

ASSEMBLY BILL NO. 534—COMMITTEE ON
COMMERCE AND LABOR

(ON BEHALF OF THE PUBLIC WORKS BOARD)

MARCH 24, 2003

Referred to Committee on Government Affairs

SUMMARY—Makes various changes concerning State Public Works Board. (BDR 28-556)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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; authorizing the Manager of the State Public Works Board or his designated representative to issue orders to compel the cessation of work on state public works under certain circumstances; providing for an appeal of such an order; requiring the Manager to serve as the Building Official for all buildings and structures on state property; revising the provisions governing change orders; providing requirements for the administration of money for capital improvement projects; providing a civil and criminal penalty; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 341 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.** *“Board” means the State Public Works Board.*
- 4 **Sec. 3.** *“Manager” means the Manager appointed pursuant*
- 5 *to NRS 341.100.*
- 6 **Sec. 4.** *1. When acting in the capacity of Building Official*
- 7 *pursuant to paragraph (h) of subsection 5 of NRS 341.100, the*
- 8 *Manager or his designated representative may issue an order to*



1 *compel the cessation of work on all or any portion of a building or*
2 *structure based on health or safety reasons or for violations of*
3 *applicable building codes or other laws or regulations.*

4 *2. If a person receives an order issued pursuant to subsection*
5 *1, the person shall immediately cease work on the building or*
6 *structure or portion thereof.*

7 *3. Any person who willfully refuses to comply with an order*
8 *issued pursuant to subsection 1 or who willfully encourages*
9 *another person to refuse to comply or assists another person in*
10 *refusing to comply with such an order is guilty of a gross*
11 *misdemeanor and shall be punished as provided in NRS 193.140.*
12 *Any penalties collected pursuant to this subsection must be*
13 *deposited with the State Treasurer for credit to the State General*
14 *Fund.*

15 *4. In addition to the criminal penalty set forth in subsection*
16 *3, the Manager may impose an administrative penalty of not more*
17 *than \$10,000 per day for each day that a person violates*
18 *subsection 3.*

19 *5. If a person wishes to contest an order issued to him*
20 *pursuant to subsection 1, the person may bring an action in*
21 *district court. The court shall give such a proceeding priority over*
22 *other civil matters that are not expressly given priority by law. An*
23 *action brought pursuant to this subsection does not stay*
24 *enforcement of the order unless the district court orders otherwise.*

25 *6. If a person refuses to comply with an order issued*
26 *pursuant to subsection 1, the Manager may bring an action in the*
27 *name of the State of Nevada in district court to compel compliance*
28 *and to collect any administrative penalties imposed pursuant to*
29 *subsection 4. The court shall give such a proceeding priority over*
30 *other civil matters that are not expressly given priority by law. Any*
31 *attorney's fees and costs awarded by the court in favor of the State*
32 *and any penalties collected in the action must be deposited with*
33 *the State Treasurer for credit to the State General Fund.*

34 *7. No right of action exists in favor of any person by reason*
35 *of any action or failure to act on the part of the Board, the*
36 *Manager or any officers, employees or agents of the Board in*
37 *carrying out the provisions of this section.*

38 *8. As used in this section, "person" includes a government*
39 *and a governmental subdivision, agency or instrumentality.*

40 **Sec. 5.** NRS 341.010 is hereby amended to read as follows:
41 341.010 As used in this chapter, unless the context otherwise
42 requires, ~~["Board" means the State Public Works Board.]~~ *the words*
43 *and terms defined in sections 2 and 3 of this act have the*
44 *meanings ascribed to them in those sections.*



1 **Sec. 6.** NRS 341.100 is hereby amended to read as follows:
2 341.100 1. The Board may appoint a Manager who serves at
3 the pleasure of the Board and the Governor. The Board or the
4 Governor may remove the Manager for inefficiency, neglect of duty,
5 malfeasance or for other just cause.
6 2. The Manager, with the approval of the Board, may appoint a
7 deputy for professional services and a deputy for administrative,
8 fiscal and constructional services. In addition, the Manager may
9 appoint such other technical and clerical assistants as may be
10 necessary to carry into effect the provisions of this chapter.
11 3. The Manager and his deputies are in the unclassified service
12 of the State. Except as otherwise provided in NRS 284.143, the
13 Manager and each deputy shall devote his entire time and attention
14 to the business of his office and shall not pursue any other business
15 or occupation or hold any other office of profit.
16 4. The Manager and his deputy for professional services must
17 each be a licensed professional engineer pursuant to the provisions
18 of chapter 625 of NRS or an architect registered pursuant to the
19 provisions of chapter 623 of NRS. The deputy manager for
20 administrative, fiscal and constructional services must have a
21 comprehensive knowledge of principles of administration and a
22 working knowledge of principles of engineering or architecture as
23 determined by the Board.
24 5. The Manager shall:
25 (a) Serve as the Secretary of the Board.
26 (b) Manage the daily affairs of the Board.
27 (c) Represent the Board before the Legislature.
28 (d) Prepare and submit to the Board, for its approval, the
29 recommended priority for proposed capital improvement projects
30 and provide the Board with an estimate of the cost of each project.
31 (e) Make recommendations to the Board for the selection of
32 architects, engineers and contractors.
33 (f) Make recommendations to the Board concerning the
34 acceptance of completed projects.
35 (g) Advise the Board and the Legislature, or the Interim Finance
36 Committee if the Legislature is not in session, on a monthly basis of
37 the progress of all public works projects which are a part of the
38 approved capital improvement program.
39 (h) *Serve as the Building Official for all buildings and*
40 *structures on property of the State or held in trust for any division*
41 *of the State Government.*
42 **Sec. 7.** NRS 341.145 is hereby amended to read as follows:
43 341.145 The Board:



- 1 1. Has final authority to approve the architecture of all
- 2 buildings, plans, designs, types of construction, major repairs and
- 3 designs of landscaping.
- 4 2. Shall determine whether any rebates are available from a
- 5 public utility for installing devices in any state building which are
- 6 designed to decrease the use of energy in the building. If such a
- 7 rebate is available, the Board shall apply for the rebate.
- 8 3. Shall solicit bids for and let all contracts for new
- 9 construction or major repairs.
- 10 4. May negotiate with the lowest responsible and responsive
- 11 bidder on any contract to obtain a revised bid if:
- 12 (a) The bid is less than the appropriation made by the
- 13 Legislature for that building project; and
- 14 (b) The bid does not exceed the relevant budget item for that
- 15 building project as established by the Board by more than 10
- 16 percent.
- 17 5. May reject any or all bids.
- 18 6. After the contract is let, shall supervise and inspect
- 19 construction and major repairs. The cost of supervision and
- 20 inspection must be financed from the capital construction program
- 21 approved by the Legislature.
- 22 7. Shall obtain approval from the Interim Finance Committee
- 23 when the Legislature is not in regular or special session, or from the
- 24 Legislature by concurrent resolution when the Legislature is in
- 25 regular or special session, for any change in the scope of the design
- 26 or construction of a project as that project was authorized by the
- 27 Legislature. The Board shall adopt by regulation criteria for
- 28 determining whether a change in the scope of the design or
- 29 construction of a project requires such approval.
- 30 8. May authorize change orders, before or during construction:
- 31 (a) In any amount, where the change represents a reduction in
- 32 the *total* awarded contract price.
- 33 (b) ~~Not~~ *Except as otherwise provided in paragraph (c), not*
- 34 *to exceed in the aggregate 10 percent of the total awarded contract*
- 35 *price, where the change represents an increase in that price.*
- 36 (c) *In any amount, where the total awarded contract price is*
- 37 *less than \$10,000 and the change represents an increase not*
- 38 *exceeding the amount of the total awarded contract price.*
- 39 9. Shall specify in any contract with a design professional the
- 40 period within which the design professional must prepare and
- 41 submit to the Board a change order that has been authorized by the
- 42 design professional. As used in this subsection, "design
- 43 professional" means a person with a professional license or
- 44 certificate issued pursuant to chapter 623, 623A or 625 of NRS.



1 10. Has final authority to accept each building *or structure, or*
2 *any portion thereof, on property of the State or held in trust for*
3 *any division of the State Government* as completed or to require
4 necessary alterations to conform to the contract ~~§~~ *or to codes*
5 *adopted by the Board,* and to file the notice of completion ~~§~~ *and*
6 *certificate of occupancy for the building or structure.*

7 **Sec. 8.** NRS 341.146 is hereby amended to read as follows:

8 341.146 1. The Board shall establish funds for projects of
9 capital construction necessary to account for the program of capital
10 construction approved by the Legislature. These funds must be used
11 to account for all revenues, appropriations and expenditures
12 restricted to constructing buildings and other projects which come
13 under the supervision of the Board.

14 2. *If a state department, board, commission or agency*
15 *provides to the Board money that has not been appropriated by the*
16 *Legislature for a capital improvement project, any interest earned*
17 *on that money accrues to the benefit of the project. Upon a*
18 *determination by the Board that the project is completed, the*
19 *Board shall return any principal and interest remaining on that*
20 *money to the department, board, commission or agency that had*
21 *provided the money to the Board.*

22 3. *Except as otherwise provided in subsection 4, if the money*
23 *for a capital improvement project includes money from more than*
24 *one source, the money must be expended in the following order:*

25 (a) *Money that was approved for the same or a different*
26 *project during a previous biennium that has been reallocated*
27 *during the current biennium for the project;*

28 (b) *Money received for the project from the Federal*
29 *Government;*

30 (c) *Money generated by the state department, board,*
31 *commission or agency for whom the project is being performed;*

32 (d) *Proceeds from the issuance of general obligation bonds;*

33 (e) *Money from the State General Fund; and*

34 (f) *Any other source of money for the project.*

35 4. *The provisions of subsection 3 do not apply if the receipt of*
36 *any money from the Federal Government for the project is*
37 *conditioned upon a different order of expenditure.*

38 **Sec. 9.** NRS 341.148 is hereby amended to read as follows:

39 341.148 1. Except as otherwise provided in subsection 2, the
40 Board shall advertise in a newspaper of general circulation in the
41 State of Nevada for separate sealed bids for each construction
42 project. Approved plans and specifications for the construction must
43 be on file at a place and time stated in the advertisement for the
44 inspection of all persons desiring to bid thereon and for other
45 interested persons. The Board may accept bids on either the whole



1 or a part of the construction, equipment and furnishings, and may let
2 separate contracts for different and separate portions of any project,
3 or a combination contract for structural, mechanical and electrical
4 construction if savings will result to ~~the lowest responsible and~~
5 ~~responsive bidder.] this state.~~

6 2. The Board is not required to advertise for sealed bids for
7 construction projects if the estimated cost is less than \$25,000, but
8 the Board may solicit firm written bids from not less than two
9 licensed contractors doing business in the area and may award the
10 contract to the lowest responsible and responsive bidder or reject all
11 bids.

12 **Sec. 10.** NRS 341.153 is hereby amended to read as follows:

13 341.153 1. The Legislature hereby finds as facts:

14 (a) That the construction of public buildings is a specialized
15 field requiring for its successful accomplishment a high degree of
16 skill and experience not ordinarily acquired by public officers and
17 employees whose primary duty lies in some other field.

18 (b) That this construction involves the expenditure of large
19 amounts of public money which, whatever their particular
20 constitutional, statutory or governmental source, involve a public
21 trust.

22 (c) That the application by state agencies of conflicting
23 standards of performance results in wasteful delays and increased
24 costs in the performance of public works.

25 2. The Legislature therefore declares it to be the policy of this
26 state that all construction of ~~public~~ buildings upon property of the
27 State or held in trust for any division of the State Government be
28 supervised by, and final authority for its completion and acceptance
29 vested in, the ~~State Public Works~~ Board as provided in NRS
30 341.141 to 341.148, inclusive.

31 **Sec. 11.** This act becomes effective upon passage and
32 approval.

