

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

MARCH 13, 2013

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

Referred to Committee on Government Affairs

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

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

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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

Legislative Counsel's Digest:

1 Existing federal law requires any steel, iron and manufactured products used in
2 certain transportation projects that receive federal funding to be produced in the
3 United States unless: (1) the use of such materials would be inconsistent with the
4 public interest; (2) such materials are not produced in the United States in sufficient
5 quantity and of sufficient quality; or (3) the use of such materials would increase
6 the cost of the project by more than 25 percent. (23 U.S.C. § 313) **Sections 4 and**
7 **15** of this bill require any iron or steel products or manufactured goods used in this
8 State for a public work or a project of the Department of Transportation to be
9 manufactured in the United States. **Sections 4 and 15** also allow a contractor or
10 subcontractor to apply for a waiver of this requirement if: (1) the use of such
11 materials would be inconsistent with the public interest; (2) such materials are not



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12 produced in the United States in sufficient quantity and of sufficient quality; or (3)
13 the use of such materials would increase the cost of the project by more than 25
14 percent. Further, **sections 4 and 15** allow the public body awarding the contract to
15 waive the requirement after providing notice and an opportunity for public
16 comment by publishing a detailed justification of the waiver.

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

22 **Section 17** of this bill provides that the requirement to use iron or steel
23 products or manufactured goods which are manufactured in the United States apply
24 to any public work or project of the Department of Transportation that is first
25 advertised for bid on or after July 1, 2013. **Section 17** also declares that any
26 contract for such a public work or project that fails to comply with this bill is void.

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

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

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

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

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

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

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

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

25 **2. *The Legislature therefore declares it to be the policy of this***
26 *State that its agencies and political subdivisions aid and promote*
27 *the economy of this State and the United States by requiring a*
28 *preference for the procurement of iron, steel and manufactured*



1 *goods produced in the United States in all contracts for public*
2 *works.*

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

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

9 *2. A manufactured good, all manufacturing to produce the*
10 *good takes place in the United States and all the components of*
11 *the product originate in the United States. A component shall be*
12 *deemed to originate in the United States if all manufacturing to*
13 *produce the component takes place in the United States regardless*
14 *of the origin of its subcomponents.*

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

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

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

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

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

31 *3. If a public body receives an application for a waiver*
32 *pursuant to subsection 2, the public body shall:*

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

35 *(1) The application;*

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

38 *(3) All relevant information available to the public body*
39 *concerning the application; and*

40 *(b) Accept public comment on the application for not less than*
41 *30 days.*

42 *4. If the public body determines that a waiver from the*
43 *requirements of subsection 1 should be granted to a contractor or*
44 *subcontractor, the public body may grant the waiver not less than*
45 *30 days after providing the notice and opportunity for public*



1 *comment required pursuant to subsection 3 by publishing in a*
2 *newspaper of general circulation in the county in which the public*
3 *work is or will be located, before the waiver takes effect, a detailed*
4 *justification for the waiver that addresses the public comments*
5 *received by the public body.*

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

7 338.0115 1. Except as otherwise provided in subsection 2,
8 the provisions of this chapter and chapters 332 and 339 of NRS do
9 not apply to a contract under which a private developer, for the
10 benefit of a private development, constructs a water or sewer line
11 extension and any related appurtenances:

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

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

17 2. If, pursuant to the provisions of such a contract, the
18 developer is not responsible for paying all of the initial construction
19 costs of the project, the provisions of NRS 338.0117, 338.013 to
20 338.090, inclusive, and 338.1373 to 338.148, inclusive, *and*
21 *sections 2, 3 and 4 of this act* apply to the contract.

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

23 338.1373 1. A local government or its authorized
24 representative shall award a contract for a public work pursuant to
25 the provisions of NRS 338.1415 *and section 4 of this act* and:

26 (a) NRS 338.1377 to 338.139, inclusive;

27 (b) NRS 338.143 to 338.148, inclusive;

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

29 (d) NRS 338.1711 to 338.173, inclusive.

30 2. The provisions of *section 4 of this act and* NRS 338.1375 to
31 338.1382, inclusive, 338.1386, 338.13862, 338.13864, 338.139,
32 338.142, 338.169 to 338.16995, inclusive, and 338.1711 to
33 338.1727, inclusive, do not apply with respect to contracts for the
34 construction, reconstruction, improvement and maintenance of
35 highways that are awarded by the Department of Transportation
36 pursuant to NRS 408.201 and 408.313 to 408.433, inclusive.

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

38 338.1379 1. Except as otherwise provided in NRS 338.1382,
39 a contractor who wishes to qualify as a bidder on a contract for a
40 public work must submit an application to the Division or the local
41 government.

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

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



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

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

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

10 (a) On a specific project; or

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

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

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

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

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

29 (a) *Within* the preceding year, breached a contract for a public
30 work for which the cost exceeds \$25,000,000 by failing to comply
31 with a requirement of paragraphs (a) to (e), inclusive, of subsection
32 1 of NRS 338.0117 ~~H~~; or

33 (b) *With respect to any iron or steel product or manufactured*
34 *good used or supplied in a public work or project to which section*
35 *4 or 15 of this act applies, intentionally affixed thereto a label*
36 *bearing an inscription of "Made in America" or any inscription*
37 *with similar meaning, if the iron or steel product or manufactured*
38 *good was not manufactured in the United States, as that term is*
39 *defined in section 3 of this act.*

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

41 338.1382 In lieu of adopting criteria pursuant to NRS 338.1377
42 and determining the qualification of bidders pursuant to NRS
43 338.1379, a governing body may deem a person to be qualified to
44 bid on:



1 1. Contracts for public works of the local government if the
2 person has not ~~H~~ *violated paragraph (b) of subsection 8 of NRS*
3 *338.1379 or*, within the preceding year, breached a contract for a
4 public work for which the cost exceeds \$25,000,000 by failing to
5 comply with a requirement of paragraphs (a) to (e), inclusive, of
6 subsection 1 of NRS 338.0117, and has been determined by:

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

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

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

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

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

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

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

24 338.1415 A local government or its authorized representative
25 shall not accept a bid on a contract for a public work if the
26 contractor who submits the bid has ~~[-within]~~ :

27 *1. Within* the preceding year, breached a contract for a public
28 work for which the cost exceeds \$25,000,000 by failing to comply
29 with a requirement of paragraphs (a) to (e), inclusive, of subsection
30 1 of NRS 338.0117 ~~[-]~~ ; or

31 *2. With respect to any iron or steel product or manufactured*
32 *good used or supplied in a public work or project to which section*
33 *4 or 15 of this act applies, intentionally affixed thereto a label*
34 *bearing an inscription of "Made in America" or any inscription*
35 *with similar meaning, if the iron or steel product or manufactured*
36 *good was not manufactured in the United States, as that term is*
37 *defined in section 3 of this act.*

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

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

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



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

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

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

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

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

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

27 ***Sec. 13. "Manufactured in the United States" means, in the***
28 ***case of:***

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

32 ***2. A manufactured good, all manufacturing to produce the***
33 ***good takes place in the United States and all the components of***
34 ***the product originate in the United States. A component shall be***
35 ***deemed to originate in the United States if all manufacturing to***
36 ***produce the component takes place in the United States regardless***
37 ***of the origin of its subcomponents.***

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

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



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

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

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

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

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

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

15 (1) *The application;*

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

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

20 (b) *Accept public comment on the application for not less than*
21 *30 days.*

22 4. *If the Department determines that a waiver from the*
23 *requirements of subsection 1 should be granted to a contractor or*
24 *subcontractor, the Department may grant the waiver not less than*
25 *30 days after providing the notice and opportunity for public*
26 *comment pursuant to subsection 3 by publishing in a newspaper of*
27 *general circulation in the county in which the project is or will be*
28 *located, before the waiver takes effect, a detailed justification for*
29 *the waiver that addresses the public comments received by the*
30 *Department.*

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

32 408.333 Except as otherwise provided in NRS 408.3875 to
33 408.3887, inclusive:

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

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



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

6 (a) *Within* the preceding year, breached a contract for a public
7 work for which the cost exceeds \$25,000,000 by failing to comply
8 with a requirement of paragraphs (a) to (e), inclusive, of subsection
9 1 of NRS 338.0117 ~~H~~ ; or

10 (b) *With respect to any iron or steel product or manufactured*
11 *good used or supplied in a public work or project to which section*
12 *4 or 15 of this act applies, intentionally affixed thereto a label*
13 *bearing an inscription of "Made in America" or any inscription*
14 *with similar meaning, if the iron or steel product or manufactured*
15 *good was not manufactured in the United States, as that term is*
16 *defined in section 13 of this act.*

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

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

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

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

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

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

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



- 1 (c) For which the contract was not awarded in compliance with
2 the amendatory provisions of this act,
3 ↪ is void.
4 3. As used in this section:
5 (a) "Contract" has the meaning ascribed to it in NRS 338.010.
6 (b) "Project" has the meaning ascribed to it in section 14 of this
7 act.
8 (c) "Public work" has the meaning ascribed to it in
9 NRS 338.010.
10 **Sec. 18.** This act becomes effective on July 1, 2013.

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