

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

MARCH 16, 2015

Referred to Committee on Government Affairs

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

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

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

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

**Legislative Counsel's Digest:**

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



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15 public body may, however, enter into such a contract for a public work provided  
16 that the contract requires the payment of any state or local taxes that would  
17 otherwise have been due for the purchase and use of such construction materials or  
18 goods if they had been purchased and used by an entity not exempted from the  
19 payment of such taxes. **Section 1** also provides that: (1) an express or implied  
20 contract entered into in violation of this prohibition is void; (2) a person who enters  
21 into such a contract is guilty of a gross misdemeanor; and (3) the right to enforce  
22 the provisions of this prohibition vests exclusively in the Attorney General. **Section**  
23 **1** further provides that, if a contract is entered into in violation of this prohibition,  
24 the Attorney General must forward to the Department of Taxation a list of the  
25 construction materials or goods purchased under the contract. The Department is  
26 then required to calculate the amount of applicable state and local taxes that should  
27 have been collected on the construction materials or goods, and deduct from the  
28 money otherwise payable from the proceeds of any tax distribution due to the  
29 public body either twice the amount of the applicable taxes or the sum of \$250,000,  
30 whichever is greater. In addition, **section 1** exempts from the new prohibition  
31 express or implied contracts for public works that use certain construction materials  
32 or goods that are: (1) purchased pursuant to governmental procurement rules,  
33 needed on a recurring basis and used to protect the health, safety or welfare of the  
34 public; or (2) specialized, project-specific components.

35 Under existing law, the laws of this State pertaining to public works apply to  
36 any project which is financed in whole or in part from public money for the new  
37 construction, repair or reconstruction of publicly owned works and properties,  
38 except that such laws only apply to a building for the Nevada System of Higher  
39 Education if 25 percent or more of the costs of the building as a whole are paid  
40 from money appropriated by this State or from federal money. (NRS 338.010)  
41 **Section 2** of this bill removes that exemption from the application of public works  
42 laws for such a building for the System. However, **section 2.5** of this bill exempts a  
43 building of the System if less than 25 percent of the costs of the building are paid  
44 from money appropriated by this State or federal money from certain provisions  
45 requiring that a public body use the services of the State Public Works Division of  
46 the Department of Administration for certain services relating to planning,  
47 maintenance and construction of state buildings. (NRS 341.141-341.148) **Section 4**  
48 of this bill repeals certain sections for conformity with the amendments made in  
49 **section 2**.

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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.*



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

8       (a) *The contract requires the payment of any state or local*  
9 *taxes that would otherwise have been due for the purchase and*  
10 *use of the construction materials or goods if the construction*  
11 *materials or goods had been purchased and used by a contractor*  
12 *who was not a constituent part of the public body and who was not*  
13 *otherwise exempt from the taxes pursuant to state or local law;*  
14 *and*

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

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

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

25       5. *The right to enforce the provisions of this section vests*  
26 *exclusively in the Attorney General, who shall institute and*  
27 *prosecute the appropriate proceedings to enforce the provisions of*  
28 *this section.*

29       6. *If an express or implied contract for a public work is*  
30 *entered into in violation of subsection 1, the Attorney General*  
31 *shall forward to the Department of Taxation a list of construction*  
32 *materials or goods purchased in violation of this section by the*  
33 *public body or the contractor who is a constituent part of the*  
34 *public body. The Department shall calculate the applicable state*  
35 *and local taxes on the purchase and use of the construction*  
36 *materials or goods which would have been due but for the tax*  
37 *exemption of the public body or the contractor who is a*  
38 *constituent part of the public body, and shall deduct that amount*  
39 *from the money otherwise payable from the proceeds of any tax*  
40 *distribution to the public body:*

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

42       (b) *The sum of \$250,000,*

43       ↪ *whichever is greater.*



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

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

8       (b) *Specialized components which are specific to a particular*  
9 *project and are not commonly used in public works projects.*

10       ↳ *If a public body enters into such a contract, the public body*  
11 *must provide annually to the Department of Taxation an itemized*  
12 *list of the construction materials or goods purchased pursuant to*  
13 *the contract and the amount paid for each item.*

14       8. *As used in this section, "construction materials or goods"*  
15 *means all materials, equipment or supplies which are intended to*  
16 *be used in a public work and includes, without limitation, the*  
17 *following, as well as related components or other materials*  
18 *intended for similar use:*

19       (a) *Structural or reinforcing steel.*

20       (b) *Aggregates, including, without limitation, base, barrow,*  
21 *concrete, asphalt, treated base, fill, topsoil and decorative*  
22 *aggregate.*

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

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

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

30       (f) *Utility materials, including, without limitation, piping,*  
31 *conduit, fiber optics, cables and cabling, power generators and*  
32 *pumps.*

33       (g) *Electrical materials, including, without limitation, conduit,*  
34 *wire, cables and cabling, electrical panels, lighting fixtures, outlets*  
35 *and switches.*

36       (h) *Plumbing materials, including, without limitation, pipes*  
37 *and piping, fixtures, drains, pumps, toilets, sinks, tubs and water*  
38 *heaters.*

39       (i) *Heating, ventilation and air conditioning materials,*  
40 *including, without limitation, ducts, vents, sheet metal, air*  
41 *conditioning units, furnaces and fans.*

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



1        *(k) Miscellaneous materials, including, without limitation,*  
2 *materials used for fencing, irrigation, masonry, cabinetry, doors,*  
3 *windows, traffic signals and signs, landscaping, roofing and*  
4 *elevators.*

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

6        338.010 As used in this chapter:

7        1. "Authorized representative" means a person designated by a  
8 public body to be responsible for the development, solicitation,  
9 award or administration of contracts for public works pursuant to  
10 this chapter.

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

14        3. "Contractor" means:

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

17        (b) A design-build team.

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

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

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

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

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

30        (1) A building and its site, at least one person who holds a  
31 certificate of registration to practice architecture pursuant to chapter  
32 623 of NRS.

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

38        7. "Design professional" means:

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

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

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



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

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

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

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

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

13 (b) Determined by a public body or its authorized representative  
14 which awarded a contract for a public work pursuant to NRS  
15 338.1375 to 338.139, inclusive, to be qualified to bid on that  
16 contract pursuant to NRS 338.1379 or 338.1382.

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

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

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

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

27 12. "Horizontal construction" means the construction of any  
28 fixed work, including any irrigation, drainage, water supply, flood  
29 control, harbor, railroad, highway, tunnel, airport or airway, sewer,  
30 sewage disposal plant or water treatment facility and any ancillary  
31 vertical components thereof, bridge, inland waterway, pipeline for  
32 the transmission of petroleum or any other liquid or gaseous  
33 substance, pier, and work incidental thereto. The term does not  
34 include vertical construction, the construction of any terminal or  
35 other building of an airport or airway, or the construction of any  
36 other building.

37 13. "Local government" means every political subdivision or  
38 other entity which has the right to levy or receive money from ad  
39 valorem or other taxes or any mandatory assessments, and includes,  
40 without limitation, counties, cities, towns, boards, school districts  
41 and other districts organized pursuant to chapters 244A, 309, 318,  
42 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,  
43 inclusive, and any agency or department of a county or city which  
44 prepares a budget separate from that of the parent political  
45 subdivision. The term includes a person who has been designated by



1 the governing body of a local government to serve as its authorized  
2 representative.

3 14. "Offense" means failing to:

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

10 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
- 14 public work; and
- 15 (d) Contracts for the services of any subcontractor or
- 16 independent contractor or is responsible for payment to any
- 17 contracted subcontractors or independent contractors.

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

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

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

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

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

39 ~~†(b) A building for the Nevada System of Higher Education of  
40 which 25 percent or more of the costs of the building as a whole are  
41 paid from money appropriated by this State or from federal money.†~~

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



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

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

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

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

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

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

15 (b) A subcontractor and another subcontractor or supplier,  
16 ➔ for the provision of labor, materials, equipment or supplies for a  
17 construction project.

18 21. "Subcontractor" means a person who:

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

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

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

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

33 24. "Wages" means:

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

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

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





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

3       *The provisions of NRS 341.141 to 341.148, inclusive, apply to a*  
4 *contract for the construction of a building for the Nevada System*  
5 *of Higher Education only if 25 percent or more of the costs of the*  
6 *building as a whole are paid from money appropriated by this*  
7 *State or from federal money.*

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

9       341.141 1. The Division shall furnish engineering and  
10 architectural services to the Nevada System of Higher Education  
11 and all other state departments, boards or commissions charged with  
12 the construction of any building constructed on state property or for  
13 which the money is appropriated by the Legislature, except:

14       (a) Buildings used in maintaining highways;

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

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

19       (2) By the Department of Wildlife; ~~land~~

20       (c) *Buildings of the Nevada System of Higher Education:*

21       *(1) That are exempted pursuant to section 2.5 of this act; or*

22       *(2) To which section 2.5 of this act applies if the*  
23 *Administrator has delegated his or her authority in accordance*  
24 *with NRS 341.119; and*

25       (d) Buildings on property controlled by other state agencies if  
26 the Administrator has delegated his or her authority in accordance  
27 with NRS 341.119.

28       ➔ The Board of Regents of the University of Nevada and all other  
29 state departments, boards or commissions shall use those services.

30       2. The services must consist of:

31       (a) Preliminary planning;

32       (b) Designing;

33       (c) Estimating of costs; and

34       (d) Preparation of detailed plans and specifications.

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

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

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## TEXT OF REPEALED SECTIONS

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**338.018 Applicability to certain contracts for construction work of Nevada System of Higher Education.** The provisions of NRS 338.013 to 338.018, inclusive, apply to any contract for



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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.





