

(Reprinted with amendments adopted on June 1, 2015)

THIRD REPRINT

A.B. 332

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 shall 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; revising provisions relating to certain construction projects of the Nevada System of Higher Education; revising the minimum qualifications for the Administrator of the State Public Works Division of the Department of Administration; 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 the
- 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 an express or implied contract for a
- 11 public work which provides that any construction materials or goods to be used on



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the public work be purchased or otherwise supplied by: (1) the public body; (2) a contractor who is a constituent part of the public body; or (3) a contractor who is not a constituent part 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) an express or implied 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 twice the amount of the applicable taxes. In addition, **section 1** exempts from the new prohibition express or implied contracts for public works that use certain construction materials or goods that are: (1) purchased pursuant to governmental procurement rules, needed on a recurring basis and used to protect the health, safety or welfare of the public; or (2) specialized, project-specific components.

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 a building of the System if less than 25 percent of the costs of the building are paid from money appropriated by this State or federal money, but **section 2.5** of this bill exempts such a building from certain provisions requiring that a public body use the services of the State Public Works Division of the Department of Administration for certain services relating to planning, maintenance and construction of state buildings. (NRS 341.141-341.148) **Section 2.5** also specifically requires the System to use the services of the Division as building official for the construction of any building for the System. **Section 4** of this bill repeals certain sections for conformity with the amendments made in **section 2**.

Under existing law, the Administrator and Deputy Administrator of the State Public Works Division are required to be licensed professional engineers or registered architects. (NRS 341.100) **Section 2.6** of this bill revises those qualifications to require that the Administrator have: (1) a master's degree or doctoral degree in civil or environmental engineering, architecture, public administration or a related field; and (2) have experience in management, public administration or public policy. **Section 2.6** provides that if the Administrator is not a licensed professional engineer or a registered architect, the Deputy Administrator is required to be a licensed professional engineer or a registered architect.



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

1 **Section 1.** Chapter 338 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 1. *Except as otherwise provided in this section, a public body*
4 *shall not enter into an express or implied contract for a public*
5 *work which provides that any construction materials or goods to*
6 *be used on the public work will be purchased or otherwise*
7 *supplied by:*

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

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

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

19 (a) *The contract requires the payment of any state or local*
20 *taxes that would otherwise have been due for the purchase and*
21 *use of the construction materials or goods if the construction*
22 *materials or goods had been purchased and used by a contractor*
23 *who was not a constituent part of the public body and who was not*
24 *otherwise exempt from the taxes pursuant to state or local law;*
25 *and*

26 (b) *The public body sends an itemized list of the construction*
27 *materials or goods to be purchased or otherwise provided by the*
28 *public body or a contractor who is a constituent part of the public*
29 *body, to the Department of Taxation. The itemized list must*
30 *include the amount paid for each item.*

31 3. *An express or implied contract entered into in violation of*
32 *subsection 1 is void.*

33 4. *A person who enters into an express or implied contract*
34 *that violates the provisions of subsection 1 is guilty of a gross*
35 *misdemeanor.*

36 5. *The right to enforce the provisions of this section vests*
37 *exclusively in the Attorney General, who shall institute and*
38 *prosecute the appropriate proceedings to enforce the provisions of*
39 *this section.*

40 6. *If an express or implied contract for a public work is*
41 *entered into in violation of subsection 1, the Attorney General*
42 *shall forward to the Department of Taxation a list of construction*



1 *materials or goods purchased in violation of this section by the*
2 *public body or the contractor who is a constituent part of the*
3 *public body. The Department shall calculate the applicable state*
4 *and local taxes on the purchase and use of the construction*
5 *materials or goods which would have been due but for the tax*
6 *exemption of the public body or the contractor who is a*
7 *constituent part of the public body, and shall deduct from the*
8 *money otherwise payable from the proceeds of any tax distribution*
9 *to the public body twice the amount of the applicable taxes.*

10 7. *The provisions of this section do not apply to an express or*
11 *implied contract for a public work for which the construction*
12 *materials or goods purchased by the public body are:*

13 (a) *Devices, equipment or hardware purchased in compliance*
14 *with chapter 332 or 333 of NRS which are needed on a recurring*
15 *basis and used to protect the health, safety or welfare of the public,*
16 *including, without limitation, official traffic control devices; or*

17 (b) *Specialized components purchased in compliance with*
18 *chapter 332 or 333 of NRS which are specific to a particular*
19 *project and are not commonly used in public works projects.*

20 ➤ *If a public body enters into such a contract, the public body*
21 *must provide annually to the Department of Taxation an itemized*
22 *list of the construction materials or goods purchased pursuant to*
23 *the contract and the amount paid for each item.*

24 8. *If a public body is going to perform the public work itself*
25 *in accordance with NRS 338.13864, the public body is not*
26 *required to:*

27 (a) *Pay any state or local taxes for the purchase and use of*
28 *construction materials or goods.*

29 (b) *Send to the Department of Taxation an itemized list of*
30 *construction materials or goods to be purchased by the public body*
31 *for the public work.*

32 9. *As used in this section, "construction materials or goods"*
33 *means all materials, equipment or supplies which are intended to*
34 *be used in a public work.*

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

36 338.010 As used in this chapter:

37 1. "Authorized representative" means a person designated by a
38 public body to be responsible for the development, solicitation,
39 award or administration of contracts for public works pursuant to
40 this chapter.

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

44 3. "Contractor" means:



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

(b) A design-build team.

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

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

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

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

(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



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1 NRS 338.1375 to 338.139, inclusive, to be qualified to bid on that
2 contract pursuant to NRS 338.1379 or 338.1382.

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

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

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

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

13 12. “Horizontal construction” means the construction of any
14 fixed work, including any irrigation, drainage, water supply, flood
15 control, harbor, railroad, highway, tunnel, airport or airway, sewer,
16 sewage disposal plant or water treatment facility and any ancillary
17 vertical components thereof, bridge, inland waterway, pipeline for
18 the transmission of petroleum or any other liquid or gaseous
19 substance, pier, and work incidental thereto. The term does not
20 include vertical construction, the construction of any terminal or
21 other building of an airport or airway, or the construction of any
22 other building.

23 13. “Local government” means every political subdivision or
24 other entity which has the right to levy or receive money from ad
25 valorem or other taxes or any mandatory assessments, and includes,
26 without limitation, counties, cities, towns, boards, school districts
27 and other districts organized pursuant to chapters 244A, 309, 318,
28 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,
29 inclusive, and any agency or department of a county or city which
30 prepares a budget separate from that of the parent political
31 subdivision. The term includes a person who has been designated by
32 the governing body of a local government to serve as its authorized
33 representative.

34 14. “Offense” means failing to:

35 (a) Pay the prevailing wage required pursuant to this chapter;

36 (b) Pay the contributions for unemployment compensation
37 required pursuant to chapter 612 of NRS;

38 (c) Provide and secure compensation for employees required
39 pursuant to chapters 616A to 617, inclusive, of NRS; or

40 (d) Comply with subsection 5 or 6 of NRS 338.070.

41 15. “Prime contractor” means a contractor who:

42 (a) Contracts to construct an entire project;

43 (b) Coordinates all work performed on the entire project;

44 (c) Uses his or her own workforce to perform all or a part of the
45 public work; and



(d) Contracts for the services of any subcontractor or independent contractor or is responsible for payment to any contracted subcontractors or independent contractors.

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

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

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

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

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

~~[(b) A building for the Nevada System of Higher Education of which 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.]~~

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

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

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

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

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

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

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

(b) A subcontractor and another subcontractor or supplier,



↪ for the provision of labor, materials, equipment or supplies for a construction project.

21. "Subcontractor" means a person who:

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

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

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

23. "Vertical construction" means the construction or remodeling of any building, structure or other improvement that is predominantly vertical, including, without limitation, a building, structure or improvement for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, and any improvement appurtenant thereto.

24. "Wages" means:

(a) The basic hourly rate of pay; and

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

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

Sec. 2.5. Chapter 341 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2, the provisions of NRS 341.141 to 341.148, inclusive, apply to a contract for the construction of a building for the Nevada System of Higher Education only 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.

2. The provisions of subsection 2 of NRS 341.145 apply to the construction of any building for the Nevada System of Higher Education.

Sec. 2.6. NRS 341.100 is hereby amended to read as follows:

341.100 1. The Administrator and the Deputy Administrator of the Public Works - Compliance and Code Enforcement Section serve at the pleasure of the Director of the Department.

2. The Administrator shall appoint:



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(a) A Deputy Administrator of the Public Works - Professional Services Section; and

(b) A Deputy Administrator of the Buildings and Grounds Section.

↪ Each deputy administrator appointed pursuant to this subsection serves at the pleasure of the Administrator.

3. The Administrator shall recommend and the Director shall appoint a Deputy Administrator of the Public Works - Compliance and Code Enforcement Section. The Deputy Administrator appointed pursuant to this subsection has the final authority in the interpretation and enforcement of any applicable building codes.

4. The Administrator may appoint such other technical and clerical assistants as may be necessary to carry into effect the provisions of this chapter.

5. The Administrator and each deputy administrator are in the unclassified service of the State. Except as otherwise provided in NRS 284.143, the Administrator and each deputy administrator shall devote his or her entire time and attention to the business of the office and shall not pursue any other business or occupation or hold any other office of profit.

6. The Administrator ~~and~~ *must have a master's degree or doctoral degree in civil or environmental engineering, architecture, public administration or a related field and must have experience in management, public administration or public policy. If the Administrator is not a licensed professional engineer pursuant to the provisions of chapter 625 of NRS or an architect registered pursuant to the provisions of chapter 623 of NRS,* the Deputy Administrator of the Public Works - Professional Services Section must ~~each~~ be a licensed professional engineer pursuant to the provisions of chapter 625 of NRS or an architect registered pursuant to the provisions of chapter 623 of NRS.

7. The Deputy Administrator of the Public Works - Compliance and Code Enforcement Section must have a comprehensive knowledge of building codes and a working knowledge of the principles of engineering or architecture as determined by the Administrator.

8. The Administrator shall:

(a) Serve as the Secretary of the Board.

(b) Manage the daily affairs of the Division.

(c) Represent the Board and the Division before the Legislature.

(d) Prepare and submit to the Board, for its approval, the recommended priority for proposed capital improvement projects and provide the Board with an estimate of the cost of each project.

(e) Select architects, engineers and contractors.

(f) Accept completed projects.



(g) Submit in writing to the Director of the Department, the Governor and the Interim Finance Committee a monthly report regarding all public works projects which are a part of the approved capital improvement program. For each such project, the monthly report must include, without limitation, a detailed description of the progress of the project which highlights any specific events, circumstances or factors that may result in:

(1) Changes in the scope of the design or construction of the project or any substantial component of the project which increase or decrease the total square footage or cost of the project by 10 percent or more;

(2) Increased or unexpected costs in the design or construction of the project or any substantial component of the project which materially affect the project;

(3) Delays in the completion of the design or construction of the project or any substantial component of the project; or

(4) Any other problems which may adversely affect the design or construction of the project or any substantial component of the project.

(h) Have final authority to approve the architecture of all buildings, plans, designs, types of construction, major repairs and designs of landscaping.

9. The Deputy Administrator of the Public Works - Compliance and Code Enforcement Section shall:

(a) Serve as the building official for all buildings and structures on property of the State or held in trust for any division of the State Government; and

(b) Consult with an agency or official that is considering adoption of a regulation described in NRS 446.942, 449.345, 455C.115, 461.173, 472.105 or 477.0325 and provide recommendations regarding how the regulation, as it applies to buildings and structures on property of this State or held in trust for any division of the State Government, may be made consistent with other regulations which apply to such buildings or structures.

Sec. 2.7. NRS 341.141 is hereby amended to read as follows:

341.141 1. The Division shall furnish engineering and architectural services to the Nevada System of Higher Education and all other state departments, boards or commissions charged with the construction of any building constructed on state property or for which the money is appropriated by the Legislature, except:

(a) Buildings used in maintaining highways;

(b) Improvements, other than nonresidential buildings with more than 1,000 square feet in floor area, made:

(1) In state parks by the State Department of Conservation and Natural Resources; or



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- 1 (2) By the Department of Wildlife; ~~and~~
2 (c) *Buildings of the Nevada System of Higher Education:*
3 *(1) That are exempted pursuant to subsection 1 of section*
4 *2.5 of this act; or*
5 *(2) To which subsection 1 of section 2.5 of this act applies if*
6 *the Administrator has delegated his or her authority in accordance*
7 *with NRS 341.119; and*
8 (d) Buildings on property controlled by other state agencies if
9 the Administrator has delegated his or her authority in accordance
10 with NRS 341.119.
11 ➤ The Board of Regents of the University of Nevada and all other
12 state departments, boards or commissions shall use those services.
13 2. The services must consist of:
14 (a) Preliminary planning;
15 (b) Designing;
16 (c) Estimating of costs; and
17 (d) Preparation of detailed plans and specifications.
18 **Sec. 3.** NRS 338.018 and 338.075 are hereby repealed.
19 **Sec. 4.** This act becomes effective on July 1, 2015.

TEXT OF REPEALED SECTIONS

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.

