

Amendment No. 461

Assembly Amendment to Assembly Bill No. 106 (BDR 27-295)

Proposed by: Assembly Committee on Government Affairs

Amends: Summary: Yes 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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

WBD/RBL



Date: 4/23/2017

A.B. No. 106—Revises provisions governing government contracting.
(BDR 27-295)



ASSEMBLY BILL NO. 106—ASSEMBLYWOMAN SPIEGEL

PREFILED FEBRUARY 7, 2017

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing ~~government contracting;~~ state governmental procurement. (BDR 27-295)

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 ~~government contracting; requiring certain employers to establish their compliance with certain antidiscrimination provisions of state and federal law as a condition of entry into a governmental contract; requiring the inclusion of certain terms and conditions in such a contract; providing a penalty;~~ state governmental procurement; requiring the Administrator of the Purchasing Division of the Department of Administration to establish by regulation a program of certification of vendors who pay equal pay for equal work without regard to gender; requiring the Purchasing Division to include the certification of such a vendor in certain records; authorizing a certified vendor to include its certification in advertising and promotional materials; providing a limited bidding preference for certified vendors under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing provisions of state and federal law generally prohibit discrimination in employment on the basis of race, color, creed, sex, sexual orientation, gender identity or expression, religion, age, disability or national origin. (42 U.S.C. §§ 2000e et seq.; NRS 338.125, 613.310-613.435) In particular, an employer is generally prohibited from paying lower wages to an employee than the wages paid to an employee of the opposite sex for equal work performed under similar working conditions. (29 U.S.C. § 206(d); NRS 608.017)

~~Sections 2, 6, 11 and 19 of this bill prohibit various governmental entities from awarding a contract to an employer, including a public employer, having 50 or more employees unless the employer provides a certificate of pay equity compliance issued to the employer by the Labor Commissioner. Pursuant to section 22 of this bill, the Commissioner is authorized to issue such a certificate only if the employer establishes and the Commissioner determines that the employer provides equal employment opportunity for all employees and applicants for employment regardless of sex, and that male and female employees receive equal pay for equal work. Sections 2, 6, 11 and 19 also authorize those governmental entities to refuse to award a contract to an employer with less than 50 employees unless the employer provides such a certificate. Section 2 applies to a local government with respect to contracts for the purchase of services, supplies, materials or equipment. Section 6 applies to similar contracts~~

awarded by the Administrator of the Purchasing Division of the Department of Administration or another officer or agency in the Executive Department of the State Government. Section 11 applies to a contract for any public work that is financed in whole or in part from public money of this State or its political subdivisions. Section 11 also enacts those provisions with respect to a subcontract between an employer who has been awarded a contract for a public work and any subcontractor. Section 19 applies to contracts for the construction, reconstruction, improvement and maintenance of highways. Section 10 likewise makes similar provisions applicable to any subcontract.

Section 22 governs the process of obtaining the required certificate from the Labor Commissioner. Section 22: (1) sets forth the information that must be provided by an employer in an application for a certificate; (2) authorizes the Commissioner to issue a provisional certificate pending a review of the information; (3) requires the Commissioner to make certain determinations about the practices of the employer as they relate to male and female employees and applicants for employment; and (4) provides for the issuance or denial of a certificate, the cancellation of a provisional certificate and the revocation of a certificate under certain circumstances. Section 22 further requires the Commissioner to adopt regulations as necessary to effectuate this process.

Section 24 of this bill requires the Administrator of the Purchasing Division of the Department of Administration to establish by regulation a program to certify vendors that pay their employees equal pay for equal work without regard to gender. The regulations must include a method for a vendor to self-certify that it pays its employees equal pay for equal work without regard to gender. Section 25 of this bill provides that if the Administrator certifies a vendor: (1) the Purchasing Division is required to include the certification in any information concerning the vendor that the Purchasing Division maintains in its records or makes available on its Internet website; and (2) the vendor is authorized to include the certification in its advertising, marketing or other promotional materials. Section 26 of this bill provides that a vendor that makes a material misstatement or commits a fraudulent act in its self-certification may be prohibited from bidding on state contracts for up to 3 years. Section 27 of this bill requires the Administrator to submit an annual report to the Governor and the Legislature concerning the program of certification.

Existing law establishes procedures for certain purchases of supplies, materials and equipment by the State. (NRS 333.300) Section 28 of this bill gives a limited 5 percent bidder's preference to bidders who are certified vendors under the program of certification established by the Administrator in cases in which the lowest submitted bids are within 5 percent of each other and none is submitted by a bidder who is resident in this State. Section 29 of this bill makes a conforming change. Section 32 of this bill provides that the program established by the Administrator pursuant to this bill expires on June 30, 2021.

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

Section 1. ~~[Chapter 332 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.] (Deleted by amendment.)~~

Sec. 2. ~~[Except in the case of an emergency described in NRS 332.112 and notwithstanding any other provision of this chapter, a governing body or its authorized representative:~~

~~1. Shall not award a contract governed by this chapter to an employer with 50 or more employees in this State unless the employer submits to the governing body or its authorized representative, as applicable, a current certificate of pay equity compliance issued by the Labor Commissioner pursuant to section 22 of this act.~~

~~2. May refuse to award such a contract to an employer with less than 50 employees in this State unless the employer submits to the governing body or its~~

~~authorized representative, as applicable, a current certificate of pay equity compliance issued by the Labor Commissioner pursuant to section 22 of this act.]~~
~~(Deleted by amendment.)~~

Sec. 3. ~~[Any contract described in section 2 of this act that is conditioned on submission of a current certificate of pay equity compliance by the employer must:~~

~~1. Require the employer, in accordance with subsection 7 of section 22 of this act, to notify the governing body or its authorized representative, as applicable, of any notice or decision issued by the Labor Commissioner to the employer pursuant to that section; and~~

~~2. Provide for the termination of the contract if:~~

~~(a) The employer fails to give any notice required by subsection 1; or~~

~~(b) The Labor Commissioner:~~

~~(1) Refuses to issue a certificate to the employer;~~

~~(2) Cancels a provisional certificate previously issued to the employer; or~~

~~(3) Issues a decision pursuant to section 22 of this act and NRS 607.215 revoking a certificate previously issued to the employer and the decision is not stayed and set aside on judicial review.]~~
~~(Deleted by amendment.)~~

Sec. 4. ~~[NRS 332.025 is hereby amended to read as follows:~~

~~332.025 As used in this chapter, unless the context otherwise requires:~~

~~1. "Authorized representative" means a person designated by the governing body to be responsible for the development, award and proper administration of all purchases and contracts for a local government or a department, division, agency, board or unit of a local government made pursuant to this chapter.~~

~~2. "Chief administrative officer" means the person directly responsible to the governing body for the administration of that particular entity.~~

~~3. "Employer" includes, without limitation, a government, governmental agency and political subdivision of a government.~~

~~4. "Evaluator" means an authorized representative, officer, employee, representative, agent, consultant or member of a governing body who has participated in:~~

~~(a) The evaluation of bids;~~

~~(b) Negotiations concerning purchasing by a local government; or~~

~~(c) The review or approval of the award, modification or extension of a contract.~~

~~[4.] 5. "Governing body" means the board, council, commission or other body in which the general legislative and fiscal powers of the local government are vested.~~

~~[5.] 6. "Proprietary information" means:~~

~~(a) Any trade secret or confidential business information that is contained in a bid submitted to a governing body or its authorized representative on a particular contract; or~~

~~(b) Any other trade secret or confidential business information submitted to a governing body or its authorized representative by a bidder and designated as proprietary by the governing body or its authorized representative.~~

~~As used in this subsection, "confidential business information" means any information relating to the amount or source of any income, profits, losses or expenditures of a person, including data relating to cost, price, or the customers of a bidder which is submitted in support of a bid. The term does not include the amount of a bid submitted to a governing body or its authorized representative.~~

~~[6.] 7. "Trade secret" has the meaning ascribed to it in NRS 600A.030.]~~
~~(Deleted by amendment.)~~

1 Sec. 5. ~~[Chapter 333 of NRS is hereby amended by adding thereto the~~
2 ~~provisions set forth as sections 6 and 7 of this act.] (Deleted by amendment.)~~

3 Sec. 6. ~~[Except in the case of an emergency described in NRS 333.300 or~~
4 ~~by rules of the Administrator adopted pursuant to NRS 333.380, and~~
5 ~~notwithstanding any other provision of this chapter, the Administrator or a using~~
6 ~~agency:~~

7 1. ~~Shall not award a contract governed by this chapter to an employer with~~
8 ~~50 or more employees in this State unless the employer submits to the~~
9 ~~Administrator or using agency, as applicable, a current certificate of pay equity~~
10 ~~compliance issued by the Labor Commissioner pursuant to section 22 of this act.~~

11 2. ~~May refuse to award such a contract to an employer with less than 50~~
12 ~~employees in this State unless the employer submits to the Administrator or using~~
13 ~~agency, as applicable, a current certificate of pay equity compliance issued by the~~
14 ~~Labor Commissioner pursuant to section 22 of this act.] (Deleted by~~
15 ~~amendment.)~~

16 Sec. 7. ~~[Any contract described in section 6 of this act that is conditioned~~
17 ~~on submission of a current certificate of pay equity compliance by the employer~~
18 ~~must:~~

19 1. ~~Require the employer, in accordance with subsection 7 of section 22 of~~
20 ~~this act, to notify the Administrator or using agency, as applicable, of any notice~~
21 ~~or decision issued by the Labor Commissioner to the employer pursuant to that~~
22 ~~section; and~~

23 2. ~~Provide for the termination of the contract if:~~

24 ~~(a) The employer fails to give any notice required by subsection 1; or~~

25 ~~(b) The Labor Commissioner:~~

26 ~~(1) Refuses to issue a certificate to the employer;~~

27 ~~(2) Cancels a provisional certificate previously issued to the employer; or~~

28 ~~(3) Issues a decision pursuant to section 22 of this act and NRS 607.215~~
29 ~~revoking a certificate previously issued to the employer and the decision is not~~
30 ~~stayed and set aside on judicial review.] (Deleted by amendment.)~~

31 Sec. 8. ~~[NRS 333.020 is hereby amended to read as follows:~~

32 ~~333.020 As used in this chapter, unless the context otherwise requires:~~

33 ~~1. "Administrator" means the Administrator of the Purchasing Division.~~

34 ~~2. "Best value" means the greatest possible economy consistent with grades~~
35 ~~or qualities of supplies, materials, equipment and services that are adapted to the~~
36 ~~purposes to be served.~~

37 ~~3. "Director" means the Director of the Department of Administration.~~

38 ~~4. "Employer" includes, without limitation, a government, governmental~~
39 ~~agency and political subdivision of a government.~~

40 ~~5. "Invitation to bid" means a written statement which sets forth the~~
41 ~~requirements and specifications of a contract to be awarded by competitive~~
42 ~~selection.~~

43 ~~[5.] 6. "Proprietary information" means:~~

44 ~~(a) Any trade secret or confidential business information that is contained in a~~
45 ~~bid or proposal submitted on a particular contract; or~~

46 ~~(b) Any other trade secret or confidential business information submitted in a~~
47 ~~bid or proposal and designated as proprietary by the Administrator.~~

48 ~~As used in this subsection, "confidential business information" means any~~
49 ~~information relating to the amount or source of any income, profits, losses or~~
50 ~~expenditures of a person, including data relating to cost or price submitted in~~
51 ~~support of a bid or proposal. The term does not include the amount of a bid or~~
52 ~~proposal.~~

~~[6.] 7. "Purchasing Division" means the Purchasing Division of the Department of Administration.~~

~~[7.] 8. "Purchasing officer" means a person who is authorized by the Administrator or a using agency to participate in:~~

~~(a) The evaluation of bids or proposals for a contract;~~

~~(b) Any negotiations concerning a contract; or~~

~~(c) The development, review or approval of a contract.~~

~~[8.] 9. "Request for proposals" means a written statement which sets forth the requirements and specifications of a contract to be awarded by competitive selection.~~

~~[9.] 10. "Trade secret" has the meaning ascribed to it in NRS 600A.020.~~

~~[10.] 11. "Using agencies" means all officers, departments, institutions, boards, commissions and other agencies in the Executive Department of the State Government which derive their support from public money in whole or in part, whether the money is provided by the State of Nevada, received from the Federal Government or any branch, bureau or agency thereof, or derived from private or other sources. The term does not include the Nevada Rural Housing Authority, the Housing Division of the Department of Business and Industry, local governments as defined in NRS 254.474, conservation districts, irrigation districts and the Nevada System of Higher Education.~~

~~[11.] 12. "Volunteer fire department" means a volunteer fire department which pays premiums for industrial insurance pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS.] (Deleted by amendment.)~~

Sec. 9. [NRS 287.0415 is hereby amended to read as follows:

~~287.0415 1. A majority of the members of the Board constitutes a quorum for the transaction of business.~~

~~2. The Governor shall designate one of the members of the Board to serve as the Chair.~~

~~3. The Board shall meet at least once every calendar quarter and at other times upon the call of the Chair.~~

~~4. The Board may meet in closed session:~~

~~(a) To discuss matters relating to personnel;~~

~~(b) With investment counsel to plan future investments or establish investment objectives and policies;~~

~~(c) With legal counsel to receive advice upon claims or suits by or against the Program;~~

~~(d) To prepare a request for a proposal or other solicitation for bids to be released by the Board for competitive bidding; or~~

~~(e) As otherwise provided pursuant to chapter 241 of NRS.~~

~~5. Except as otherwise provided in this subsection, if the Board causes a meeting to be transcribed by a court reporter who is certified pursuant to chapter 656 of NRS, the Board shall post a transcript of the meeting on its Internet website not later than 30 days after the meeting. The Board shall post a transcript of a closed session of the Board on its Internet website when the Board determines that the matters discussed no longer require confidentiality and, if applicable, the person whose character, conduct, competence or health was discussed in the closed session has consented to the posting.~~

~~6. The Board may appoint such advisory committees as it deems necessary to assist the Board in carrying out its duties pursuant to NRS 287.0402 to 287.049, inclusive.~~

~~7. As used in this section, "request for a proposal" has the meaning ascribed to it in subsection [8.] 9 of NRS 232.020.] (Deleted by amendment.)~~

1 Sec. 10. ~~[Chapter 238 of NRS is hereby amended by adding thereto the~~
2 ~~provisions set forth as sections 11 and 12 of this act.] (Deleted by amendment.)~~

3 Sec. 11. ~~[1. Except in the case of an emergency described in NRS 338.011~~
4 ~~and notwithstanding any other provision of this chapter, a public body:~~

5 ~~(a) Shall not award a contract governed by this chapter to an employer with~~
6 ~~50 or more employees in this State unless the employer submits to the public body~~
7 ~~a current certificate of pay equity compliance issued by the Labor Commissioner~~
8 ~~pursuant to section 22 of this act.~~

9 ~~(b) May refuse to award such a contract to an employer with less than 50~~
10 ~~employees in this State unless the employer submits to the public body a current~~
11 ~~certificate of pay equity compliance issued by the Labor Commissioner pursuant~~
12 ~~to section 22 of this act.~~

13 ~~2. In connection with the performance of work under a contract governed~~
14 ~~by this chapter and awarded to an employer by a public body, the employer:~~

15 ~~(a) Shall not enter into a contract with a subcontractor with 50 or more~~
16 ~~employees in this State unless the subcontractor submits to the employer a~~
17 ~~current certificate of pay equity compliance issued by the Labor Commissioner~~
18 ~~pursuant to section 22 of this act.~~

19 ~~(b) May refuse to award such a contract to a subcontractor with less than 50~~
20 ~~employees in this State unless the subcontractor submits to the employer a~~
21 ~~current certificate of pay equity compliance issued by the Labor Commissioner~~
22 ~~pursuant to section 22 of this act.] (Deleted by amendment.)~~

23 Sec. 12. ~~[Any contract described in section 11 of this act that is conditioned~~
24 ~~on submission of a current certificate of pay equity compliance by the employer~~
25 ~~or subcontractor, as applicable, must:~~

26 ~~1. Require the employer or subcontractor, as applicable, in accordance with~~
27 ~~subsection 7 of section 22 of this act, to notify the public body and any other party~~
28 ~~to the contract of any notice or decision issued by the Labor Commissioner to the~~
29 ~~employer or subcontractor pursuant to that section; and~~

30 ~~2. Provide for the termination of the contract if:~~

31 ~~(a) The employer or subcontractor fails to give any notice required by~~
32 ~~subsection 1; or~~

33 ~~(b) The Labor Commissioner:~~

34 ~~(1) Refuses to issue a certificate to the employer or subcontractor;~~

35 ~~(2) Cancels a provisional certificate previously issued to the employer or~~
36 ~~subcontractor; or~~

37 ~~(3) Issues a decision pursuant to section 22 of this act and NRS 607.215~~
38 ~~revoking a certificate previously issued to the employer or subcontractor and the~~
39 ~~decision is not stayed and set aside on judicial review.] (Deleted by amendment.)~~

40 Sec. 13. ~~[NRS 338.010 is hereby amended to read as follows:~~

41 ~~338.010 As used in this chapter [], unless the context otherwise requires:~~

42 ~~1. "Authorized representative" means a person designated by a public body to~~
43 ~~be responsible for the development, solicitation, award or administration of~~
44 ~~contracts for public works pursuant to this chapter.~~

45 ~~2. "Contract" means a written contract entered into between a contractor and~~
46 ~~a public body for the provision of labor, materials, equipment or supplies for a~~
47 ~~public work.~~

48 ~~3. "Contractor" means:~~

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

50 ~~(b) A design-build team.~~

51 ~~4. "Day labor" means all cases where public bodies, their officers, agents or~~
52 ~~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 622 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 622 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 622 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. "Employer" includes, without limitation, a government, governmental agency and political subdivision of a government.~~

~~11. "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.] 12. "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.] 13. "Local government" means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318, 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision. The term includes a~~

1 person who has been designated by the governing body of a local government to
2 serve as its authorized representative.

3 ~~[[12.] 14. "Offense" means failing to:~~

4 ~~— (a) Pay the prevailing wage required pursuant to this chapter;~~

5 ~~— (b) Pay the contributions for unemployment compensation required pursuant to~~
6 ~~chapter 612 of NRS;~~

7 ~~— (c) Provide and secure compensation for employees required pursuant to~~
8 ~~chapters 616A to 617, inclusive, of NRS; or~~

9 ~~— (d) Comply with subsection 5 or 6 of NRS 238.070.~~

10 ~~[[14.] 15. "Prime contractor" means a contractor who:~~

11 ~~— (a) Contracts to construct an entire project;~~

12 ~~— (b) Coordinates all work performed on the entire project;~~

13 ~~— (c) Uses his or her own workforce to perform all or a part of the public work;~~
14 ~~and~~

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

18 ~~→ The term includes, without limitation, a general contractor or a specialty~~
19 ~~contractor who is authorized to bid on a project pursuant to NRS 338.139 or~~
20 ~~338.148.~~

21 ~~[[15.] 16. "Public body" means the State, county, city, town, school district or~~
22 ~~any public agency of this State or its political subdivisions sponsoring or financing~~
23 ~~a public work.~~

24 ~~[[16.] 17. "Public work" means any project for the new construction, repair or~~
25 ~~reconstruction of a project financed in whole or in part from public money for:~~

26 ~~— (a) Public buildings;~~

27 ~~— (b) Jails and prisons;~~

28 ~~— (c) Public roads;~~

29 ~~— (d) Public highways;~~

30 ~~— (e) Public streets and alleys;~~

31 ~~— (f) Public utilities;~~

32 ~~— (g) Publicly owned water mains and sewers;~~

33 ~~— (h) Public parks and playgrounds;~~

34 ~~— (i) Public convention facilities which are financed at least in part with public~~
35 ~~money; and~~

36 ~~— (j) All other publicly owned works and property.~~

37 ~~[[17.] 18. "Specialty contractor" means a person who is licensed to conduct~~
38 ~~business as described in subsection 4 of NRS 624.215.~~

39 ~~[[18.] 19. "Stand alone underground utility project" means an underground~~
40 ~~utility project that is not integrated into a larger project, including, without~~
41 ~~limitation:~~

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

44 ~~— (b) A project for the construction or installation of a storm drain, including~~
45 ~~facilities appurtenant thereto;~~

46 ~~→ that is not located at the site of a public work for the design and construction of~~
47 ~~which a public body is authorized to contract with a design build team pursuant to~~
48 ~~subsection 2 of NRS 238.1711.~~

49 ~~[[19.] 20. "Subcontract" means a written contract entered into between:~~

50 ~~— (a) A contractor and a subcontractor or supplier; or~~

51 ~~— (b) A subcontractor and another subcontractor or supplier;~~

52 ~~→ for the provision of labor, materials, equipment or supplies for a construction~~
53 ~~project.~~

~~[20.] 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.~~
~~[21.] 22. "Supplier" means a person who provides materials, equipment or supplies for a construction project.~~
~~[22.] 23. "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.~~
~~[23.] 24. "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.] (Deleted by amendment.)~~
Sec. 14. [NRS 338.018 is hereby amended to read as follows:
~~338.018 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 \$250,000 even if the construction work does not qualify as a public work, as defined in [subsection 17 of] NRS 338.010.] (Deleted by amendment.)~~
Sec. 15. [NRS 338.075 is hereby amended to read as follows:
~~338.075 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 \$250,000 even if the construction work does not qualify as a public work, as defined in [subsection 17 of] NRS 338.010.] (Deleted by amendment.)~~
Sec. 16. [NRS 338.1908 is hereby amended to read as follows:
~~338.1908 1. The governing body of each local government shall, by July 28, 2009, develop a plan to retrofit public buildings, facilities and structures, including, without limitation, traffic control systems, and to otherwise use sources of renewable energy to serve those buildings, facilities and structures. Such a plan must:~~
~~(a) Include a list of specific projects. The projects must be prioritized and selected on the basis of the following criteria:~~
~~(1) The length of time necessary to commence the project.~~
~~(2) The number of workers estimated to be employed on the project.~~
~~(3) The effectiveness of the project in reducing energy consumption.~~
~~(4) The estimated cost of the project.~~
~~(5) Whether the project is able to be powered by or otherwise use sources of renewable energy.~~
~~(6) Whether the project has qualified for participation in one or more of the following programs:~~
~~(I) The Solar Energy Systems Incentive Program created by NRS 701B.240;~~
~~(II) The Renewable Energy School Pilot Program created by NRS 701B.350;~~
~~(III) The Wind Energy Systems Demonstration Program created by NRS 701B.560; or~~

~~(IV) The Waterpower Energy Systems Demonstration Program created by NRS 701B.820.~~

~~(b) Include a list of potential funding sources for use in implementing the projects, including, without limitation, money available through the Energy Efficiency and Conservation Block Grant Program as set forth in 42 U.S.C. § 17152 and grants, gifts, donations or other sources of money from public and private sources.~~

~~2. The governing body of each local government shall transmit the plan developed pursuant to subsection 1 to the Director of the Office of Energy and to any other entity designated for that purpose by the Legislature.~~

~~2. As used in this section:~~

~~(a) "Local government" means each city or county that meets the definition of "eligible unit of local government" as set forth in 42 U.S.C. § 17151 and each unit of local government, as defined in [subsection 13 of] NRS 338.010, that does not meet the definition of "eligible entity" as set forth in 42 U.S.C. § 17151.~~

~~(b) "Renewable energy" means a source of energy that occurs naturally or is regenerated naturally, including, without limitation:~~

- ~~(1) Biomass;~~
- ~~(2) Fuel cells;~~
- ~~(3) Geothermal energy;~~
- ~~(4) Solar energy;~~
- ~~(5) Waterpower; and~~
- ~~(6) Wind.~~

~~→ The term does not include coal, natural gas, oil, propane or any other fossil fuel, or nuclear energy.~~

~~(c) "Retrofit" means to alter, improve, modify, remodel or renovate a building, facility or structure to make that building, facility or structure more energy efficient.] (Deleted by amendment.)~~

~~Sec. 17. [Chapter 408 of NRS is hereby amended by adding thereto the provisions set forth as sections 18, 19 and 20 of this act.] (Deleted by amendment.)~~

~~Sec. 18. ["Employer" includes, without limitation, a government, governmental agency and political subdivision of a government.] (Deleted by amendment.)~~

~~Sec. 19. [1. Except in the case of a disaster or great emergency described in NRS 408.323, the Director and the Department:~~

~~(a) Shall not award a contract governed by this chapter to an employer with 50 or more employees in this State unless the employer submits to the Director or Department, as applicable, a certificate of pay equity compliance issued by the Labor Commissioner pursuant to section 22 of this act.~~

~~(b) May refuse to award such a contract to an employer with less than 50 employees in this State unless the employer submits to the Director or Department, as applicable, a current certificate of pay equity compliance issued by the Labor Commissioner pursuant to section 22 of this act.~~

~~2. In connection with the performance of work under a contract governed by this chapter and awarded to an employer by the Director or Department, the employer:~~

~~(a) Shall not enter into a contract with a subcontractor with 50 or more employees in this State unless the subcontractor submits to the employer a current certificate of pay equity compliance issued by the Labor Commissioner pursuant to section 22 of this act.~~

~~(b) May refuse to award such a contract to a subcontractor with less than 50 employees in this State unless the subcontractor submits to the employer a~~

~~current certificate of pay equity compliance issued by the Labor Commissioner pursuant to section 22 of this act.] (Deleted by amendment.)~~

Sec. 20. ~~[Any contract described in section 19 of this act that is conditioned on submission of a current certificate of pay equity compliance by the employer or subcontractor, as applicable, must:~~

~~1. Require the employer or subcontractor, as applicable, in accordance with subsection 7 of section 22 of this act, to notify the Director or Department, as applicable, and any other party to the contract of any notice or decision issued by the Labor Commissioner to the employer or subcontractor pursuant to that section; and~~

~~2. Provide for the termination of the contract if:~~

~~(a) The employer or subcontractor fails to give any notice required by subsection 1; or~~

~~(b) The Labor Commissioner:~~

~~(1) Refuses to issue a certificate to the employer or subcontractor;~~

~~(2) Cancels a provisional certificate previously issued to the employer or subcontractor; or~~

~~(3) Issues a decision pursuant to section 22 of this act and NRS 607.215 revoking a certificate previously issued to the employer or subcontractor and the decision is not stayed and set aside on judicial review.] (Deleted by amendment.)~~

Sec. 21. ~~[NRS 408.020 is hereby amended to read as follows:~~

~~408.020 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 408.022 to 408.095, inclusive, and section 18 of this act have the meanings ascribed to them in those sections.] (Deleted by amendment.)~~

Sec. 22. ~~[Chapter 607 of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~1. Except as otherwise provided in this section, the Labor Commissioner shall issue a certificate of pay equity compliance to an employer who submits an application to the Labor Commissioner in a form prescribed by the Labor Commissioner. The application must be accompanied by:~~

~~(a) An affidavit of equity in compensation;~~

~~(b) A description of the employer's program to ensure equity in compensation;~~

~~(c) A workforce analysis; and~~

~~(d) Any other information required by the Labor Commissioner.~~

~~The application must be signed by the chief executive officer of the employer, affirming that to the best of his or her knowledge and belief the contents of the application and the accompanying documents are true, correct and complete.~~

~~2. An affidavit of equity in compensation submitted pursuant to subsection 1 must affirm that the employer is in compliance with all applicable federal and state laws and regulations and local ordinances concerning equity in compensation, including, without limitation:~~

~~(a) The Equal Pay Act of 1963, 29 U.S.C. § 206(d);~~

~~(b) Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.;~~

~~(c) NRS 338.125;~~

~~(d) NRS 608.017; and~~

~~(e) NRS 613.310 to 613.435, inclusive.~~

~~3. A description of the employer's program to ensure equity in compensation submitted pursuant to subsection 1 must include a description or statement of the policies and procedures adopted by the employer to ensure:~~

~~(a) Equal employment opportunity for all employees and applicants regardless of sex; and~~

~~(b) That male and female employees receive equal pay for equal work.
4. Except as otherwise provided in this subsection, a workforce analysis submitted pursuant to subsection 1 must set forth:~~

~~(a) The total number of persons employed by the employer during the last preceding calendar year in each job category, disaggregated by the sex of the employees.~~

~~(b) The total amount of compensation paid during the last preceding calendar year to all the employees in each job category, disaggregated by the sex of the employees.~~

~~(c) The total number of hours worked during the last preceding calendar year by all the employees in each job category, disaggregated by the sex of the employees. For the purposes of this paragraph, an exempt employee shall be deemed to work 40 hours per week.~~

~~Notwithstanding the provisions of paragraphs (a), (b) and (c), the Labor Commissioner may establish by regulation any 12 month period for reporting the information required by those paragraphs.~~

~~5. If, on the basis of the application and supporting documents and information submitted by an employer pursuant to this section, the Labor Commissioner determines that the employer provides equal employment opportunity for all employees and applicants regardless of sex and that male and female employees receive equal pay for equal work, the Labor Commissioner shall issue a certificate of pay equity compliance to the employer. Pending such a determination, the Labor Commissioner may issue a provisional certificate to the employer. If the Labor Commissioner is unable to make such a determination, the Labor Commissioner shall deny the certificate or cancel any provisional certificate previously issued to the employer and notify the employer in writing of the basis for the denial or cancellation, as applicable. The denial or cancellation is not subject to judicial review.~~

~~6. An employer who has been issued a certificate of pay equity compliance pursuant to this section shall submit an updated workforce analysis to the Labor Commissioner on a schedule established by regulation of the Labor Commissioner, but not less frequently than once each year. If an employer fails or refuses to submit a workforce analysis to the Labor Commissioner as required by this subsection or the Labor Commissioner determines, on the basis of a workforce analysis, that the employer has failed during the period covered by the workforce analysis to provide equal employment opportunity for all employees and applicants regardless of sex or has failed to provide equal pay to male and female employees for equal work, the Labor Commissioner shall, after notice and an opportunity for hearing pursuant to NRS 607.205 to 607.215, inclusive, revoke the certificate of pay equity compliance previously issued to the employer.~~

~~7. An employer who receives a notice or decision from the Labor Commissioner pursuant to subsection 5 or 6 and is a party to a contract described in section 2, 6, 11 or 19 of this act shall, within 3 business days after receiving the notice or decision, transmit a copy of the notice or decision to each other party to the contract and to any subcontractor of the employer.~~

~~8. An employer is not disqualified from receiving a certificate of pay equity compliance pursuant to this section to the extent of any difference in wages between male and female employees that is the result of:~~

~~(a) A seniority system;~~

~~(b) A merit system;~~

~~(c) A compensation system under which wages are determined by the quality or quantity of production; or~~

~~(d) A wage differential that is based on factors other than sex.~~

~~9. Except as otherwise provided by specific statute, any person, including, without limitation, any officer, agent or employee of a public body who violates any provision of this section, section 2, 6, 11 or 19 of this act or any regulation adopted pursuant thereto is guilty of a misdemeanor.~~

~~10. The Labor Commissioner shall adopt regulations to carry out the provisions of this section. For the purpose of establishing the job categories required for a workforce analysis submitted:~~

~~(a) By an employer other than one described in paragraph (b), the Labor Commissioner may adopt the job categories set forth in the Employer Information Report (EEO-1); or~~

~~(b) By an employer that is a government, governmental agency or political subdivision of a government, the Labor Commissioner may adopt the job categories set forth in the State and Local Government Report (EEO-1),~~

~~in the form most recently approved by the United States Equal Employment Opportunity Commission as of the effective date of this act.~~

~~11. As used in this section:~~

~~(a) "Compensation" means all wages, salary or other payments to an employee that are required to be reported to the Internal Revenue Service on Form W-2.~~

~~(b) "Employer" includes, without limitation, a government, governmental agency and political subdivision of a government.~~

~~(c) "Exempt employee" means an executive, administrative, professional or other employee who is classified as exempt in accordance with the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq. (Deleted by amendment.)~~

Sec. 23. Chapter 333 of NRS is hereby amended by adding thereto the provisions set forth as sections 24 to 29, inclusive, of this act.

Sec. 24. 1. The Administrator shall, within the limits of available resources, establish by regulation a program to certify vendors that pay their employees equal pay for equal work without regard to gender.

2. The regulations adopted pursuant to subsection 1 must include, without limitation:

(a) A method for a vendor to self-certify that the vendor pays its employees equal pay for equal work without regard to gender; and

(b) Certification by the Administrator, without review, of a vendor that fulfills the requirements for self-certification.

3. In carrying out the provisions of this section, the Administrator may cooperate and coordinate with the Office of Economic Development, created by NRS 231.043, the Nevada Equal Rights Commission created by NRS 233.030, the Nevada Commission for Women created by NRS 2331.020 and any other office, department, board, commission, agency or institution of state government that has appropriate expertise.

Sec. 25. If the Administrator certifies a vendor pursuant to the regulations adopted pursuant to section 24 of this act:

1. The Purchasing Division shall include the certification in its information concerning the vendor that it maintains in its records or makes available on the Internet website of the Purchasing Division.

2. The vendor may include the certification in its advertising, marketing or other promotional materials.

Sec. 26. 1. If the Purchasing Division determines that a vendor has made a material misrepresentation or otherwise committed a fraudulent act in self-certifying pursuant to the regulations adopted by the Administrator pursuant to section 24 of this act that the vendor pays its employees equal pay for equal work

1 without regard to gender, the vendor may be prohibited, for not more than 3
2 years, from:

3 (a) Self-certifying that the vendor pays its employees equal pay for equal
4 work without regard to gender; and

5 (b) Submitting a bid or proposal to the Purchasing Division.

6 2. If the Purchasing Division determines, as described in subsection 1, that
7 a vendor has made a material misrepresentation or otherwise committed a
8 fraudulent act in self-certifying that the vendor pays its employees equal pay for
9 equal work without regard to gender, the vendor may apply to the Administrator
10 to review the decision pursuant to chapter 233B of NRS.

11 Sec. 27. The Administrator shall, on or before October 1 of each year,
12 prepare and submit to the Governor and to the Director of the Legislative
13 Counsel Bureau for transmittal to the Legislature an annual report which
14 includes, for the immediately preceding fiscal year:

15 1. The number of vendors certified pursuant to the regulations adopted
16 pursuant to section 24 of this act;

17 2. The number of certified vendors that submitted a bid or proposal to the
18 Purchasing Division;

19 3. The number of certified vendors that were awarded a contract by the
20 Purchasing Division; and

21 4. The number of certified vendors that were disciplined by the Purchasing
22 Division pursuant to section 26 of this act.

23 Sec. 28. NRS 333.300 is hereby amended to read as follows:

24 333.300 1. Except as otherwise provided in NRS 333.375, the
25 Administrator shall give reasonable notice, by advertising and by written notice
26 provided to persons in a position to furnish the classes of commodities involved, as
27 shown by its records, of all proposed purchases of supplies, materials and
28 equipment to be purchased in accordance with a schedule prepared in conformity
29 with the provisions of NRS 333.250.

30 2. All such materials, supplies and equipment, except as otherwise provided
31 in this section, if the estimated cost thereof exceeds \$50,000, must be purchased by
32 formal contract from the lowest responsible bidder after notice inviting the
33 submission of sealed proposals to the Administrator of the Purchasing Division at
34 the date, hour and location set forth in the proposal, and at that date, hour and
35 location the proposals must be publicly opened. The Purchasing Division may
36 reject any or all proposals, or may accept the proposal determined best for the
37 interest of the State. The notice must be published as prescribed in NRS 333.310.

38 3. The Administrator may solicit the purchase of materials, supplies and
39 equipment, if the estimated cost thereof is \$50,000 or less, by written contract from
40 the lowest responsible bidder if notice of the proposed purchase is provided to:

41 (a) At least three persons in a position to furnish the materials, supplies or
42 equipment; and

43 (b) The Office of Economic Development.

44 4. In case of emergencies caused by acts of God or the national defense or
45 other unforeseeable circumstances, the provisions for advertisements on
46 competitive bids may be waived by the Administrator, but every effort must be
47 made to secure the maximum competitive bidding under the circumstances. In no
48 case may contracts be awarded until every possible effort has been made to secure
49 at least three bona fide competitive bids.

50 5. ~~+++~~ Except as otherwise provided in subsection 6, in awarding contracts
51 for the purchase of supplies, materials and equipment, if two or more lowest bids
52 are identical, the Administrator shall:

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

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

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

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

6. In awarding contracts for the purchase of supplies, materials and equipment, if:

(a) Two or more lowest bids are within 5 percent of each other;

(b) None is by a bidder resident in the State of Nevada; and

(c) One or more lowest bids is by a bidder who is a vendor certified by the Administrator pursuant to the regulations adopted pursuant to section 24 of this act.

the bid or proposal submitted by the bidder who is a certified vendor shall be deemed to be 5 percent lower than the bid or proposal actually submitted.

Sec. 29. NRS 333.340 is hereby amended to read as follows:

333.340 1. Every contract or order for goods must be awarded to the lowest responsible bidder. To determine the lowest responsible bidder, the Administrator:

(a) Shall consider, if applicable:

(1) The granting of the preference described in NRS 333.3366.

(2) The required standards adopted pursuant to NRS 333.4611.

(3) The certification described in section 24 of this act.

(b) May consider:

(1) The location of the using agency to be supplied.

(2) The qualities of the articles to be supplied.

(3) The total cost of ownership of the articles to be supplied.

(4) Except as otherwise provided in subparagraph (5), the conformity of the articles to be supplied with the specifications.

(5) If the articles are an alternative to the articles listed in the original request for bids, whether the advertisement for bids included a statement that bids for an alternative article will be considered if:

(I) The specifications of the alternative article meet or exceed the specifications of the article listed in the original request for bids;

(II) The purchase of the alternative article results in a lower price; and

(III) The Administrator deems the purchase of the alternative article to be in the best interests of the State of Nevada.

(6) The purposes for which the articles to be supplied are required.

(7) The dates of delivery of the articles to be supplied.

2. If a contract or an order is not awarded to the lowest bidder, the Administrator shall provide the lowest bidder with a written statement which sets forth the specific reasons that the contract or order was not awarded to him or her.

3. As used in this section, "total cost of ownership" includes, but is not limited to:

(a) The history of maintenance or repair of the articles;

(b) The cost of routine maintenance and repair of the articles;

(c) Any warranties provided in connection with the articles;

(d) The cost of replacement parts for the articles; and

(e) The value of the articles as used articles when given in trade on a subsequent purchase.

~~Sec. 23.~~ Sec. 30. The provisions of this act do not apply to any contract that is advertised, bid, offered or awarded before January 1, 2018.

1 **Sec. 31. The provisions of subsection 1 of NRS 218D.380 do not apply to**
2 **any provision of this act which adds or revises a requirement to submit a**
3 **report to the Legislature.**

4 ~~{Sec. 24.}~~ **Sec. 32.** This act ~~{becomes effective}~~ :
5 **1. Becomes effective** upon passage and approval for the purpose of adopting
6 regulations and performing any other preparatory administrative tasks that are
7 necessary to carry out the provisions of this act and on January 1, 2018, for all other
8 purposes.

9 **2. Expires by limitation on June 30, 2021.**