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ASSEMBLY BILL NO. 304—ASSEMBLYMEN HARDY,  
MABEY, HETRICK AND MARVEL

MARCH 21, 2005

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Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to certain public contracts. (BDR 27-257)

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.

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AN ACT relating to public contracts; revising requirements relating to performance contracts for operating cost-savings measures in buildings occupied by state agencies; providing requirements for such performance contracts that are financed as installment-purchase contracts or lease-purchase contracts; authorizing the issuance of refunding obligations relating to performance contracts; clarifying the inapplicability of the requirements relating to prevailing wages to the payment of the wages of inmates of custodial or penal institutions working on public works; 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 333A of NRS is hereby amended by  
2 adding thereto the provisions set forth as sections 2 to 16, inclusive,  
3 of this act.

4     **Sec. 2.** *“Board” means:*

5         1. *If the using agency that enters into a performance contract*  
6 *is the University and Community College System of Nevada, the*  
7 *Board of Regents of the University of Nevada; or*

8         2. *For any other using agency that enters into a performance*  
9 *contract, the State Board of Examiners.*



1       **Sec. 3. 1.** *Notwithstanding any provision of NRS 333A.010*  
2 *to 333A.150, inclusive, and sections 2 to 16, inclusive, of this act*  
3 *and chapters 333 and 338 of NRS to the contrary, a using agency*  
4 *may enter into a performance contract with a qualified service*  
5 *company for the purchase and installation of one or more*  
6 *operating cost-savings measures to reduce costs related to energy,*  
7 *water and the disposal of waste, and related labor costs.*

8       2. *Any operating cost-savings measures put into place as a*  
9 *result of a performance contract must comply with all applicable*  
10 *building codes.*

11       **Sec. 4. 1.** *The Purchasing Division of the Department of*  
12 *Administration shall work directly with any using agency*  
13 *interested in entering into a performance contract, using the list of*  
14 *qualified service companies compiled by the State Public Works*  
15 *Board pursuant to NRS 333A.080. The Purchasing Division, in*  
16 *conjunction with the using agency, shall ensure that each*  
17 *appropriate qualified service company is notified of the using*  
18 *agency's interest in entering into a performance contract and*  
19 *coordinate an opportunity for each such qualified service*  
20 *company to:*

21       (a) *Visit the site pertaining to which the using agency wishes*  
22 *to enter into a performance contract;*

23       (b) *Perform a comprehensive audit in the manner prescribed*  
24 *in section 5 of this act; and*

25       (c) *Submit a proposal, including, without limitation, the*  
26 *comprehensive audit, and make a related presentation to the using*  
27 *agency for all operating cost-savings measures that the qualified*  
28 *service company determines would be practicable to implement.*

29       2. *The using agency shall:*

30       (a) *Evaluate the proposals and presentations made pursuant to*  
31 *subsection 1;*

32       (b) *Evaluate the financial stability of the qualified service*  
33 *companies that made proposals and presentations pursuant to*  
34 *subsection 1 based on the financial statements and ratings of the*  
35 *qualified service companies; and*

36       (c) *Select a qualified service company,*  
37 *↪ pursuant to the provisions of NRS 333A.010 to 333A.150,*  
38 *inclusive, and sections 2 to 16, inclusive, of this act, and any*  
39 *regulations adopted pursuant thereto, for evaluating and awarding*  
40 *contracts.*

41       3. *A qualified service company selected by a using agency*  
42 *pursuant to subsection 2 shall prepare a financial-grade*  
43 *operational audit, which must include, without limitation:*

44       (a) *A detailed explanation of the operating cost savings that*  
45 *will result from the performance contract; and*



1       ***(b) A comparison of the costs of implementing the operating***  
2 ***cost-savings measures to the operating cost savings that are***  
3 ***anticipated as a result of the performance contract.***

4       ***4. Except as otherwise provided in this subsection, the***  
5 ***financial-grade operational audit prepared by the qualified service***  
6 ***company pursuant to subsection 3 becomes, upon acceptance, a***  
7 ***part of the final performance contract and the costs incurred by***  
8 ***the qualified service company in preparing the financial-grade***  
9 ***operational audit shall be deemed to be part of the performance***  
10 ***contract. If, after the financial-grade operational audit is***  
11 ***prepared, the using agency decides not to execute the performance***  
12 ***contract, the using agency shall pay the qualified service company***  
13 ***that prepared the financial-grade operational audit the costs***  
14 ***incurred by the qualified service company in preparing the***  
15 ***financial-grade operational audit, if the Legislature has***  
16 ***specifically appropriated money for that purpose. An***  
17 ***appropriation by the Legislature for the purchase and installation***  
18 ***of an operating cost-savings measure creates no presumption that***  
19 ***the using agency for which the money was appropriated is***  
20 ***required to enter into such a performance contract.***

21       ***Sec. 5. 1. Each comprehensive audit performed pursuant to***  
22 ***paragraph (b) of subsection 1 of section 4 of this act must include,***  
23 ***without limitation:***

24       ***(a) An assessment of any operating cost-savings measure that***  
25 ***might be implemented within the building of the using agency,***  
26 ***including, without limitation, any operating cost-savings measure***  
27 ***specifically requested by the using agency;***

28       ***(b) An estimate of the costs associated with implementing an***  
29 ***operating cost-savings measure described in paragraph (a);***

30       ***(c) A comparison of the energy and water consumption in the***  
31 ***building of the using agency to the energy and water consumption***  
32 ***in similar buildings; and***

33       ***(d) A report that compares the current pattern of the costs to***  
34 ***the using agency associated with energy consumption, water***  
35 ***consumption and the disposal of waste, and related labor costs, to***  
36 ***the projected costs if the using agency implements operating cost-***  
37 ***savings measures.***

38       ***2. A comprehensive audit must be based on:***

39       ***(a) A review and analysis of the historical energy and water***  
40 ***usage of the using agency; and***

41       ***(b) Surveys, plans, specifications or drawings that provide***  
42 ***details of the structure or design of the building of the using***  
43 ***agency.***



1       3. *The using agency shall provide to each qualified service*  
2 *company that intends to perform a comprehensive audit the*  
3 *records of the energy and water consumption of the building.*

4       **Sec. 6.** *1. A using agency that selects a qualified service*  
5 *company pursuant to section 4 of this act shall retain the*  
6 *professional services of a third-party consultant to work on behalf*  
7 *of the using agency in coordination with the qualified service*  
8 *company.*

9       2. *A third-party retained pursuant to subsection 1 must be*  
10 *certified by the Association of Energy Engineers as a "Certified*  
11 *Energy Manager" or hold similar credentials from a comparable*  
12 *nationally recognized organization.*

13       3. *The duties of a third-party consultant retained pursuant to*  
14 *subsection 1 may include, without limitation:*

15       (a) *Assisting the using agency in reviewing the operating cost-*  
16 *savings measures proposed by the qualified service company;*

17       (b) *Overseeing the construction of the operating cost-savings*  
18 *measures; and*

19       (c) *Monitoring the operating cost savings after the*  
20 *construction of the operating cost-savings measures is completed.*

21       4. *The Purchasing Division of the Department of*  
22 *Administration may procure sufficient funding from the qualified*  
23 *service company, through negotiation, to pay for the third-party*  
24 *consultant out of the proceeds relating to the performance*  
25 *contract. A qualified service company shall not pay a third-party*  
26 *consultant directly for the work described in subsection 3.*

27       5. *A third-party consultant retained pursuant to subsection 1*  
28 *may recommend that the using agency not execute the*  
29 *performance contract. If the using agency does not execute the*  
30 *performance contract, the using agency shall pay the third-party*  
31 *consultant a pre-negotiated fee based on the work completed by*  
32 *the third-party consultant.*

33       **Sec. 7.** *In connection with any installment-purchase contract*  
34 *or lease-purchase contract entered into to finance a performance*  
35 *contract, the Board may:*

36       1. *Grant a security interest in any property that is the subject*  
37 *of the installment-purchase contract or lease-purchase contract*  
38 *and execute an instrument to evidence such a security interest,*  
39 *including, without limitation, a deed of trust, a leasehold interest*  
40 *deed of trust, a mortgage or a financing agreement.*

41       2. *Offer certificates of participation.*

42       3. *If the installment-purchase contract or lease-purchase*  
43 *contract involves an improvement to property owned by the State*  
44 *of Nevada or the using agency, enter into a lease of the property to*  
45 *which the improvement will be made and any property that is*



1 adjacent to that property if the installment-purchase contract or  
2 lease-purchase contract:

3 (a) Except as otherwise provided in section 14 of this act, has a  
4 term of not more than 15 years beyond the date on which  
5 construction of the work required by the installment-purchase  
6 contract or lease-purchase contract is completed; and

7 (b) Provides for rental payments that approximate the fair  
8 market rental of the property before the improvement is made, as  
9 determined by the Board at the time the parties enter into the  
10 lease, which must be paid if the installment-purchase contract or  
11 lease-purchase contract terminates before the expiration of the  
12 lease because the Legislature fails to appropriate money for  
13 payments due pursuant to the installment-purchase contract or  
14 lease-purchase contract.

15 ↪ A lease entered into pursuant to this subsection may provide for  
16 nominal rental payments to be paid pursuant to the lease before  
17 the installment-purchase contract or lease-purchase contract  
18 terminates.

19 4. Enter into any other agreement, contract or arrangement  
20 that the Board determines would be beneficial to the purpose of  
21 the installment-purchase contract or lease-purchase contract,  
22 including, without limitation, contracts for professional services,  
23 trust indentures, paying agent agreements and contracts of  
24 insurance.

25 **Sec. 8.** For the period during which an installment-purchase  
26 contract or lease-purchase contract that was entered into to  
27 finance a performance contract is in effect, the property that is the  
28 subject of the installment-purchase contract or lease-purchase  
29 contract:

30 1. Is exempt from ad valorem property taxation by this State  
31 and its political subdivisions if:

32 (a) An improvement is being constructed on the property  
33 pursuant to the installment-purchase contract or lease-purchase  
34 contract; or

35 (b) This State or a using agency is in possession of the  
36 property.

37 2. Shall be deemed to be the property of this State or the  
38 using agency that is a party to the installment-purchase contract  
39 or lease-purchase contract for the purposes of statutory limits on  
40 damages that may be awarded against this State, including,  
41 without limitation, the limits in chapter 41 of NRS, with respect to  
42 any action or claim, including a claim for civil damages, that  
43 arises from or is related to the property and is brought by a person  
44 who is not a party to the installment-purchase contract or lease-  
45 purchase contract if:



1       (a) *An improvement is being constructed on the property*  
2 *pursuant to the installment-purchase contract or lease-purchase*  
3 *contract; or*

4       (b) *This State or the using agency is in possession of the*  
5 *property.*

6       **Sec. 9.** *Any obligations of this State issued in accordance*  
7 *with NRS 333A.010 to 333A.150, inclusive, and sections 2 to 16,*  
8 *inclusive, of this act may be refunded on behalf of the State by the*  
9 *Board without the necessity of the refunding obligations being*  
10 *authorized by NRS 333A.010 to 333A.150, inclusive, and sections*  
11 *2 to 16, inclusive, of this act, by the adoption of a resolution by the*  
12 *Board authorizing the issuance of obligations to refund, pay and*  
13 *discharge all or any part of such outstanding obligations of any*  
14 *one or more or all outstanding issues:*

15       1. *For the acceleration, deceleration or other modification of*  
16 *the payment of such obligations, including, without limitation, any*  
17 *interest on such obligations that is in arrears or about to become*  
18 *due for any period not exceeding 3 years after the date of the*  
19 *issuance of the refunding obligations, unless the capitalization of*  
20 *interest on obligations constituting an indebtedness increases the*  
21 *debt of the State in excess of the limitation set forth in Section 3 of*  
22 *Article 9 of the Nevada Constitution.*

23       2. *For the purpose of reducing interest costs or effecting*  
24 *other economies.*

25       3. *For the purpose of modifying or eliminating restrictive*  
26 *contractual limitations appertaining to the issuance of additional*  
27 *obligations, otherwise concerning the outstanding obligations, or*  
28 *otherwise relating to any operating cost-savings measure*  
29 *appertaining thereto.*

30       4. *For any combination of the purposes set forth in*  
31 *subsections 1, 2 and 3.*

32       **Sec. 10.** 1. *Except as otherwise provided in sections 9 to 14,*  
33 *inclusive, of this act, the proceeds of refunding obligations issued*  
34 *pursuant to section 9 of this act must be immediately applied to the*  
35 *retirement of the obligations to be refunded or be placed in escrow*  
36 *or trust in any trust bank or trust banks within or without or both*  
37 *within and without this State to be applied to the payment of the*  
38 *refunded obligations or the refunding obligations, or both, upon*  
39 *their presentation for payment to the extent, in such priority and*  
40 *otherwise in the manner which the using agency may determine.*

41       2. *The incidental costs of refunding obligations may be paid*  
42 *by the purchaser of the refunding obligations or be defrayed from*  
43 *any revenues in the State General Fund, subject to appropriations*  
44 *for such revenues as otherwise provided by law, or other available*  
45 *revenues of the State under the control of the Board or from the*



1 *proceeds of the refunding obligations, or from the interest or other*  
2 *yield derived from the investment of the proceeds of any refunding*  
3 *obligations or other money in escrow or trust, or from any other*  
4 *sources legally available therefor, or any combination thereof, as*  
5 *the using agency may determine.*

6 3. *Any accrued interest and any premium appertaining to a*  
7 *sale of refunding obligations may be applied to the payment of the*  
8 *interest on or principal of those refunding obligations, or both, or*  
9 *may be deposited in a reserve therefor, or may be used to refund*  
10 *obligations by deposit in escrow, trust or otherwise, or may be used*  
11 *to defray any incidental costs appertaining to the refunding, or*  
12 *any combination thereof, as the using agency may determine, but*  
13 *in no event by the incurrence of additional debt in excess of the*  
14 *limitation on state debt set forth in Section 3 of Article 9 of the*  
15 *Nevada Constitution.*

16 **Sec. 11.** 1. *Any escrow or trust into which the proceeds of*  
17 *refunding obligations are placed pursuant to section 10 of this act*  
18 *must not necessarily be limited to proceeds of refunding*  
19 *obligations but may include other money available for its purpose.*

20 2. *Any proceeds of refunding obligations placed in escrow or*  
21 *trust, pending such use, may be invested or reinvested in federal*  
22 *securities, and in the case of an escrow or trust for the refunding*  
23 *of outstanding obligations issued in accordance with sections 9 to*  
24 *14, inclusive, of this act in other securities issued by the Federal*  
25 *Government if the resolution by the Board authorizing the*  
26 *issuance of such outstanding state securities or any trust*  
27 *indenture or other proceedings appertaining thereto expressly*  
28 *allows any such investment or reinvestment in such securities*  
29 *issued by the Federal Government other than federal securities.*

30 3. *A trust bank accounting for federal securities and other*  
31 *securities issued by the Federal Government in such escrow or*  
32 *trust may place the securities for safekeeping wholly or in part in*  
33 *any trust bank or trust banks within or without or both within and*  
34 *without this State.*

35 4. *A trust bank shall continuously secure any money placed*  
36 *in escrow or trust and not so invested or reinvested in federal*  
37 *securities and other securities issued by the Federal Government*  
38 *by a pledge in any trust bank or trust banks within or without or*  
39 *both within and without the State of federal securities in an*  
40 *amount at all times at least equal to the total uninvested amount of*  
41 *such money accounted for in such escrow or trust.*

42 5. *Such proceeds and investments in escrow or trust, together*  
43 *with any interest or other gain to be derived from any such*  
44 *investment, must be in an amount at all times at least sufficient to*  
45 *pay principal, interest, any prior redemption premiums due, and*



1 *any charges of the escrow agent or trustee and any other*  
2 *incidental expenses payable therefrom, except to the extent*  
3 *provision may have been previously otherwise made therefor, as*  
4 *such obligations become due at their respective maturities or due*  
5 *at designated prior redemption date or dates in connection with*  
6 *which the using agency has exercised or is obligated to exercise a*  
7 *prior redemption option on behalf of the State.*

8 *6. The computations made in determining such sufficiency*  
9 *must be verified by a certified public accountant licensed to*  
10 *practice in this State or in any other state.*

11 *7. Any purchaser of any refunding obligation issued*  
12 *pursuant to sections 9 to 14, inclusive, of this act is not responsible*  
13 *for the application of the proceeds of the refunding obligation by*  
14 *the State, the Board, the using agency or any of the officers,*  
15 *agents or employees of the State.*

16 *8. As used in this section, "federal securities" means bills,*  
17 *notes, certificates of indebtedness, bonds or other similar*  
18 *securities which are direct obligations of the United States or*  
19 *which are unconditionally guaranteed as to payment, both of*  
20 *principal and of interest, by the United States.*

21 **Sec. 12.** *Obligations for refunding and obligations for any*  
22 *other purpose authorized pursuant to sections 9 to 14, inclusive, of*  
23 *this act or by any other law may be issued separately or issued in*  
24 *combination in one series or more by the State in accordance with*  
25 *the provisions of sections 9 to 14, inclusive, of this act.*

26 **Sec. 13.** *Except as otherwise provided in sections 9 to 14,*  
27 *inclusive, of this act, the relevant provisions elsewhere herein*  
28 *appertaining generally to the issuance of obligations to defray the*  
29 *cost of any operating cost-savings measure are equally applicable*  
30 *in the authorization and issuance of refunding obligations,*  
31 *including, without limitation, their terms and security, the*  
32 *covenants and other provisions of the resolution authorizing the*  
33 *issuance of the obligations, or other instrument or proceedings*  
34 *appertaining thereto, and other aspects of the obligations.*

35 **Sec. 14.** *1. An obligation may not be refunded pursuant to*  
36 *sections 9 to 14, inclusive, of this act unless the holder of the*  
37 *obligation voluntarily surrenders the obligation for exchange or*  
38 *payment, or unless the obligation matures or is callable for prior*  
39 *redemption under its terms within 25 years after the date of*  
40 *issuance of the refunding obligations. Provision must be made for*  
41 *paying the securities within that period.*

42 *2. The maturity of any obligation refunded may not be*  
43 *extended beyond 25 years, or beyond 1 year next following the*  
44 *date of the last outstanding maturity, whichever limitation is later.*

45 *3. The principal amount of the refunding obligations may:*





1 (a) Exceed the principal amount of the refunded obligations;  
2 or

3 (b) Be less than or equal to the principal amount of the  
4 obligations being refunded if provision is duly and sufficiently  
5 made for their payment.

6 **Sec. 15.** *The determination of the using agency that the*  
7 *limitations imposed upon the issuance of obligations pursuant to*  
8 *NRS 333A.010 to 333A.150, inclusive, and sections 2 to 16,*  
9 *inclusive, of this act, including, without limitation, any obligations*  
10 *for funding or refunding obligations, have been met shall be*  
11 *conclusive in the absence of fraud or arbitrary and gross abuse of*  
12 *discretion regardless of whether the authorizing resolution or the*  
13 *obligations authorized by that resolution contain a recital as*  
14 *authorized by section 16 of this act.*

15 **Sec. 16.** *A resolution providing for the issuance of a*  
16 *performance contract, including, without limitation, an*  
17 *installment-purchase contract or lease-purchase contract or other*  
18 *proceedings appertaining thereto, may provide that the obligations*  
19 *contain a recital that the obligations are issued pursuant to NRS*  
20 *333A.010 to 333A.150, inclusive, and sections 2 to 16, inclusive, of*  
21 *this act, which recital is conclusive evidence of the validity of the*  
22 *obligations.*

23 **Sec. 17.** NRS 333A.010 is hereby amended to read as follows:  
24 333A.010 As used in NRS 333A.010 to 333A.150, inclusive,  
25 *and sections 2 to 16, inclusive, of this act,* unless the context  
26 otherwise requires, the words and terms defined in NRS 333A.020  
27 to 333A.070, inclusive, *and section 2 of this act* have the meanings  
28 ascribed to them in those sections.

29 **Sec. 18.** NRS 333A.080 is hereby amended to read as follows:  
30 333A.080 1. ~~Notwithstanding any provision of this chapter~~  
31 ~~and chapters 333 and 338 of NRS to the contrary, a using agency~~  
32 ~~may enter into a performance contract with a qualified service~~  
33 ~~company for the purchase and installation of an operating cost-~~  
34 ~~savings measure to reduce costs related to energy, water and the~~  
35 ~~disposal of waste, and related labor costs. Such a performance~~  
36 ~~contract may be in the form of an installment payment contract or a~~  
37 ~~lease purchase contract that is subject to the provisions of NRS~~  
38 ~~353.500 to 353.630, inclusive. Any operating cost-savings measures~~  
39 ~~put into place as a result of a performance contract must comply~~  
40 ~~with all applicable building codes.~~

41 ~~—2.]~~ The State Public Works Board shall determine those  
42 companies that satisfy the requirements of qualified service  
43 companies for the purposes of NRS 333A.010 to 333A.150,  
44 inclusive ~~[ ]~~, *and sections 2 to 16, inclusive, of this act.* In making  
45 such a determination, the State Public Works Board shall enlist the



1 assistance of the staffs of the Office of Energy within the Office of  
2 the Governor, the Buildings and Grounds Division of the  
3 Department of Administration and the Purchasing Division of the  
4 Department of Administration. The State Public Works Board shall  
5 prepare and issue a request for qualifications to not less than three  
6 potential qualified service companies.

7 ~~[3-]~~ 2. In sending out a request for qualifications, the State  
8 Public Works Board:

9 (a) Shall attempt to identify at least one potential qualified  
10 service company located within this State; and

11 (b) May consider whether and to what extent the companies to  
12 which the request for qualifications will be sent will use local  
13 contractors.

14 ~~[4-]~~ 3. The State Public Works Board shall ~~use objective~~  
15 *adopt, by regulation*, criteria to determine those companies that  
16 satisfy the requirements of qualified service companies. The  
17 ~~objective~~ criteria for evaluation must include *, without limitation*,  
18 the following areas as substantive factors to assess the capability of  
19 such companies:

20 (a) Design;

21 (b) Engineering;

22 (c) Installation;

23 (d) Maintenance and repairs associated with performance  
24 contracts;

25 (e) Experience in conversions to different sources of energy or  
26 fuel and other services related to operating cost-savings measures  
27 provided that is done in association with a comprehensive energy,  
28 water or waste disposal cost-savings retrofit;

29 (f) Monitoring projects after the projects are installed;

30 (g) Data collection and reporting of savings;

31 (h) Overall project experience and qualifications;

32 (i) Management capability;

33 (j) Ability to access long-term financing;

34 (k) Experience with projects of similar size and scope; and

35 (l) Such other factors determined by the State Public Works  
36 Board to be relevant and appropriate to the ability of a company to  
37 perform the ~~project~~ *projects*.

38 ➤ In determining whether a company satisfies the requirements of a  
39 qualified service company, the State Public Works Board shall also  
40 consider ~~the financial health of the company as evidenced by its~~  
41 ~~financial statements and ratings and~~ whether the company holds the  
42 appropriate licenses required for the design, engineering and  
43 construction which would be completed pursuant to a performance  
44 contract.



1 ~~[5.] 4. The State Public Works Board shall compile a list of~~  
2 ~~those companies that it determines satisfy the requirements of~~  
3 ~~qualified service companies. [The Purchasing Division of the~~  
4 ~~Department of Administration shall work directly with any using~~  
5 ~~agency interested in entering into a performance contract, using the~~  
6 ~~list of qualified service companies compiled by the State Public~~  
7 ~~Works Board. The Purchasing Division, in conjunction with the~~  
8 ~~using agency, shall ensure that each appropriate qualified service~~  
9 ~~company is notified of the using agency's interest in entering into a~~  
10 ~~performance contract and coordinate an opportunity for each such~~  
11 ~~qualified service company to:~~

12 ~~—(a) Perform a preliminary and comprehensive audit and~~  
13 ~~assessment of all potential operating cost savings measures that~~  
14 ~~might be implemented within the buildings of the using agency;~~  
15 ~~including any operating cost savings measures specifically~~  
16 ~~requested by the using agency; and~~

17 ~~—(b) Submit a proposal and make a related presentation to the~~  
18 ~~using agency for all such operating cost savings measures that the~~  
19 ~~qualified service company determines would be practicable to~~  
20 ~~implement.~~

21 ~~—6. The using agency shall:~~

22 ~~—(a) Evaluate the proposals and presentations made pursuant to~~  
23 ~~subsection 5; and~~

24 ~~—(b) Select a qualified service company,~~

25 ~~↪ pursuant to the provisions of this chapter and chapter 333 of~~  
26 ~~NRS, and any regulations adopted pursuant thereto, for evaluating~~  
27 ~~and awarding contracts.~~

28 ~~—7. A qualified service company selected by a using agency~~  
29 ~~pursuant to subsection 6 shall prepare a financial grade operational~~  
30 ~~audit. Except as otherwise provided in this subsection, the audit~~  
31 ~~prepared by the qualified service company becomes, upon~~  
32 ~~acceptance, a part of the final performance contract and the costs~~  
33 ~~incurred by the qualified service company in preparing the audit~~  
34 ~~shall be deemed to be part of the performance contract. If, after the~~  
35 ~~audit is prepared, the using agency decides not to execute the~~  
36 ~~performance contract, the using agency shall pay the qualified~~  
37 ~~service company that prepared the audit the costs incurred by the~~  
38 ~~qualified service company in preparing the audit, if the Legislature~~  
39 ~~has specifically appropriated money for that purpose. An~~  
40 ~~appropriation by the Legislature for the purchase and installation of~~  
41 ~~an operating cost savings measure creates no presumption that the~~  
42 ~~using agency for which the money was appropriated is required to~~  
43 ~~enter into such a contract.~~

44 ~~—8. The using agency shall retain the professional services of a~~  
45 ~~third-party consultant with the requisite technical expertise to assist~~



1 ~~the using agency in reviewing the operating cost savings measures~~  
2 ~~proposed by the qualified service company. The Purchasing~~  
3 ~~Division of the Department of Administration may procure~~  
4 ~~sufficient funding from the qualified service company, through~~  
5 ~~negotiation, to pay for the third party consultant. Such a third party~~  
6 ~~consultant must be certified by the Association of Energy Engineers~~  
7 ~~as a "Certified Energy Manager" or hold similar credentials from a~~  
8 ~~comparable nationally recognized organization. A third party~~  
9 ~~consultant retained pursuant to this subsection shall work on behalf~~  
10 ~~of the using agency in coordination with the qualified service~~  
11 ~~company.]~~

12 **Sec. 19.** NRS 333A.090 is hereby amended to read as follows:  
13 333A.090 1. *Any financing related to a performance*  
14 *contract must be approved by the Board.*

15 2. A performance contract may be financed through ~~[a]~~ :

16 (a) A person other than the qualified service company.

17 ~~[2.]~~ (b) *An installment-purchase contract or lease-purchase*  
18 *contract. Such an installment-purchase contract or lease-purchase*  
19 *contract is not subject to:*

20 (1) *The provisions of NRS 353.500 to 353.630, inclusive.*

21 (2) *Any requirement of competitive bidding or other*  
22 *restriction imposed on the procedure for the awarding of contracts*  
23 *or the procurement of goods or services.*

24 3. A performance contract may be structured as:

25 (a) A performance contract that guarantees operating cost  
26 savings, which includes, without limitation, the design and  
27 installation of equipment, the operation and maintenance, if  
28 applicable, of any of the operating cost-savings measures and the  
29 guaranteed annual savings which must meet or exceed the total  
30 annual contract payments to be made by the using agency, including  
31 *, without limitation,* any financing charges to be incurred by the  
32 using agency over the life of the performance contract. The using  
33 agency may require that these savings be verified ~~[annually or over]~~  
34 :

35 (1) *When the work required by the performance contract is*  
36 *completed and 1 year after that work is completed; or*

37 (2) *Over a sufficient period that demonstrates savings.*

38 (b) A shared-savings contract which includes provisions  
39 mutually agreed upon by the using agency and qualified service  
40 company as to the negotiated rate of payments based upon operating  
41 cost savings and a stipulated maximum consumption level of energy  
42 or water, or both energy and water, over the life of the contract.

43 **Sec. 20.** NRS 333A.100 is hereby amended to read as follows:

44 333A.100 1. Notwithstanding any provision of NRS  
45 333A.010 to 333A.150, inclusive, *and sections 2 to 16, inclusive, of*



1 *this act* to the contrary, a performance contract entered into pursuant  
2 to NRS 333A.010 to 333A.150, inclusive, *and sections 2 to 16,*  
3 *inclusive, of this act* does not create a debt for the purposes of  
4 Section 3 of Article 9 of the Nevada Constitution.

5 2. Except as otherwise provided in this section, the term of a  
6 performance contract may extend beyond the biennium in which the  
7 contract is executed, provided that the performance contract  
8 contains a provision which states that all obligations of the State  
9 under the performance contract are extinguished at the end of any  
10 fiscal year if the Legislature fails to provide an appropriation to the  
11 using agency for the ensuing fiscal year for payments to be made  
12 under the performance contract. If the Legislature fails to  
13 appropriate money to a using agency for a performance contract,  
14 there is no remedy against the State, except that if a security interest  
15 in any property was created pursuant to the performance contract,  
16 the holder of such a security interest may enforce the security  
17 interest against that property. ~~[The]~~ *Except as otherwise provided in*  
18 *section 14 of this act, the* term of a performance contract must not  
19 exceed 15 years ~~[ ]~~ *beyond the date on which the work required by*  
20 *the performance contract is completed.*

21 3. The length of a performance contract may reflect the useful  
22 life of the operating cost-savings measure being installed or  
23 purchased under the performance contract.

24 **Sec. 21.** NRS 333A.130 is hereby amended to read as follows:

25 333A.130 1. During the term of a performance contract, the  
26 qualified service company shall monitor the reductions in energy or  
27 water consumption and other operating cost savings attributable to  
28 the operating cost-savings measure purchased or installed under the  
29 performance contract, and shall ~~[, at least once a year or at such~~  
30 ~~other intervals specified in the performance contract,]~~ prepare and  
31 provide a report to the using agency documenting the performance  
32 of the operating cost-savings measures ~~[ ]~~:

33 *(a) At the time that the work required by the performance*  
34 *contract is completed and 1 year after that work is completed; or*

35 *(b) At such other intervals as specified in the performance*  
36 *contract.*

37 2. A qualified service company and the using agency may  
38 agree to make modifications in the calculation of savings based on:

39 (a) Subsequent material changes to the baseline consumption of  
40 energy or water identified at the beginning of the term of the  
41 performance contract.

42 (b) A change in utility rates.

43 (c) A change in the number of days in the billing cycle of a  
44 utility.

45 (d) A change in the total square footage of the building.



1 (e) A change in the operational schedule, and any corresponding  
2 change in the occupancy and indoor temperature, of the building.

3 (f) A material change in the weather.

4 (g) A material change in the amount of equipment or lighting  
5 used at the building.

6 (h) Any other change which reasonably would be expected to  
7 modify the use of energy or the cost of energy.

8 **Sec. 22.** NRS 338.080 is hereby amended to read as follows:

9 338.080 None of the provisions of NRS 338.020 to 338.090,  
10 inclusive, apply to:

11 1. Any work, construction, alteration, repair or other  
12 employment performed, undertaken or carried out, by or for any  
13 railroad company or any person operating the same, whether such  
14 work, construction, alteration or repair is incident to or in  
15 conjunction with a contract to which a public body is a party, or  
16 otherwise.

17 2. Apprentices recorded under the provisions of chapter 610 of  
18 NRS.

19 3. *Inmates of custodial or penal institutions.*

20 4. Any contract for a public work whose cost is less than  
21 \$100,000. A unit of the project must not be separated from the total  
22 project, even if that unit is to be completed at a later time, in order to  
23 lower the cost of the project below \$100,000.

24 **Sec. 23.** This act becomes effective on July 1, 2005.





