

ASSEMBLY BILL NO. 332—ASSEMBLYMEN KIRKPATRICK;  
BENITEZ-THOMPSON, CARLTON AND HICKEY

MARCH 16, 2015

Referred to Committee on Government Affairs

SUMMARY—Makes various changes concerning government purchasing and bidding. (BDR 28-256)

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; prohibiting a public body from entering into certain contracts for public works which allow for purchase by the public body of the construction materials or goods to be used in the public work; providing that the Attorney General is to enforce the prohibition against such a contract for a public work; directing the Department of Taxation to withhold certain money payable to a public body which violates such a prohibition in a contract for a public work; removing an exemption for certain construction projects of the Nevada System of Higher Education from provisions governing public works; providing a penalty; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Under existing law, the sale of any tangible personal property to a  
2 governmental entity including the State, its unincorporated agencies and  
3 instrumentalities or a county, city, district or other political subdivision of this  
4 State, is exempted from the imposition of sales and use taxes. (NRS 372.325,  
5 372.345) A contractor who buys tangible personal property or stores, uses or  
6 otherwise consumes tangible personal property for such a governmental entity must  
7 pay such taxes unless the contractor is a constituent part of that entity. (NRS  
8 372.340) **Section 1** of this bill prohibits any public body including the State, its  
9 local governments, school districts, and any public agency thereof which sponsors  
10 or finances a public work from entering into a contract for a public work which  
11 provides that any construction materials or goods to be used on the public work be  
12 purchased or otherwise supplied by: (1) the public body; (2) a contractor who is a  
13 constituent part of the public body; or (3) a contractor who is not a constituent part



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of the public body acting on behalf of the public body. A public body may, however, enter into such a contract for a public work provided that the contract requires the payment of any state or local taxes that would otherwise have been due for the purchase and use of such construction materials or goods if they had been purchased and used by an entity not exempted from the payment of such taxes. **Section 1** also provides that: (1) a contract entered into in violation of this prohibition is void; (2) a person who enters into such a contract is guilty of a gross misdemeanor; and (3) the right to enforce the provisions of this prohibition vests exclusively in the Attorney General. **Section 1** further provides that, if a contract is entered into in violation of this prohibition, the Attorney General must forward to the Department of Taxation a list of the construction materials or goods purchased under the contract. The Department is then required to calculate the amount of applicable state and local taxes that should have been collected on the construction materials or goods, and deduct from the money otherwise payable from the proceeds of any tax distribution due to the public body either twice the amount of the applicable taxes or the sum of \$500,000, whichever is greater.

Under existing law, the laws of this State pertaining to public works apply to any project which is financed in whole or in part from public money for the new construction, repair or reconstruction of publicly owned works and properties, except that such laws only apply to a building for the Nevada System of Higher Education if 25 percent or more of the costs of the building as a whole are paid from money appropriated by this State or from federal money. (NRS 338.010) **Section 2** of this bill removes that exemption from the application of public works laws for such a building for the System. **Section 4** of this bill repeals certain sections for conformity with the amendments made in **section 2**.

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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 a new section to read as follows:

*1. Except as otherwise provided in subsection 2, a public body shall not enter into a contract for a public work which provides that any construction materials or goods to be used on the public work will be purchased or otherwise supplied by:*

*(a) The public body or a contractor who is a constituent part of the public body; or*

*(b) A contractor who is not a constituent part of the public body but is acting on behalf of the public body.*

*2. A public body may enter into a contract for a public work which provides that any construction materials or goods to be used in the public work will be purchased or supplied by the public body, a contractor who is a constituent part of the public body or a contractor who is not a constituent part of the public body but is acting on behalf of the public body if:*

*(a) The contract requires the payment of any state or local taxes that would otherwise have been due for the purchase and use of the construction materials or goods if the construction materials or goods had been purchased and used by a contractor*



1 *who was not a constituent part of the public body and who was not*  
2 *otherwise exempt from the taxes pursuant to state or local law;*  
3 *and*

4 *(b) The public body sends a copy of the contract, including an*  
5 *itemized list of the construction materials or goods to be purchased*  
6 *or otherwise provided by the public body or a contractor who is a*  
7 *constituent part of the public body, to the Department of Taxation.*  
8 *The itemized list must include the amount paid for each item.*

9 *3. A contract entered into in violation of subsection 1 is void.*

10 *4. A person who enters into a contract that violates the*  
11 *provisions of subsection 1 is guilty of a gross misdemeanor.*

12 *5. The right to enforce the provisions of this section vests*  
13 *exclusively in the Attorney General, who may institute and*  
14 *prosecute the appropriate proceedings to enforce the provisions of*  
15 *this section.*

16 *6. If a contract for a public work is entered into in violation*  
17 *of subsection 1, the Attorney General shall forward to the*  
18 *Department of Taxation a list of construction materials or goods*  
19 *purchased in violation of this section by the public body or the*  
20 *contractor who is a constituent part of the public body. The*  
21 *Department shall calculate the applicable state and local taxes on*  
22 *the purchase and use of the construction materials or goods which*  
23 *would have been due but for the tax exemption of the public body*  
24 *or the contractor who is a constituent part of the public body, and*  
25 *shall deduct that amount from the money otherwise payable from*  
26 *the proceeds of any tax distribution to the public body:*

27 *(a) Twice the amount of the applicable taxes; or*

28 *(b) The sum of \$500,000,*

29 *↪ whichever is greater.*

30 *7. As used in this section, "construction materials or goods"*  
31 *means all materials, equipment or supplies which are intended to*  
32 *be used in a public work and includes, without limitation, the*  
33 *following, as well as related components or other materials*  
34 *intended for similar use:*

35 *(a) Structural or reinforcing steel.*

36 *(b) Aggregates, including, without limitation, base, barrow,*  
37 *concrete, asphalt, treated base, fill, topsoil and decorative*  
38 *aggregate.*

39 *(c) Interior finishing materials, including, without limitation,*  
40 *drywall, metal studs, acoustical ceiling material, paint, sealants,*  
41 *compounds and wall coverings.*

42 *(d) Flooring, including, without limitation, carpet, tile, wood,*  
43 *vinyl and laminates.*

44 *(e) Wood and wood products, including, without limitation,*  
45 *plywood, lumber, form systems, sheeting and decking.*



1       (f) *Utility materials, including, without limitation, piping,*  
2 *conduit, fiber optics, cables and cabling, power generators and*  
3 *pumps.*

4       (g) *Electrical materials, including, without limitation, conduit,*  
5 *wire, cables and cabling, electrical panels, lighting fixtures, outlets*  
6 *and switches.*

7       (h) *Plumbing materials, including, without limitation, pipes*  
8 *and piping, fixtures, drains, pumps, toilets, sinks, tubs and water*  
9 *heaters.*

10       (i) *Heating, ventilation and air conditioning materials,*  
11 *including, without limitation, ducts, vents, sheet metal, air*  
12 *conditioning units, furnaces and fans.*

13       (j) *Equipment and devices, whether purchased or rented,*  
14 *including, without limitation, heavy construction equipment,*  
15 *forklifts, scissor lifts, boom lifts, cranes and traffic control devices.*

16       (k) *Miscellaneous materials, including, without limitation,*  
17 *materials used for fencing, irrigation, masonry, cabinetry, doors,*  
18 *windows, traffic signals and signs, landscaping and elevators.*

19       **Sec. 2.** NRS 338.010 is hereby amended to read as follows:

20       338.010 As used in this chapter:

21       1. "Authorized representative" means a person designated by a  
22 public body to be responsible for the development, solicitation,  
23 award or administration of contracts for public works pursuant to  
24 this chapter.

25       2. "Contract" means a written contract entered into between a  
26 contractor and a public body for the provision of labor, materials,  
27 equipment or supplies for a public work.

28       3. "Contractor" means:

29       (a) A person who is licensed pursuant to the provisions of  
30 chapter 624 of NRS.

31       (b) A design-build team.

32       4. "Day labor" means all cases where public bodies, their  
33 officers, agents or employees, hire, supervise and pay the wages  
34 thereof directly to a worker or workers employed by them on public  
35 works by the day and not under a contract in writing.

36       5. "Design-build contract" means a contract between a public  
37 body and a design-build team in which the design-build team agrees  
38 to design and construct a public work.

39       6. "Design-build team" means an entity that consists of:

40       (a) At least one person who is licensed as a general engineering  
41 contractor or a general building contractor pursuant to chapter 624  
42 of NRS; and

43       (b) For a public work that consists of:



(1) A building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS.

(2) Anything other than a building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS or landscape architecture pursuant to chapter 623A of NRS or who is licensed as a professional engineer pursuant to chapter 625 of NRS.

7. "Design professional" means:

(a) A person who is licensed as a professional engineer pursuant to chapter 625 of NRS;

(b) A person who is licensed as a professional land surveyor pursuant to chapter 625 of NRS;

(c) A person who holds a certificate of registration to engage in the practice of architecture, interior design or residential design pursuant to chapter 623 of NRS;

(d) A person who holds a certificate of registration to engage in the practice of landscape architecture pursuant to chapter 623A of NRS; or

(e) A business entity that engages in the practice of professional engineering, land surveying, architecture or landscape architecture.

8. "Division" means the State Public Works Division of the Department of Administration.

9. "Eligible bidder" means a person who is:

(a) Found to be a responsible and responsive contractor by a local government or its authorized representative which requests bids for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373; or

(b) Determined by a public body or its authorized representative which awarded a contract for a public work pursuant to NRS 338.1375 to 338.139, inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or 338.1382.

10. "General contractor" means a person who is licensed to conduct business in one, or both, of the following branches of the contracting business:

(a) General engineering contracting, as described in subsection 2 of NRS 624.215.

(b) General building contracting, as described in subsection 3 of NRS 624.215.

11. "Governing body" means the board, council, commission or other body in which the general legislative and fiscal powers of a local government are vested.

12. "Horizontal construction" means the construction of any fixed work, including any irrigation, drainage, water supply, flood control, harbor, railroad, highway, tunnel, airport or airway, sewer,



1 sewage disposal plant or water treatment facility and any ancillary  
2 vertical components thereof, bridge, inland waterway, pipeline for  
3 the transmission of petroleum or any other liquid or gaseous  
4 substance, pier, and work incidental thereto. The term does not  
5 include vertical construction, the construction of any terminal or  
6 other building of an airport or airway, or the construction of any  
7 other building.

8 13. "Local government" means every political subdivision or  
9 other entity which has the right to levy or receive money from ad  
10 valorem or other taxes or any mandatory assessments, and includes,  
11 without limitation, counties, cities, towns, boards, school districts  
12 and other districts organized pursuant to chapters 244A, 309, 318,  
13 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,  
14 inclusive, and any agency or department of a county or city which  
15 prepares a budget separate from that of the parent political  
16 subdivision. The term includes a person who has been designated by  
17 the governing body of a local government to serve as its authorized  
18 representative.

19 14. "Offense" means failing to:

- 20 (a) Pay the prevailing wage required pursuant to this chapter;  
21 (b) Pay the contributions for unemployment compensation  
22 required pursuant to chapter 612 of NRS;  
23 (c) Provide and secure compensation for employees required  
24 pursuant to chapters 616A to 617, inclusive, of NRS; or  
25 (d) Comply with subsection 5 or 6 of NRS 338.070.

26 15. "Prime contractor" means a contractor who:

- 27 (a) Contracts to construct an entire project;  
28 (b) Coordinates all work performed on the entire project;  
29 (c) Uses his or her own workforce to perform all or a part of the  
30 public work; and  
31 (d) Contracts for the services of any subcontractor or  
32 independent contractor or is responsible for payment to any  
33 contracted subcontractors or independent contractors.

34 ➔ The term includes, without limitation, a general contractor or a  
35 specialty contractor who is authorized to bid on a project pursuant to  
36 NRS 338.139 or 338.148.

37 16. "Public body" means the State, county, city, town, school  
38 district or any public agency of this State or its political subdivisions  
39 sponsoring or financing a public work.

40 17. "Public work" means any project for the new construction,  
41 repair or reconstruction of ~~f~~:

42 ~~—(a) A~~ a project financed in whole or in part from public money  
43 for:

44 ~~f(1)~~ (a) Public buildings;

45 ~~f(2)~~ (b) Jails and prisons;



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1 ~~[(3)]~~ (c) Public roads;  
2 ~~[(4)]~~ (d) Public highways;  
3 ~~[(5)]~~ (e) Public streets and alleys;  
4 ~~[(6)]~~ (f) Public utilities;  
5 ~~[(7)]~~ (g) Publicly owned water mains and sewers;  
6 ~~[(8)]~~ (h) Public parks and playgrounds;  
7 ~~[(9)]~~ (i) Public convention facilities which are financed at  
8 least in part with public money; and  
9 ~~[(10)]~~ (j) All other publicly owned works and property.

10 ~~[(b) A building for the Nevada System of Higher Education of~~  
11 ~~which 25 percent or more of the costs of the building as a whole are~~  
12 ~~paid from money appropriated by this State or from federal money.]~~

13 18. "Specialty contractor" means a person who is licensed to  
14 conduct business as described in subsection 4 of NRS 624.215.

15 19. "Stand-alone underground utility project" means an  
16 underground utility project that is not integrated into a larger  
17 project, including, without limitation:

18 (a) An underground sewer line or an underground pipeline for  
19 the conveyance of water, including facilities appurtenant thereto;  
20 and

21 (b) A project for the construction or installation of a storm drain,  
22 including facilities appurtenant thereto,

23 ➤ that is not located at the site of a public work for the design and  
24 construction of which a public body is authorized to contract with a  
25 design-build team pursuant to subsection 2 of NRS 338.1711.

26 20. "Subcontract" means a written contract entered into  
27 between:

28 (a) A contractor and a subcontractor or supplier; or

29 (b) A subcontractor and another subcontractor or supplier,  
30 ➤ for the provision of labor, materials, equipment or supplies for a  
31 construction project.

32 21. "Subcontractor" means a person who:

33 (a) Is licensed pursuant to the provisions of chapter 624 of NRS  
34 or performs such work that the person is not required to be licensed  
35 pursuant to chapter 624 of NRS; and

36 (b) Contracts with a contractor, another subcontractor or a  
37 supplier to provide labor, materials or services for a construction  
38 project.

39 22. "Supplier" means a person who provides materials,  
40 equipment or supplies for a construction project.

41 23. "Vertical construction" means the construction or  
42 remodeling of any building, structure or other improvement that is  
43 predominantly vertical, including, without limitation, a building,  
44 structure or improvement for the support, shelter and enclosure of



1 persons, animals, chattels or movable property of any kind, and any  
2 improvement appurtenant thereto.

3 24. "Wages" means:

4 (a) The basic hourly rate of pay; and

5 (b) The amount of pension, health and welfare, vacation and  
6 holiday pay, the cost of apprenticeship training or other similar  
7 programs or other bona fide fringe benefits which are a benefit to  
8 the worker.

9 25. "Worker" means a skilled mechanic, skilled worker,  
10 semiskilled mechanic, semiskilled worker or unskilled worker in the  
11 service of a contractor or subcontractor under any appointment or  
12 contract of hire or apprenticeship, express or implied, oral or  
13 written, whether lawfully or unlawfully employed. The term does  
14 not include a design professional.

15 **Sec. 3.** NRS 338.018 and 338.075 are hereby repealed.

16 **Sec. 4.** This act becomes effective on July 1, 2015.

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#### TEXT OF REPEALED SECTIONS

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**338.018 Applicability to certain contracts for construction work of Nevada System of Higher Education.** The provisions of NRS 338.013 to 338.018, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds \$100,000 even if the construction work does not qualify as a public work, as defined in subsection 17 of NRS 338.010.

**338.075 Applicability to certain contracts for construction work of Nevada System of Higher Education.** The provisions of NRS 338.020 to 338.090, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds \$100,000 even if the construction work does not qualify as a public work, as defined in subsection 17 of NRS 338.010.

