



**DEPARTMENT OF ADMINISTRATION**

209 E. Musser Street, Room 200  
Carson City, Nevada 89701-4298  
(775) 684-0222  
Fax (775) 684-0260  
<http://www.budget.state.nv.us/>

Date: December 23, 2011  
To: Stephanie Day, Deputy Director  
Department of Administration  
From: Carla Watson, Budget Analyst  
Budget and Planning Division  
Subject: BOARD OF EXAMINERS **ACTION** ITEM

The following describes an action item submitted for placement on the agenda of the next Board of Examiners' meeting.

**DEPARTMENT OF TRANSPORTATION – ADMINISTRATION**

Nature of the Request:

**REQUEST FOR BLANKET PRE-APPROVALS FOR CONTRACTING WITH FORMER EMPLOYEES WHO MEET CERTAIN CRITERIA**

Pursuant to the State Administration Manual (SAM) 323 (2), the Department of Transportation seeks a favorable Board of Examiner's decision regarding pre-approvals for former employees who work in seasonal, intermittent or other temporary capacities if the person will be performing or producing services for which the business or entity is employed. The department is specifically requesting blanket pre-approvals for the following positions:

- Summer interns hired through the University System
- Seasonal employees hired for winter snow plow operations
- If positions are relocated and incumbents choose not to move and they leave the department, there is an opportunity for these individuals to seek employment with a consulting firm currently under contract with the department. These prior department employees may be assigned to work on NDOT jobs, which could result in the retention of expertise and experience.

Recommendation:

Recommend approval.

REVIEWED: _____ ACTION ITEM: _____
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STATE OF NEVADA  
 DEPARTMENT OF TRANSPORTATION  
 1263 S. Stewart Street  
 Carson City, Nevada 89712  
 December 14, 2011

BRIAN SANDOVAL  
 Governor

SUSAN MARTINOVICH, P.E., Director

In Reply Refer to:

Mr. Jeff Mohlenkamp, Director  
 Department of Administration  
 Blasdel Building  
 209 E. Musser Street  
 Carson City, NV 89701

**RECEIVED**

DEC 14 2011

Re: Board of Examiners  
 AB 240 Exceptions

DEPARTMENT OF ADMINISTRATION  
 OFFICE OF THE DIRECTOR  
 BUDGET AND PLANNING DIVISION

Dear Director Mohlenkamp:

During the 2011 Legislature session AB240 was enacted. This legislation established criteria and identified under what conditions a person could work for the State of Nevada after leaving State service. From my understanding, one of the intents was to eliminate "double dipping" by keeping individuals from being paid a retirement in addition to collecting a salary as a consultant to do the same work. Subsequently the Board of Examiners at their October meeting, established parameters for implementing the legislation.

As per allowances made as part of the bill and established by the BOE under SAM 323 (2.), I am seeking blanket pre-approvals from BOE for former employees who work in seasonal, intermittent or other temporary capacities. I am also seeking approval for exceptions for employees who are leaving the Department because their positions have been relocated to a location more than 50 miles.

- Summer interns hired through the university system.

These students are valuable in developing our future work force. We provide a service to them and a partnership with the universities and colleges by providing on-the-job training. They typically work for the Department during the summer months. They do not receive any benefits or retirement. Some have subsequently come to work for NDOT after graduation and have become valued employees. Under the current provisions of the bill these summer intern students would be excluded from working on an NDOT project, should they be hired to work for a local consulting firm after graduation.

- Seasonal Employees hired for winter snow plow operations.

NDOT utilizes construction aid positions to provide temporary assistance help during peak operation periods. These are 6-month positions used for a variety of seasonal work, most predominately being snow removal across the state. This ability to hire temporary positions allows NDOT to quickly respond during weather events 24-hour 7-days a week, without the need to hire full time employees with full benefits. Many of these temporary employees are seasonal workers from other jobs that are shut down for the winter, typically construction, or just individuals seeking extra part-time employment

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(not current NDOT workers). Drivers with Commercial Drivers License certification (CDL's) are in demand. NDOT may be in a contractual arrangement with a construction firm that may hire one of these individuals. It is our understanding that these drivers are hired temporarily by construction firms to meet their needs as well.

- Relocated Positions.

The Right of Way Division evaluated their organization structure with a view toward customer service and efficiency. This division within the Department of Transportation is a key division of which all right of way acquisitions and actions must process through. There are many state and federal rules and regulations associated with the acquisition processes involving millions of dollars. This is also a division that works directly with people. They make the offers, negotiate, and if necessary help in relocation efforts all within the parameters of the rules and regulations.

To help with resources and in training a constantly changing staff, I supported the recommendation of the Chief Right of Way agent to relocate six agent positions to Carson City headquarters from Las Vegas. This move provided those personnel with direct support of ROW Engineering, appraisers, review and other staff to help them carry out their duties. It also gives them closer proximity to the design team to work through issues of mitigation and actual purpose and need of right of way acquisitions.

Working closely with NDOT Human Resources and State Personnel, the individuals were notified of the change and given the opportunity to move with their positions. Several for personnel reasons, cannot move and are choosing to leave the Department. There is opportunity for these individuals to seek employment with a consulting firm currently under contract with the Department hired to acquire right of way for Project NEO. These staff wants to be able to work on NDOT jobs and we think this is an asset to the Department since it is an opportunity to retain expertise and experience. Project NEON is to undertake I-15 improvements from Sahara to the Spaghetti Bowl in Clark County – Est. \$1.2 billion. No one has been hired date.

Additionally, while NDOT does not have a specific need to seek exception, there may also be consideration for exception to include: positions that were funded by grants that were for a fixed period of time; persons who may be laid off due to position elimination/budget considerations; and persons who do not successfully complete their probationary period.

I have discussed the first two exceptions with Assemblywoman Smith who is in agreement with these conditions.

I respectfully ask that this item be put on the BOE agenda for consideration of action. Thank you.

Sincerely,



Susan Martinovich, P.E.  
Director

# **323 – Contracts with State Employees, Former State Employees and Secondary Employment**

This section relates to current or former employees who contract with the State to provide services, and certain contracts with business entities who employ current or former state employees. Additionally, this section addresses the responsibilities of current employees who hold outside employment.

1. Definitions of Employee For purposes of this section,

- a. Current employee is a person who is an employee of an agency of the State;
- b. Former employee is a person who was an employee of any agency of the State at any time within 24 months preceding the commencement date of the proposed contract.

Note: Employees of the Nevada System of Higher Education (NSHE), Boards and Commissions are considered State employees.

2. BOE Pre-Approval Required

Before any department, division or agency of the State may execute a contract for services with a current employee, a former employee, or a person employed by the Nevada Department of Transportation (NDOT) for transportation projects that are entirely funded by federal money and the term of the contract exceeds 4 years, the Board of Examiners (BOE) must give pre-approval for entering into a contract with that person. (As noted in section 5 below, contracts executed by NSHE, Boards and Commissions and certain other contracts do not require BOE pre-approval) This pre-approval does not constitute approval of the contract terms, but only approval to contract with the particular current employee or former employee.

A limited exception exists for contracts less than four months determined by the department, division or agency to constitute an emergency situation necessitating a contract with a current or former employee.

A department, division or agency of the State may seek blanket pre-approvals from BOE for former employees who work in seasonal, intermittent or other temporary capacities if the person will be performing or producing services for which the business or entity is employed. For example, five seasonal snow plow drivers terminate their employment at the end of winter. The drivers are later hired by construction companies to drive trucks as part of contracts the companies have with a State agency; in this instance, BOE pre-approval for entering into each contract is required unless the State agency has a blanket pre-approval for the former employees.

### 3. Standards for Pre-Approval of Contracts with Temporary Employment Services and Current or Former Employees

If an agency will be using a temporary worker to be supplied through a contract with a temporary employment service, and that person is a current or former state employee, the Board of Examiners shall not approve the use of the temporary worker unless the Board of Examiners determines that:

- a. The person provides services not provided by any other employee of the agency or for which a critical labor shortage exists; or
- b. A short-term need or unusual economic circumstance exists.

The Board of Examiners will apply these standards to all proposed contracts for services involving current employees or former employees.

### 4. Contracts Potentially Requiring BOE Pre-Approval

Contracts affecting current or former employees and requiring Board of Examiners pre-approval may take the form of:

- a. A direct contract between a department, division or agency of the State and a current employee or former employee.
- b. A contract with a business or any other entity that employs a current or former employee who will be performing or producing the contracted services
- c. A contract with a temporary employment service that provides a former state employee to the State to perform services as a temporary worker.

A person who is a current or former employee may not evade the intent of this section by performing contract work for the State through creation of a corporation or other business entity.

### 5. Exemptions

The requirements for BOE pre-approval of contracts with current employees or former employees do not apply to the following contracts:

- a. A contract with a current employee or former employee for 4 months or less, where the executive head of the department/division/agency determines an emergency exists that necessitates the contract. (Note: a copy of the contract and a description of the emergency must be submitted to the BOE. BOE shall review the contract and the description of the emergency and notify the department, division or agency utilizing this emergency exception whether the BOE would have approved the contract).

b. Contracts with Professional engineers employed by the Department of Transportation for a transportation project entirely funded by federal funds.

c. Contracts with Nevada System of Higher Education, or a board or commission of the State

d. Contracts with a person employed by an entity, which is a provider of services for Medicaid, and which provides services on a fee for service basis or through managed care.

e. Contracts for \$1 million or more entered into:

i. Pursuant to the State Plan for Medicaid established pursuant to NRS 422.271

ii. For financial services

iii. Pursuant to the Public Employees' Benefits Program

## 6. Contracting Agency Requirements

Complete Contract Authorization – The agency must complete an Authorization form (available on the Purchasing Division's website) requesting authorization to contract with a current or former employee and receive approval from the BOE before entering into a contract for services with a current employee or former employee, or with an entity that will be having a current employee or former employee perform the contracted services.

Contract Approval Process - If the contract is going to be with a:

- Current employee
- Former employee
- Person who is employed by the Department of Transportation for a transportation project, which is entirely federally funded, and the term of the contract is over 4 years
- Business employing a current or former employee who will be performing or producing the contracted services

The following flowchart summarizes steps to be performed

Flow Chart

## 7. Additional Requirements For Current Employees

a. Time Keeping

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i. State time tracking - Current employees, during the pay period they perform contract or provider agreement work with the State, must include in their time sheet notes for each day, the specific times they used flex, sick, compensatory time, annual leave, etc. If contract work is performed during their standard shift, the employee must document the specific times in the notes and explain how this was performed during flex time, compensatory leave, annual leave, or non-state paid time.

ii. Contract time tracking - The contracted employee must document all time (date and time of day) spent working on the contract and include it in the invoice. Additionally, the employee must provide a supervisor approved copy of their State time sheet with their invoice.

b. Contractor Oversight

i. Current employee's supervisor's responsibilities - The employee's supervisor must compare the employee's NEATS time sheet to the times per the contract invoice to ensure contract work was not done during state time. The supervisor must sign the time sheet and the invoice certifying that contract work was performed during flex time, compensatory leave, annual leave, or non-state paid time.

ii. Contracting agency's responsibilities - The Contract Monitor must reconcile the current employee's approved NEATS time sheets to the times noted on the invoices to ensure contract work was performed during flex time, compensatory leave, annual leave, or non-state paid time.

c. Secondary Employment

Any employee with secondary employment must complete a Secondary Employment Disclosure form (available on the Purchasing Division's website) and submit it for approval by the agency head. When an employee obtains or has a change in their secondary employment, they must submit a Secondary Employment Disclosure form within 30 days of acceptance and must renew the Disclosure by July 1st of each year. The agency head must review the form for conflicts with State employment. Approved forms should be filed in the employee's personnel file.

Secondary employment includes but not limited to contracts with the State, work with temporary employment agencies, and provider agreements.