

Amendment No. CA15

Conference Committee Amendment to (BDR 23-149)
Assembly Bill No. 240 Second Reprint

Proposed by: Conference Committee

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

TMC



Date: 6/6/2011

A.B. No. 240—Revises provisions governing contracts for services entered into by certain public employers. (BDR 23-149)



ASSEMBLY BILL NO. 240—ASSEMBLYMEN SMITH, CONKLIN, OCEGUERA, BOBZIEN,
KIRKPATRICK; AIZLEY, ATKINSON, DIAZ, GOICOECHEA, GRADY, HARDY,
HICKEY, HOGAN AND MASTROLUCA

MARCH 7, 2011

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing contracts for services entered into by
certain public employers. (BDR 23-149)

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 agencies; revising the restrictions on contracts with or
employment of former or current state employees by a state agency;
providing certain exceptions; requiring state agencies to report all
contracts for services as part of the budget process; requiring that a
contractor with a state agency be in active and good standing with the
Secretary of State; requiring certain reporting to the 77th Session of
the Legislature; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law restricts the employment of consultants by public agencies and requires the
2 approval of certain contracts with consultants by the Interim Finance Committee. (NRS
3 284.1729) **Section 1** of this bill expands those restrictions to apply to all contracts to provide
4 services to state agencies, revises the exceptions to the restrictions and requires approval of
5 the State Board of Examiners rather than the Interim Finance Committee of contracts subject
6 to the restrictions. **Section 1** also prohibits a state agency from entering into a contract with a
7 person for services without ensuring that the person is in active and good standing with the
8 Secretary of State. **Section 1** also provides that certain provisions governing state purchasing
9 apply to such contracts. **Section 2** of this bill requires state agencies to report all contracts for
10 services as part of the budget process instead of only reporting contracts with consultants and
11 temporary employment services. **Section 3 of this bill** moves the reporting requirements for
12 school districts regarding consultants to the chapter which specifically governs school
13 districts. Section 3.5 of this bill requires certain reporting to the 77th Session of the
14 Legislature concerning certain contracts for services entered into by state agencies.

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

1 **Section 1.** NRS 284.1729 is hereby amended to read as follows:

2 284.1729 1. Except as otherwise provided in this section, a department,
3 division or other agency of this State shall not ~~{employ, by}~~ **enter into a** contract ~~{or~~
4 ~~otherwise,}~~ **with** a person to provide services ~~{as a consultant}~~ for the agency if:

5 (a) The person is a current employee of an agency of this State;

6 (b) The person is a former employee of an agency of this State and less than ~~{1~~
7 ~~year has}~~ **2 years have** expired since the termination of the person's employment
8 with the State ~~{,}~~ **;** ~~or~~

9 (c) ~~{Except as otherwise provided in paragraph (d), the term of the contract is~~
10 ~~for more than 2 years, or is amended or otherwise extended beyond 2 years; or~~

11 ~~—(d)}~~ The person is employed by the Department of Transportation for a
12 transportation project that is ~~{federally}~~ **entirely** funded ~~by federal money~~ and the
13 term of the contract is for more than 4 years, ~~{or is amended or otherwise extended~~
14 ~~beyond 4 years.}~~

15 ~~↳~~ unless, before the ~~{person is employed}~~ **contract is executed** by the agency, the
16 ~~{Interim Finance Committee}~~ **State Board of Examiners** approves the employment
17 of the person. **The requirements of this subsection apply to any person employed**
18 **by a business or other entity that enters into a contract to provide services for a**
19 **department, division or agency of this State if the person will be performing or**
20 **producing the services for which the business or entity is employed.**

21 2. The provisions of paragraph (a) or (b) of subsection 1 apply to employment
22 through a temporary employment service. A temporary employment service
23 providing employees for a state agency shall provide the agency with the names of
24 the employees to be provided to the agency. The ~~{Interim Finance Committee}~~
25 **State Board of Examiners** shall not approve ~~{the employment of a consultant}~~ **a**
26 **contract** pursuant to paragraph (b) of subsection 1 unless the ~~{Interim Finance~~
27 ~~Committee}~~ **Board** determines that one or more of the following circumstances
28 exist:

29 (a) The person provides services that are not provided by any other employee
30 of the agency or for which a critical labor shortage exists; or

31 (b) A short-term need or unusual economic circumstance exists for the agency
32 to ~~{employ}~~ **contract with** the person. ~~{as a consultant.}~~

33 3. A department, division or other agency of this State may ~~{employ}~~ **contract**
34 **with** a person pursuant to paragraph (a) or (b) of subsection 1 without obtaining the
35 approval of the ~~{Interim Finance Committee}~~ **State Board of Examiners** if the term
36 of ~~{employment}~~ **the contract** is for less than 4 months and the executive head of
37 the department, division or agency determines that an emergency exists which
38 necessitates the ~~{employment.}~~ **contract**. If a department, division or agency
39 ~~{employs}~~ **contracts with** a person pursuant to this subsection, the department,
40 division or agency shall ~~{include in the report to the Interim Finance Committee~~
41 ~~pursuant to subsection 4}~~ **submit a copy of the contract and** a description of the
42 emergency ~~{to the State Board of Examiners, which shall review the contract~~
43 ~~and the description of the emergency and notify the department, division or~~
44 ~~agency whether the State Board of Examiners would have approved the contract~~
45 ~~if it had not been entered into pursuant to this subsection.~~

46 4. Except as otherwise provided in subsection ~~{7,}~~ **9**, a department, division or
47 other agency of this State shall, **not later than 10 days after the end of each fiscal**
48 **quarter**, report to the Interim Finance Committee ~~{whenever it employs, by contract}~~

1 ~~or otherwise.] concerning all contracts [a person]~~ to provide services ~~[as a~~
2 ~~consultant]~~ for the agency *that were entered into by the agency during the fiscal*
3 *quarter with a person* who is a *current or* former employee of a department,
4 division or other agency of this State.

5 5. Except as otherwise provided in subsection ~~[7.] 9,~~ a department, division or
6 other agency of this State shall not contract with a temporary employment service
7 unless the contracting process is controlled by rules of open competitive bidding.

8 6. Each board or commission of this State ~~[, each school district in this State]~~
9 and each institution of the Nevada System of Higher Education that employs a
10 consultant shall, at least once every 6 months, submit to the Interim Finance
11 Committee a report setting forth:

12 (a) The number of consultants employed by the board, commission ~~[, school~~
13 ~~district]~~ or institution;

14 (b) The purpose for which the board, commission ~~[, school district]~~ or
15 institution employs each consultant;

16 (c) The amount of money or other remuneration received by each consultant
17 from the board, commission ~~[, school district]~~ or institution; and

18 (d) The length of time each consultant has been employed by the board,
19 commission ~~[, school district]~~ or institution.

20 7. *A department, division or other agency of this State, including a board or*
21 *commission of this State and each institution of the Nevada System of Higher*
22 *Education ~~[, shall] :~~*

23 *(a) Shall make every effort to limit the number of contracts it enters into with*
24 *persons to provide services which have a term of more than 2 years and which*
25 *are in the amount of less than \$1 million; and*

26 *(b) Shall not enter into a contract with a person to provide services without*
27 *ensuring that the person is in active and good standing with the Secretary of*
28 *State.*

29 8. *The provisions of chapter 333 of NRS that are not in conflict or*
30 *otherwise inconsistent with this section apply to a contract entered into pursuant*
31 *to this section.*

32 9. The provisions of subsections 1 to 5, inclusive, do not apply to: ~~[the:]~~

33 (a) *The Nevada System of Higher Education or a board or commission of this*
34 *State.*

35 (b) ~~[Employment]~~ *The employment* of professional engineers by the
36 Department of Transportation if those engineers are employed for a transportation
37 project that is ~~[federally funded]~~.

38 ~~8. For the purposes of this section, "consultant" includes any person~~
39 ~~employed by a business or other entity that is providing consulting services if the~~
40 ~~person will be performing or producing the work for which the business or entity is~~
41 ~~employed.] entirely funded by federal money.~~

42 (c) *Contracts in the amount of \$1 million or more entered into:*

43 (1) *Pursuant to the State Plan for Medicaid established pursuant to NRS*
44 *422.271.*

45 (2) *For financial services.*

46 (3) *Pursuant to the Public Employees' Benefits Program.*

47 (d) *The employment of a person by a business or entity which is a provider of*
48 *services under the State Plan for Medicaid and which provides such services on a*
49 *fee-for-service basis or through managed care.*

50 **Sec. 2.** NRS 353.210 is hereby amended to read as follows:

51 353.210 1. Except as otherwise provided in subsection 6, on or before
52 September 1 of each even-numbered year, all departments, institutions and other

1 agencies of the Executive Department of the State Government, and all agencies of
2 the Executive Department of the State Government receiving state money, fees or
3 other money under the authority of the State, including those operating on money
4 designated for specific purposes by the Nevada Constitution or otherwise, shall
5 prepare, on blanks furnished them by the Chief, and submit to the Chief:

6 (a) The number of positions within the department, institution or agency that
7 have been vacant for at least 12 months, the number of months each such position
8 has been vacant and the reasons for each such vacancy;

9 (b) Any existing contracts *for services* the department, institution or agency
10 has with ~~consultants or~~ temporary employment services ~~or~~ *or other persons*, the
11 proposed expenditures for such contracts in the next 2 fiscal years and the reasons
12 for the use of such ~~consultants or~~ services; and

13 (c) Estimates of their expenditure requirements, together with all anticipated
14 income from fees and all other sources, for the next 2 fiscal years compared with
15 the corresponding figures of the last completed fiscal year and the estimated figures
16 for the current fiscal year.

17 2. The Chief shall direct that one copy of the forms submitted pursuant to
18 subsection 1, accompanied by every supporting schedule and any other related
19 material, be delivered directly to the Fiscal Analysis Division of the Legislative
20 Counsel Bureau on or before September 1 of each even-numbered year.

21 3. The Budget Division of the Department of Administration shall give
22 advance notice to the Fiscal Analysis Division of the Legislative Counsel Bureau of
23 any conference between the Budget Division of the Department of Administration
24 and personnel of other state agencies regarding budget estimates. A Fiscal Analyst
25 of the Legislative Counsel Bureau or his or her designated representative may
26 attend any such conference.

27 4. The estimates of expenditure requirements submitted pursuant to
28 subsection 1 must be classified to set forth the data of funds, organizational units,
29 and the character and objects of expenditures, and must include a mission statement
30 and measurement indicators for each program. The organizational units may be
31 subclassified by functions and activities, or in any other manner at the discretion of
32 the Chief.

33 5. If any department, institution or other agency of the Executive Department
34 of the State Government, whether its money is derived from state money or from
35 other money collected under the authority of the State, fails or neglects to submit
36 estimates of its expenditure requirements as provided in this section, the Chief may,
37 from any data at hand in the Chief's office or which the Chief may examine or
38 obtain elsewhere, make and enter a proposed budget for the department, institution
39 or agency in accordance with the data.

40 6. Agencies, bureaus, commissions and officers of the Legislative
41 Department, the Public Employees' Retirement System and the Judicial Department
42 of the State Government shall submit to the Chief for his or her information in
43 preparing the proposed executive budget the budgets which they propose to submit
44 to the Legislature.

45 **Sec. 3.** Chapter 391 of NRS is hereby amended by adding thereto a new
46 section to read as follows:

47 *Each school district in this State that employs a consultant shall, at least once*
48 *every 6 months, submit to the Interim Finance Committee a report setting forth:*

- 49 1. *The number of consultants employed by the school district;*
- 50 2. *The purpose for which the school district employs each consultant;*
- 51 3. *The amount of money or other remuneration received by each consultant*
52 *from the school district; and*

1 *4. The length of time each consultant has been employed by the school*
2 *district.*

3 Sec. 3.5. Each department, division or other agency of this State,
4 including a board or commission of this State and each institution of the
5 Nevada System of Higher Education, shall, on or before February 1, 2013,
6 submit to the Director of the Legislative Counsel Bureau for transmittal to the
7 77th Session of the Legislature a report that:

8 1. Lists each contract the department, division or agency has entered into
9 with persons to provide services which has a term of more than 2 years and
10 which is in the amount of less than \$1 million; and

11 2. Sets forth a description of the necessity of entering into each contract,
12 including, without limitation, the necessity of the contract having a term of
13 more than 2 years.

14 **Sec. 4.** This act becomes effective on July 1, 2011.