

Amendment No. 508

Assembly Amendment to Assembly Bill No. 247

(BDR 28-190)

Proposed by: Assemblywoman Carlton

Amendment Box: Consistent with Amendment No. 258.

Amends: Summary: No Title: No 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.

RBL



Date: 4/16/2013

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.

~

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 or 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 or 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 in a bid for a contract if: (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. Further, **sections 4 and 15** allow the public body awarding the contract to waive the requirement when it awards the contract, after providing notice and an opportunity for public comment, by publishing a detailed justification of the waiver. **Such a waiver is not allowed to be granted after the contract has been awarded.**

Sections 7, 8, 9 and 16 of this bill permanently prohibit a contractor who intentionally mislabels or misrepresents such materials 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 or manufactured goods which are manufactured in the United States apply 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, steel and manufactured goods 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, steel and manufactured goods 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, steel and manufactured goods produced 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 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. ~~14~~ *When a bid on a contract for a public work is submitted to a public body, the contractor or subcontractor may apply to the public body for a waiver of*

1 *the requirements of subsection 1 ~~for a~~ if the contract or any subcontract for ~~a~~*
2 *the public work is awarded, if:*

- 3 (a) *The requirements would be inconsistent with the public interest;*
4 (b) *Such products and goods are not produced in the United States in*
5 *sufficient and reasonably available quantities and of a satisfactory quality; or*
6 (c) *Inclusion of such products and goods would increase the cost of the*
7 *contract by more than 25 percent.*

8 3. *If a public body receives an application for a waiver in a bid for a*
9 *contract for a public work pursuant to subsection 2, the public body shall:*

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

- 12 (1) *The application;*
13 (2) *The specific grounds for the waiver, as set forth in subsection 2,*
14 *pursuant to which the application is made; and*
15 (3) *All relevant information available to the public body concerning the*
16 *application; and*

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

18 4. *If the public body determines that a waiver from the requirements of*
19 *subsection 1 should be granted to a contractor or subcontractor, the public body*
20 *may grant the waiver when it awards the contract, but not less than 30 days after*
21 *providing the notice and opportunity for public comment required pursuant to*
22 *subsection 3 by publishing in a newspaper of general circulation in the county in*
23 *which the public work is or will be located, before the waiver takes effect, a*
24 *detailed justification for the waiver that addresses the public comments received*
25 *by the public body. A waiver must not be granted after the contract has been*
26 *awarded.*

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

28 338.0115 1. Except as otherwise provided in subsection 2, the provisions of
29 this chapter and chapters 332 and 339 of NRS do not apply to a contract under
30 which a private developer, for the benefit of a private development, constructs a
31 water or sewer line extension and any related appurtenances:

- 32 (a) Which qualify as a public work pursuant to NRS 338.010; and
33 (b) For which the developer will receive a monetary contribution or refund
34 from a public body as reimbursement for a portion of the costs of the project.

35 2. If, pursuant to the provisions of such a contract, the developer is not
36 responsible for paying all of the initial construction costs of the project, the
37 provisions of NRS 338.0117, 338.013 to 338.090, inclusive, and 338.1373 to
38 338.148, inclusive, *and sections 2, 3 and 4 of this act* apply to the contract.

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

40 338.1373 1. A local government or its authorized representative shall award
41 a contract for a public work pursuant to the provisions of NRS 338.1415 *and*
42 *section 4 of this act* and:

- 43 (a) NRS 338.1377 to 338.139, inclusive;
44 (b) NRS 338.143 to 338.148, inclusive;
45 (c) NRS 338.169 to 338.16995, inclusive; or
46 (d) NRS 338.1711 to 338.173, inclusive.

47 2. The provisions of *section 4 of this act* and NRS 338.1375 to 338.1382,
48 inclusive, 338.1386, 338.13862, 338.13864, 338.139, 338.142, 338.169 to
49 338.16995, inclusive, and 338.1711 to 338.1727, inclusive, do not apply with
50 respect to contracts for the construction, reconstruction, improvement and
51 maintenance of highways that are awarded by the Department of Transportation
52 pursuant to NRS 408.201 and 408.313 to 408.433, inclusive.

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

2 338.1379 1. Except as otherwise provided in NRS 338.1382, a contractor
3 who wishes to qualify as a bidder on a contract for a public work must submit an
4 application to the Division or the local government.

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

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

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

12 3. The Division or the local government shall notify each applicant in writing
13 of its determination. If an application is denied, the notice must set forth the reasons
14 for the denial and inform the applicant of the right to a hearing pursuant to NRS
15 338.1381.

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

18 (a) On a specific project; or

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

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

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

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

31 8. The Division or the local government shall deny an application and revoke
32 any existing qualification to bid if it finds that the applicant has ~~not~~ **within**:

33 **(a) Within** the preceding year, breached a contract for a public work for which
34 the cost exceeds \$25,000,000 by failing to comply with a requirement of paragraphs
35 (a) to (e), inclusive, of subsection 1 of NRS 338.0117 ~~not~~ **;** or

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

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

43 338.1382 In lieu of adopting criteria pursuant to NRS 338.1377 and
44 determining the qualification of bidders pursuant to NRS 338.1379, a governing
45 body may deem a person to be qualified to bid on:

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

51 (a) The Division pursuant to NRS 338.1379 to be qualified to bid on contracts
52 for public works of the State pursuant to criteria adopted pursuant to NRS
53 338.1375; 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

2. *With respect to any iron or steel product or 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 or 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, steel and manufactured goods 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, steel and manufactured goods 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, steel and manufactured goods produced 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 1. An iron or steel product, that all manufacturing to produce the product,
2 except any metallurgical processes involving the refinement of steel additives,
3 takes place in the United States.

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

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

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

16 2. ~~14~~ When a bid on a contract for a project is submitted to the
17 Department, the contractor or subcontractor may apply to the Department for a
18 waiver of the requirements of subsection 1 for a contract or any subcontract for
19 ~~14~~ the project is awarded, if:

- 20 (a) The requirements would be inconsistent with the public interest;
21 (b) Such products and goods are not produced in the United States in
22 sufficient and reasonably available quantities and of a satisfactory quality; or
23 (c) Inclusion of such products and goods would increase the cost of the
24 contract by more than 25 percent.

25 3. If the Department receives an application for a waiver in a bid for a
26 contract for a project pursuant to subsection 2, the Department shall:

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

- 29 (1) The application;
30 (2) The specific grounds for the waiver, as set forth in subsection 2,
31 pursuant to which the application is made; and
32 (3) All relevant information available to the Department concerning the
33 application; and

34 (b) Accept public comment on the application for not less than 30 days.
35 4. If the Department determines that a waiver from the requirements of
36 subsection 1 should be granted to a contractor or subcontractor, the Department
37 may grant the waiver when it awards the contract, but not less than 30 days after
38 providing the notice and opportunity for public comment pursuant to subsection
39 3 by publishing in a newspaper of general circulation in the county in which the
40 project is or will be located, before the waiver takes effect, a detailed justification
41 for the waiver that addresses the public comments received by the Department. A
42 waiver must not be granted after the contract has been awarded.

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

44 408.333 Except as otherwise provided in NRS 408.3875 to 408.3887,
45 inclusive:

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

52 2. Such statements must be filed with the Director in ample time to permit the
53 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 ~~[-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 or 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 or manufactured good was not manufactured in the United States, as that term is defined in section 13 of this act.*

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

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

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

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

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

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

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

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

↳ is void.

3. As used in this section:

(a) "Contract" has the meaning ascribed to it in NRS 338.010.

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

(c) "Public work" has the meaning ascribed to it in NRS 338.010.

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