:**

(a) The production of iron ~~and steel~~ ~~and manufactured goods~~ products provides jobs and family income to many individuals in the United States which, in turn, provides jobs and family income to the residents of this State;

(b) The taxes paid by employers and employees engaged in the production and sale of iron ~~and steel~~ ~~and manufactured goods~~ products are a large source of public revenues for the country;

(c) The economy and general welfare of this State and its residents and of the United States are inseparably linked to the preservation and development of manufacturing industries in this State, as well as the other states of this nation;

(d) In recognition of this link, this State should reinvest its taxpayer dollars with its taxpayers to foster job retention and growth, particularly within the manufacturing sector, and to ensure a broad and healthy tax base for future investments vital to the State's infrastructure; and

(e) The procurement policies of this State should ensure that products made by companies and workers who abide by the workplace safety and environmental laws and regulations of this State and this nation should be rewarded with a preference in government contracting.

2. The Legislature therefore declares it to be the policy of this State that its agencies and political subdivisions aid and promote the economy of this State and the United States by requiring a preference for the procurement of iron ~~and steel~~ ~~and manufactured goods produced~~ products manufactured in the United States in all contracts for public works.

**Sec. 3.** As used in sections 2, 3 and 4 of this act, unless the context otherwise requires, "manufactured in the United States" means ~~in the case of:~~

~~1. An iron or steel product, that all manufacturing to produce the~~ an iron or steel product, except any metallurgical processes involving the refinement of steel additives, takes place in the United States.

~~2. A manufactured good, all manufacturing to produce the good takes place in the United States and all the components of the product originate in the United States. A component shall be deemed to originate in the United States if all manufacturing to produce the component takes place in the United States regardless of the origin of its subcomponents.~~

**Sec. 4. 1.** Except as otherwise provided in subsection 2, each contract for a public work awarded by a public body must contain a provision requiring that the iron and steel products ~~and manufactured goods~~ used or supplied in the performance of the contract and any subcontract for the public work be manufactured in the United States.

2. A contractor or subcontractor may apply to the public body for a waiver of the requirements of subsection 1 for a contract or any subcontract for a public work if:

(a) The requirements would be inconsistent with the public interest;

1       (b) Such products ~~and goods~~ are not produced in the United States in  
2       sufficient and reasonably available quantities and of a satisfactory quality; or

3       (c) Inclusion of such products ~~and goods~~ would increase the cost of the  
4       contract by more than 25 percent.

5       3. If a public body receives an application for a waiver pursuant to  
6       subsection 2, the public body shall:

7       (a) By electronic means, including, without limitation, on its Internet  
8       website, if any, provide a public notice of:

9       (1) The application;

10       (2) The specific grounds for the waiver, as set forth in subsection 2,  
11       pursuant to which the application is made; and

12       (3) All relevant information available to the public body concerning the  
13       application; and

14       (b) Accept public comment on the application for not less than 30 days.

15       4. If the public body determines that a waiver from the requirements of  
16       subsection 1 should be granted to a contractor or subcontractor, the public body  
17       may grant the waiver not less than 30 days after providing the notice and  
18       opportunity for public comment required pursuant to subsection 3 by publishing  
19       in a newspaper of general circulation in the county in which the public work is or  
20       will be located, before the waiver takes effect, a detailed justification for the  
21       waiver that addresses the public comments received by the public body.

22       Sec. 5. NRS 338.0115 is hereby amended to read as follows:

23       338.0115 1. Except as otherwise provided in subsection 2, the provisions of  
24       this chapter and chapters 332 and 339 of NRS do not apply to a contract under  
25       which a private developer, for the benefit of a private development, constructs a  
26       water or sewer line extension and any related appurtenances:

27       (a) Which qualify as a public work pursuant to NRS 338.010; and

28       (b) For which the developer will receive a monetary contribution or refund  
29       from a public body as reimbursement for a portion of the costs of the project.

30       2. If, pursuant to the provisions of such a contract, the developer is not  
31       responsible for paying all of the initial construction costs of the project, the  
32       provisions of NRS 338.0117, 338.013 to 338.090, inclusive, and 338.1373 to  
33       338.148, inclusive, *and sections 2, 3 and 4 of this act* apply to the contract.

34       Sec. 6. NRS 338.1373 is hereby amended to read as follows:

35       338.1373 1. A local government or its authorized representative shall award  
36       a contract for a public work pursuant to the provisions of NRS 338.1415 *and*  
37       *section 4 of this act* and:

38       (a) NRS 338.1377 to 338.139, inclusive;

39       (b) NRS 338.143 to 338.148, inclusive;

40       (c) NRS 338.169 to 338.16995, inclusive; or

41       (d) NRS 338.1711 to 338.173, inclusive.

42       2. The provisions of *section 4 of this act* and NRS 338.1375 to 338.1382,  
43       inclusive, 338.1386, 338.13862, 338.13864, 338.139, 338.142, 338.169 to  
44       338.16995, inclusive, and 338.1711 to 338.1727, inclusive, do not apply with  
45       respect to contracts for the construction, reconstruction, improvement and  
46       maintenance of highways that are awarded by the Department of Transportation  
47       pursuant to NRS 408.201 and 408.313 to 408.433, inclusive.

48       Sec. 7. NRS 338.1379 is hereby amended to read as follows:

49       338.1379 1. Except as otherwise provided in NRS 338.1382, a contractor  
50       who wishes to qualify as a bidder on a contract for a public work must submit an  
51       application to the Division or the local government.

52       2. Upon receipt of an application pursuant to subsection 1, the Division or the  
53       local government shall:

(a) Investigate the applicant to determine whether the applicant is qualified to bid on a contract; and

(b) After conducting the investigation, determine whether the applicant is qualified to bid on a contract. The determination must be made within 45 days after receipt of the application.

3. The Division or the local government shall notify each applicant in writing of its determination. If an application is denied, the notice must set forth the reasons for the denial and inform the applicant of the right to a hearing pursuant to NRS 338.1381.

4. The Division or the local government may determine an applicant is qualified to bid:

(a) On a specific project; or

(b) On more than one project over a period of time to be determined by the Division or the local government.

5. Except as otherwise provided in subsection 8, the Division shall not use any criteria other than criteria adopted by regulation pursuant to NRS 338.1375 in determining whether to approve or deny an application.

6. Except as otherwise provided in subsection 8, the local government shall not use any criteria other than the criteria described in NRS 338.1377 in determining whether to approve or deny an application.

7. Except as otherwise provided in NRS 239.0115, financial information and other data pertaining to the net worth of an applicant which is gathered by or provided to the Division or a local government to determine the financial ability of an applicant to perform a contract is confidential and not open to public inspection.

8. The Division or the local government shall deny an application and revoke any existing qualification to bid if it finds that the applicant has ~~+-within+~~:

(a) *Within* the preceding year, breached a contract for a public work for which the cost exceeds \$25,000,000 by failing to comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1 of NRS 338.0117 ~~+-;~~ *or*

(b) *With respect to any iron or steel product ~~for manufactured good~~ used or supplied in a public work or project to which section 4 or 15 of this act applies, intentionally affixed thereto a label bearing an inscription of "Made in America" or any inscription with similar meaning, if the iron or steel product ~~for manufactured good~~ was not manufactured in the United States, as that term is defined in section 3 of this act.*

**Sec. 8.** NRS 338.1382 is hereby amended to read as follows:

338.1382 In lieu of adopting criteria pursuant to NRS 338.1377 and determining the qualification of bidders pursuant to NRS 338.1379, a governing body may deem a person to be qualified to bid on:

1. Contracts for public works of the local government if the person has not ~~+-~~ *violated paragraph (b) of subsection 8 of NRS 338.1379 or*, within the preceding year, breached a contract for a public work for which the cost exceeds \$25,000,000 by failing to comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1 of NRS 338.0117, and has been determined by:

(a) The Division pursuant to NRS 338.1379 to be qualified to bid on contracts for public works of the State pursuant to criteria adopted pursuant to NRS 338.1375; or

(b) Another governing body pursuant to NRS 338.1379 to be qualified to bid on contracts for public works of that local government pursuant to the criteria set forth in NRS 338.1377.

2. A contract for a public work of the local government if:

(a) The person has been determined by the Department of Transportation pursuant to NRS 408.333 to be qualified to bid on the contract for the public work;

(b) The public work will be owned, operated or maintained by the Department of Transportation after the public work is constructed by the local government; and

(c) The Department of Transportation requested that bidders on the contract for the public work be qualified to bid on the contract pursuant to NRS 408.333.

**Sec. 9.** NRS 338.1415 is hereby amended to read as follows:

338.1415 A local government or its authorized representative shall not accept a bid on a contract for a public work if the contractor who submits the bid has ~~within~~:

1. *Within* the preceding year, breached a contract for a public work for which the cost exceeds \$25,000,000 by failing to comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1 of NRS 338.0117 ~~or~~; *or*

2. *With respect to any iron or steel product ~~for manufactured good~~ used or supplied in a public work or project to which section 4 or 15 of this act applies, intentionally affixed thereto a label bearing an inscription of "Made in America" or any inscription with similar meaning, if the iron or steel product ~~for manufactured good~~ was not manufactured in the United States, as that term is defined in section 3 of this act.*

**Sec. 10.** Chapter 408 of NRS is hereby amended by adding thereto the provisions set forth as sections 11 to 15, inclusive, of this act.

**Sec. 11. 1. The Legislature hereby finds that:**

(a) *The production of iron ~~and~~ and steel ~~and manufactured goods~~ products provides jobs and family income to many individuals in the United States which, in turn, provides jobs and family income to the residents of this State;*

(b) *The taxes paid by employers and employees engaged in the production and sale of iron ~~and~~ and steel ~~and manufactured goods~~ products are a large source of public revenues for the country;*

(c) *The economy and general welfare of this State and its residents and of the United States are inseparably linked to the preservation and development of manufacturing industries in this State, as well as the other states of this nation;*

(d) *In recognition of this link, this State should reinvest its taxpayer dollars with its taxpayers to foster job retention and growth, particularly within the manufacturing sector, and to ensure a broad and healthy tax base for future investments vital to the State's infrastructure; and*

(e) *The procurement policies of this State should ensure that products made by companies and workers who abide by the workplace safety and environmental laws and regulations of this State and this nation should be rewarded with a preference in government contracting.*

2. *The Legislature therefore declares it to be the policy of this State that its agencies and political subdivisions aid and promote the economy of this State and the United States by requiring a preference for the procurement of iron ~~and~~ and steel ~~and manufactured goods produced~~ products manufactured in the United States in all contracts for projects.*

**Sec. 12.** *As used in sections 11 to 15, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 13 and 14 of this act have the meanings ascribed to them in those sections.*

**Sec. 13.** "Manufactured in the United States" means ~~in the case of:~~

1. *An iron or steel product, that all manufacturing to produce ~~the~~ an iron or steel product, except any metallurgical processes involving the refinement of steel additives, takes place in the United States.*

2. *A manufactured good, all manufacturing to produce the good takes place in the United States and all the components of the product originate in the United States. A component shall be deemed to originate in the United States if all*

~~manufacturing to produce the component takes place in the United States regardless of the origin of its subcomponents.~~

Sec. 14. "Project" means a project for the construction, reconstruction or improvement of a highway.

Sec. 15. 1. Except as otherwise provided in subsection 2, each contract for a project awarded by the Department must contain a provision requiring that the iron and steel products ~~and manufactured goods~~ used or supplied in the performance of the contract and any subcontract for the project be manufactured in the United States.

2. A contractor or subcontractor may apply to the Department for a waiver of the requirements of subsection 1 for a contract or any subcontract for a project if:

(a) The requirements would be inconsistent with the public interest;

(b) Such products ~~and goods~~ are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(c) Inclusion of such products ~~and goods~~ would increase the cost of the contract by more than 25 percent.

3. If the Department receives an application for a waiver pursuant to subsection 2, the Department shall:

(a) By electronic means, including, without limitation, on its Internet website, if any, provide a public notice of:

(1) The application;

(2) The specific grounds for the waiver, as set forth in subsection 2, pursuant to which the application is made; and

(3) All relevant information available to the Department concerning the application; and

(b) Accept public comment on the application for not less than 30 days.

4. If the Department determines that a waiver from the requirements of subsection 1 should be granted to a contractor or subcontractor, the Department may grant the waiver not less than 30 days after providing the notice and opportunity for public comment pursuant to subsection 3 by publishing in a newspaper of general circulation in the county in which the project is or will be located, before the waiver takes effect, a detailed justification for the waiver that addresses the public comments received by the Department.

Sec. 16. NRS 408.333 is hereby amended to read as follows:

408.333 Except as otherwise provided in NRS 408.3875 to 408.3887, inclusive:

1. Before furnishing any person proposing to bid on any advertised work with the plans and specifications for such work, the Director shall require from the person a statement, verified under oath, in the form of answers to questions contained in a standard form of questionnaire and financial statement, which must include a complete statement of the person's financial ability and experience in performing public work of a similar nature.

2. Such statements must be filed with the Director in ample time to permit the Department to verify the information contained therein in advance of furnishing proposal forms, plans and specifications to any person proposing to bid on the advertised public work, in accordance with the regulations of the Department.

3. Whenever the Director is not satisfied with the sufficiency of the answers contained in the questionnaire and financial statement, the Director may refuse to furnish the person with plans and specifications and the official proposal forms on the advertised project. If the Director determines that the person has ~~not~~ ~~within~~ :

1 (a) *Within* the preceding year, breached a contract for a public work for which  
2 the cost exceeds \$25,000,000 by failing to comply with a requirement of paragraphs  
3 (a) to (e), inclusive, of subsection 1 of NRS 338.0117 ~~or~~ *; or*

4 (b) *With respect to any iron or steel product ~~for manufactured good~~ used or*  
5 *supplied in a public work or project to which section 4 or 15 of this act applies,*  
6 *intentionally affixed thereto a label bearing an inscription of “Made in America”*  
7 *or any inscription with similar meaning, if the iron or steel product ~~for~~*  
8 *~~manufactured good~~ was not manufactured in the United States, as that term is*  
9 *defined in section 13 of this act,*

10 *the Director shall refuse to furnish the person with plans and specifications and*  
11 *the official proposal forms on the advertised project. Any bid of any person to*  
12 *whom plans and specifications and the official proposal forms have not been issued*  
13 *in accordance with this section must be disregarded, and the certified check, cash or*  
14 *undertaking of such a bidder returned forthwith.*

15 4. Any person who is disqualified by the Director, in accordance with the  
16 provisions of this section, may request, in writing, a hearing before the Director and  
17 present again the person's check, cash or undertaking and such further evidence  
18 with respect to the person's financial responsibility, organization, plant and  
19 equipment, or experience, as might tend to justify, in his or her opinion, issuance to  
20 him or her of the plans and specifications for the work.

21 5. Such a person may appeal the decision of the Director to the Board no later  
22 than 5 days before the opening of the bids on the project. If the appeal is sustained  
23 by the Board, the person must be granted the rights and privileges of all other  
24 bidders.

25 **Sec. 17.** 1. The amendatory provisions of this act apply to all contracts for  
26 public works for which bids are first advertised on or after July 1, 2013.

27 2. Any contract awarded for a public work or a project to which the  
28 amendatory provisions of this act apply pursuant to subsection 1 and:

29 (a) Which was not advertised in compliance with the amendatory provisions of  
30 this act;

31 (b) For which bids were not accepted in compliance with the amendatory  
32 provisions of this act; or

33 (c) For which the contract was not awarded in compliance with the amendatory  
34 provisions of this act,

35 *is void.*

36 3. As used in this section:

37 (a) “Contract” has the meaning ascribed to it in NRS 338.010.

38 (b) “Project” has the meaning ascribed to it in section 14 of this act.

39 (c) “Public work” has the meaning ascribed to it in NRS 338.010.

40 **Sec. 18.** This act becomes effective on July 1, 2013.