

(Reprinted with amendments adopted on April 16, 2013)

FIRST REPRINT

A.B. 247

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 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 used in this State for a public work  
8 or a project of the Department of Transportation to be manufactured in the United  
9 States. **Sections 4 and 15** also allow a contractor or subcontractor to apply for a  
10 waiver of this requirement in a bid for a contract if: (1) the use of such products  
11 would be inconsistent with the public interest; (2) such products are not produced in  
12 the United States in sufficient quantity and of sufficient quality; or (3) the use of



\* A B 2 4 7 R 1 \*

13 such products would increase the cost of the project by more than 25 percent.  
14 Further, **sections 4 and 15** allow the public body awarding the contract to waive the  
15 requirement when it awards the contract, after providing notice and an opportunity  
16 for public comment, by publishing a detailed justification of the waiver. Such a  
17 waiver is not allowed to be granted after the contract has been awarded.

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

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

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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 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 and steel products provides jobs and*  
5 *family income to many individuals in the United States which, in*  
6 *turn, provides jobs and family income to the residents of this State;*

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

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

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

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

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



1       **Sec. 3.** *As used in sections 2, 3 and 4 of this act, unless the*  
2 *context otherwise requires, "manufactured in the United States"*  
3 *means that all manufacturing to produce an iron or steel product,*  
4 *except any metallurgical processes involving the refinement of*  
5 *steel additives, takes place in the United States.*

6       **Sec. 4.** 1. *Except as otherwise provided in subsection 2,*  
7 *each contract for a public work awarded by a public body must*  
8 *contain a provision requiring that the iron and steel products used*  
9 *or supplied in the performance of the contract and any*  
10 *subcontract for the public work be manufactured in the United*  
11 *States.*

12       2. *When a bid on a contract for a public work is submitted to*  
13 *a public body, the contractor or subcontractor may apply to the*  
14 *public body for a waiver of the requirements of subsection 1 if the*  
15 *contract or any subcontract for the public work is awarded if:*

16       (a) *The requirements would be inconsistent with the public*  
17 *interest;*

18       (b) *Such products are not produced in the United States in*  
19 *sufficient and reasonably available quantities and of a satisfactory*  
20 *quality; or*

21       (c) *Inclusion of such products would increase the cost of the*  
22 *contract by more than 25 percent.*

23       3. *If a public body receives an application for a waiver in a*  
24 *bid for a contract for a public work pursuant to subsection 2, the*  
25 *public body shall:*

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

28           (1) *The application;*

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

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

33       (b) *Accept public comment on the application for not less than*  
34 *30 days.*

35       4. *If the public body determines that a waiver from the*  
36 *requirements of subsection 1 should be granted to a contractor or*  
37 *subcontractor, the public body may grant the waiver when it*  
38 *awards the contract, but not less than 30 days after providing the*  
39 *notice and opportunity for public comment required pursuant to*  
40 *subsection 3 by publishing in a newspaper of general circulation*  
41 *in the county in which the public work is or will be located, before*  
42 *the waiver takes effect, a detailed justification for the waiver that*  
43 *addresses the public comments received by the public body. A*  
44 *waiver must not be granted after the contract has been awarded.*



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

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

7     (a) Which qualify as a public work pursuant to NRS 338.010;  
8 and

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

12     2. If, pursuant to the provisions of such a contract, the  
13 developer is not responsible for paying all of the initial construction  
14 costs of the project, the provisions of NRS 338.0117, 338.013 to  
15 338.090, inclusive, and 338.1373 to 338.148, inclusive, *and*  
16 *sections 2, 3 and 4 of this act* apply to the contract.

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

18     338.1373 1. A local government or its authorized  
19 representative shall award a contract for a public work pursuant to  
20 the provisions of NRS 338.1415 *and section 4 of this act* and:

21     (a) NRS 338.1377 to 338.139, inclusive;

22     (b) NRS 338.143 to 338.148, inclusive;

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

24     (d) NRS 338.1711 to 338.173, inclusive.

25     2. The provisions of *section 4 of this act and* NRS 338.1375 to  
26 338.1382, inclusive, 338.1386, 338.13862, 338.13864, 338.139,  
27 338.142, 338.169 to 338.16995, inclusive, and 338.1711 to  
28 338.1727, inclusive, do not apply with respect to contracts for the  
29 construction, reconstruction, improvement and maintenance of  
30 highways that are awarded by the Department of Transportation  
31 pursuant to NRS 408.201 and 408.313 to 408.433, inclusive.

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

33     338.1379 1. Except as otherwise provided in NRS 338.1382,  
34 a contractor who wishes to qualify as a bidder on a contract for a  
35 public work must submit an application to the Division or the local  
36 government.

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

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

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

44     3. The Division or the local government shall notify each  
45 applicant in writing of its determination. If an application is denied,



1 the notice must set forth the reasons for the denial and inform the  
2 applicant of the right to a hearing pursuant to NRS 338.1381.

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

5 (a) On a specific project; or

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

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

12 6. Except as otherwise provided in subsection 8, the local  
13 government shall not use any criteria other than the criteria  
14 described in NRS 338.1377 in determining whether to approve or  
15 deny an application.

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

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

24 (a) *Within* the preceding year, breached a contract for a public  
25 work for which the cost exceeds \$25,000,000 by failing to comply  
26 with a requirement of paragraphs (a) to (e), inclusive, of subsection  
27 1 of NRS 338.0117 ~~H~~; or

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

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

35 338.1382 In lieu of adopting criteria pursuant to NRS 338.1377  
36 and determining the qualification of bidders pursuant to NRS  
37 338.1379, a governing body may deem a person to be qualified to  
38 bid on:

39 1. Contracts for public works of the local government if the  
40 person has not ~~H~~ *violated paragraph (b) of subsection 8 of NRS*  
41 *338.1379 or*, within the preceding year, breached a contract for a  
42 public work for which the cost exceeds \$25,000,000 by failing to  
43 comply with a requirement of paragraphs (a) to (e), inclusive, of  
44 subsection 1 of NRS 338.0117, and has been determined by:



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

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

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

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

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

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

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

18 338.1415 A local government or its authorized representative  
19 shall not accept a bid on a contract for a public work if the  
20 contractor who submits the bid has ~~[-within]~~ :

21 1. *Within* the preceding year, breached a contract for a public  
22 work for which the cost exceeds \$25,000,000 by failing to comply  
23 with a requirement of paragraphs (a) to (e), inclusive, of subsection  
24 1 of NRS 338.0117 ~~[-]~~ ; or

25 2. *With respect to any iron or steel product used or supplied*  
26 *in a public work or project to which section 4 or 15 of this act*  
27 *applies, intentionally affixed thereto a label bearing an inscription*  
28 *of "Made in America" or any inscription with similar meaning, if*  
29 *the iron or steel product was not manufactured in the United*  
30 *States, as that term is defined in section 3 of this act.*

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

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

35 (a) *The production of iron and steel products provides jobs and*  
36 *family income to many individuals in the United States which, in*  
37 *turn, provides jobs and family income to the residents of this State;*

38 (b) *The taxes paid by employers and employees engaged in the*  
39 *production and sale of iron and steel products are a large source*  
40 *of public revenues for the country;*

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



1 (d) In recognition of this link, this State should reinvest its  
2 taxpayer dollars with its taxpayers to foster job retention and  
3 growth, particularly within the manufacturing sector, and to  
4 ensure a broad and healthy tax base for future investments vital to  
5 the State's infrastructure; and

6 (e) The procurement policies of this State should ensure that  
7 products made by companies and workers who abide by the  
8 workplace safety and environmental laws and regulations of this  
9 State and this nation should be rewarded with a preference in  
10 government contracting.

11 2. The Legislature therefore declares it to be the policy of this  
12 State that its agencies and political subdivisions aid and promote  
13 the economy of this State and the United States by requiring a  
14 preference for the procurement of iron and steel products  
15 manufactured in the United States in all contracts for projects.

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

20 **Sec. 13.** "Manufactured in the United States" means that all  
21 manufacturing to produce an iron or steel product, except any  
22 metallurgical processes involving the refinement of steel additives,  
23 takes place in the United States.

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

26 **Sec. 15. 1.** Except as otherwise provided in subsection 2,  
27 each contract for a project awarded by the Department must  
28 contain a provision requiring that the iron and steel products used  
29 or supplied in the performance of the contract and any  
30 subcontract for the project be manufactured in the United States.

31 2. When a bid on a contract for a project is submitted to the  
32 Department, the contractor or subcontractor may apply to the  
33 Department for a waiver of the requirements of subsection 1 for a  
34 contract or any subcontract for the project is awarded if:

35 (a) The requirements would be inconsistent with the public  
36 interest;

37 (b) Such products are not produced in the United States in  
38 sufficient and reasonably available quantities and of a satisfactory  
39 quality; or

40 (c) Inclusion of such products would increase the cost of the  
41 contract by more than 25 percent.

42 3. If the Department receives an application for a waiver in a  
43 bid for a contract for a project pursuant to subsection 2, the  
44 Department shall:



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

3 (1) *The application;*

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

6 (3) *All relevant information available to the Department*  
7 *concerning the application; and*

8 (b) *Accept public comment on the application for not less than*  
9 *30 days.*

10 4. *If the Department determines that a waiver from the*  
11 *requirements of subsection 1 should be granted to a contractor or*  
12 *subcontractor, the Department may grant the waiver when it*  
13 *awards the contract, but not less than 30 days after providing the*  
14 *notice and opportunity for public comment pursuant to subsection*  
15 *3 by publishing in a newspaper of general circulation in the*  
16 *county in which the project is or will be located, before the waiver*  
17 *takes effect, a detailed justification for the waiver that addresses*  
18 *the public comments received by the Department. A waiver must*  
19 *not be granted after the contract has been awarded.*

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

21 408.333 Except as otherwise provided in NRS 408.3875 to  
22 408.3887, inclusive:

23 1. Before furnishing any person proposing to bid on any  
24 advertised work with the plans and specifications for such work, the  
25 Director shall require from the person a statement, verified under  
26 oath, in the form of answers to questions contained in a standard  
27 form of questionnaire and financial statement, which must include a  
28 complete statement of the person's financial ability and experience  
29 in performing public work of a similar nature.

30 2. Such statements must be filed with the Director in ample  
31 time to permit the Department to verify the information contained  
32 therein in advance of furnishing proposal forms, plans and  
33 specifications to any person proposing to bid on the advertised  
34 public work, in accordance with the regulations of the Department.

35 3. Whenever the Director is not satisfied with the sufficiency  
36 of the answers contained in the questionnaire and financial  
37 statement, the Director may refuse to furnish the person with plans  
38 and specifications and the official proposal forms on the advertised  
39 project. If the Director determines that the person has ~~[-, within]~~:

40 (a) *Within* the preceding year, breached a contract for a public  
41 work for which the cost exceeds \$25,000,000 by failing to comply  
42 with a requirement of paragraphs (a) to (e), inclusive, of subsection  
43 1 of NRS 338.0117 ~~[-]~~; or

44 (b) *With respect to any iron or steel product used or supplied*  
45 *in a public work or project to which section 4 or 15 of this act*





1 *applies, intentionally affixed thereto a label bearing an inscription*  
2 *of "Made in America" or any inscription with similar meaning, if*  
3 *the iron or steel product was not manufactured in the United*  
4 *States, as that term is defined in section 13 of this act,*

5 ↳ the Director shall refuse to furnish the person with plans and  
6 specifications and the official proposal forms on the advertised  
7 project. Any bid of any person to whom plans and specifications and  
8 the official proposal forms have not been issued in accordance with  
9 this section must be disregarded, and the certified check, cash or  
10 undertaking of such a bidder returned forthwith.

11 4. Any person who is disqualified by the Director, in  
12 accordance with the provisions of this section, may request, in  
13 writing, a hearing before the Director and present again the person's  
14 check, cash or undertaking and such further evidence with respect to  
15 the person's financial responsibility, organization, plant and  
16 equipment, or experience, as might tend to justify, in his or her  
17 opinion, issuance to him or her of the plans and specifications for  
18 the work.

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

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

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

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

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

33 (c) For which the contract was not awarded in compliance with  
34 the amendatory provisions of this act,

35 ↳ is void.

36 3. As used in this section:

37 (a) "Contract" has the meaning ascribed to it in NRS 338.010.

38 (b) "Project" has the meaning ascribed to it in section 14 of this  
39 act.

40 (c) "Public work" has the meaning ascribed to it in  
41 NRS 338.010.

42 **Sec. 18.** This act becomes effective on July 1, 2013.

