

ASSEMBLY BILL NO. 72—ASSEMBLYMEN MARVEL AND HETTRICK

FEBRUARY 6, 2001

Referred to Committee on Ways and Means

SUMMARY—Makes plans, drawings, specifications and other instruments of service prepared by design professionals for public works projects property of State of Nevada. (BDR 28-31)

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

~

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public works; making plans, drawings, specifications, maps, reports and other instruments of service prepared by a design professional for a public work the property of the State of Nevada; authorizing the reuse of such plans, drawings, specifications, maps, reports and other instruments of service for another public work; requiring that a design professional waive his right to ownership of the copyright for the plans, drawings, specifications, maps, reports and other instruments of service prepared for a public work; 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 338 of NRS is hereby amended by adding thereto a  
2     new section to read as follows:

3     1. *If a public body enters into a contract with a design professional*  
4     *for the provision of services in connection with a public work, including,*  
5     *without limitation, a contract entered into pursuant to NRS 338.1711 to*  
6     *338.1727, inclusive, the plans, drawings, specifications, maps, reports*  
7     *and other instruments of service prepared pursuant to the contract*  
8     *become the property of the State of Nevada. A public body may reuse*  
9     *such plans, drawings, specifications, maps, reports and other instruments*  
10    *of service for another public work without paying any additional*  
11    *compensation to the design professional who prepared them.*

12    2. *A contract with a design professional for the provision of services*  
13    *in connection with a public work must include a clause which provides*  
14    *that the design professional waives his right to own the copyright for or*  
15    *any common law, statutory or other reserved right in the plans, drawings,*  
16    *specifications, maps, reports and other instruments of service prepared*



1 *pursuant to that contract. Any such contract that does not contain such a*  
2 *clause is void.*

3 *3. If a public body proposes to reuse plans, drawings, specifications,*  
4 *maps, reports and other instruments of service prepared pursuant to a*  
5 *contract with a design professional for the provision of services in*  
6 *connection with a public work for another public work, another design*  
7 *professional who is employed by or has contracted with the public agency*  
8 *may modify the plans, drawings, specifications, maps, reports and other*  
9 *instruments of service for the other public work.*

10 *4. If a public body reuses plans, drawings, specifications, maps,*  
11 *reports or other instruments of service pursuant to this section, the*  
12 *design professional who prepared the plans, drawings, specifications,*  
13 *maps, reports or other instruments of service is not liable for injury or*  
14 *damage resulting from such reuse if the design professional is not a*  
15 *party to the contract for the public work for which the plans, drawings,*  
16 *specifications, maps, reports or the instruments of service will be reused.*

17 **Sec. 2.** NRS 338.010 is hereby amended to read as follows:

18 338.010 As used in this chapter:

19 1. "Day labor" means all cases where public bodies, their officers,  
20 agents or employees, hire, supervise and pay the wages thereof directly to a  
21 workman or workmen employed by them on public works by the day and  
22 not under a contract in writing.

23 2. *"Design professional" means a person with a professional license*  
24 *or certificate issued pursuant to chapter 623, 623A or 625 of NRS.*

25 3. "Eligible bidder" means a person who is:

26 (a) Found to be a responsible and responsive contractor by a local  
27 government which requests bids for a public work in accordance with  
28 paragraph (b) of subsection 1 of NRS 338.1373; or

29 (b) Determined by a public body which awarded a contract for a public  
30 work pursuant to NRS 338.1375 to 338.1389, inclusive, to be qualified to  
31 bid on that contract pursuant to NRS 338.1379 or was exempt from  
32 meeting such qualifications pursuant to NRS 338.1383.

33 ~~13-1~~ 4. "Local government" means every political subdivision or other  
34 entity which has the right to levy or receive money from ad valorem or  
35 other taxes or any mandatory assessments, and includes, without limitation,  
36 counties, cities, towns, boards, school districts and other districts organized  
37 pursuant to chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS,  
38 NRS 450.550 to 450.750, inclusive, and any agency or department of a  
39 county or city which prepares a budget separate from that of the parent  
40 political subdivision.

41 ~~14-1~~ 5. "Offense" means failing to:

42 (a) Pay the prevailing wage required pursuant to this chapter;  
43 (b) Pay the contributions for unemployment compensation required  
44 pursuant to chapter 612 of NRS; or  
45 (c) Provide and secure compensation for employees required pursuant  
46 to chapters 616A to 617, inclusive, of NRS.

47 ~~15-1~~ 6. "Prime contractor" means a person who:

48 (a) Contracts to complete an entire project;  
49 (b) Coordinates all work performed on the entire project;



- 1 (c) Uses his own work force to perform all or a part of the construction,  
2 repair or reconstruction of the project; and  
3 (d) Contracts for the services of any subcontractor or independent  
4 contractor or is responsible for payment to any contracted subcontractors or  
5 independent contractors.
- 6 ~~16-1~~ 7. "Public body" means the state, county, city, town, school  
7 district or any public agency of this state or its political subdivisions  
8 sponsoring or financing a public work.
- 9 ~~17-1~~ 8. "Public work" means any project for the new construction,  
10 repair or reconstruction of:  
11 (a) A project financed in whole or in part from public money for:  
12 (1) Public buildings;  
13 (2) Jails and prisons;  
14 (3) Public roads;  
15 (4) Public highways;  
16 (5) Public streets and alleys;  
17 (6) Public utilities which are financed in whole or in part by public  
18 money;  
19 (7) Publicly owned water mains and sewers;  
20 (8) Public parks and playgrounds;  
21 (9) Public convention facilities which are financed at least in part  
22 with public funds; and  
23 (10) Any other publicly owned works and property whose cost as a  
24 whole exceeds \$20,000. Each separate unit that is a part of a project is  
25 included in the cost of the project to determine whether a project meets that  
26 threshold.
- 27 (b) A building for the University and Community College System of  
28 Nevada of which 25 percent or more of the costs of the building as a whole  
29 are paid from money appropriated by this state or from federal money.
- 30 ~~18-1~~ 9. "Wages" means:  
31 (a) The basic hourly rate of pay; and  
32 (b) The amount of pension, health and welfare, vacation and holiday  
33 pay, the cost of apprenticeship training or other similar programs or other  
34 bona fide fringe benefits which are a benefit to the workman.
- 35 ~~19-1~~ 10. "Workman" means a skilled mechanic, skilled workman,  
36 semiskilled mechanic, semiskilled workman or unskilled workman. The  
37 term does not include a ~~["design professional" as that term is defined in~~  
38 ~~NRS 338.155-1~~ *design professional*.
- 39 **Sec. 3.** NRS 338.155 is hereby amended to read as follows:  
40 338.155 ~~1-1~~ If a public body enters into a contract with a design  
41 professional for the provision of services in connection with a public work,  
42 the contract:  
43 ~~1(a)-1~~ 1. Must set forth:  
44 ~~1(1)-1~~ (a) The specific period within which the public body must pay  
45 the design professional.  
46 ~~1(2)-1~~ (b) The specific period and manner in which the public body  
47 may dispute a payment or portion thereof that the design professional  
48 alleges is due.



1 ~~(3)~~ (c) The terms of any penalty that will be imposed upon the  
2 public body if the public body fails to pay the design professional within  
3 the specific period set forth in the contract pursuant to ~~subparagraph (1)~~.  
4 ~~(4)~~ paragraph (a).  
5 (d) That the prevailing party in an action to enforce the contract is  
6 entitled to reasonable attorney's fees and costs.  
7 ~~(b)~~ 2. May set forth the terms of any discount that the public body  
8 will receive if the public body pays the design professional within the  
9 specific period set forth in the contract pursuant to ~~subparagraph (1) of~~  
10 paragraph (a) ~~1~~.  
11 ~~2. As used in this section, "design professional" means a person with a~~  
12 ~~professional license or certificate issued pursuant to chapter 623, 623A or~~  
13 ~~625 of NRS, 1 of subsection 1.~~  
14 **Sec. 4.** NRS 623.270 is hereby amended to read as follows:  
15 623.270 1. The board may place the holder of any certificate of  
16 registration issued pursuant to this chapter on probation, reprimand him,  
17 fine him not more than \$10,000, suspend or revoke his license, impose the  
18 costs of investigation and prosecution upon him or take any combination of  
19 these disciplinary actions, if proof satisfactory to the board is presented  
20 that:  
21 (a) The certificate was obtained by fraud or concealment of a material  
22 fact.  
23 (b) The holder of the certificate has been found guilty by the board or  
24 by a court of justice of any fraud, deceit or concealment of a material fact  
25 in his professional practice, or has been convicted by a court of justice of a  
26 crime involving moral turpitude.  
27 (c) The holder of the certificate has been found guilty by the board of  
28 incompetency, negligence or gross negligence in:  
29 (1) The practice of architecture or residential design; or  
30 (2) His practice as a registered interior designer.  
31 (d) ~~The~~ *Except as otherwise provided in section 1 of this act, the*  
32 holder of a certificate has affixed his signature or seal to plans, drawings,  
33 specifications or other instruments of service which have not been prepared  
34 by him or in his office, or under his direct supervision, or has permitted the  
35 use of his name to assist any person who is not a registered architect,  
36 registered interior designer or residential designer to evade any provision  
37 of this chapter.  
38 (e) The holder of a certificate has aided or abetted any unauthorized  
39 person to practice:  
40 (1) Architecture or residential design; or  
41 (2) As a registered interior designer.  
42 (f) The holder of the certificate has violated any law, regulation or code  
43 of ethics pertaining to:  
44 (1) The practice of architecture or residential design; or  
45 (2) Practice as a registered interior designer.  
46 (g) The holder of a certificate has failed to comply with an order issued  
47 by the board or has failed to cooperate with an investigation conducted by  
48 the board.



- 1 If discipline is imposed pursuant to this section, the costs of the  
2 proceeding, including investigative costs and attorney's fees, may be  
3 recovered by the board.
- 4 2. The conditions for probation imposed pursuant to subsection 1 may  
5 include, but are not limited to:
- 6 (a) Restriction on the scope of professional practice.  
7 (b) Peer review.  
8 (c) Required education or counseling.  
9 (d) Payment of restitution to all parties who suffered harm or loss.  
10 (e) Payment of all costs of the administrative investigation and  
11 prosecution.
- 12 3. As used in this section:
- 13 (a) "Gross negligence" means conduct which demonstrates a reckless  
14 disregard of the consequences affecting the life or property of another  
15 person.  
16 (b) "Incompetency" means conduct which, in:  
17 (1) The practice of architecture or residential design; or  
18 (2) Practice as a registered interior designer,  
19 demonstrates a significant lack of ability, knowledge or fitness to discharge  
20 a professional obligation.  
21 (c) "Negligence" means a deviation from the normal standard of  
22 professional care exercised generally by other members in:  
23 (1) The profession of architecture or residential design; or  
24 (2) Practice as a registered interior designer.
- 25 **Sec. 5.** NRS 623A.280 is hereby amended to read as follows:  
26 623A.280 The following acts, among others, constitute cause for  
27 disciplinary action:
- 28 1. ~~1A~~ *Except as otherwise provided in section 1 of this act, a*  
29 certificate holder has signed or sealed instruments of service which were  
30 not prepared by him or under his immediate supervision.  
31 2. A certificate holder has permitted the use of his signature or seal by  
32 another person to evade the provisions of this chapter or any regulation  
33 adopted by the board.  
34 3. A certificate holder has not signed, sealed or dated instruments of  
35 service prepared by the certificate holder.  
36 4. A certificate holder impersonates a landscape architect of the same  
37 or similar name.  
38 5. A certificate holder is practicing under an assumed, fictitious or  
39 corporate name.  
40 6. A certificate holder is practicing landscape architecture in violation  
41 of the provisions of this chapter or any regulation adopted by the board.  
42 7. A certificate holder has obtained his certificate by fraud or  
43 misrepresentation.  
44 8. A certificate holder is guilty of fraud or deceit in the practice of  
45 landscape architecture.  
46 9. A certificate holder is guilty of negligence, willful misconduct or  
47 gross incompetence.  
48 10. A certificate holder is convicted of, or enters a plea of nolo  
49 contendere to:



- 1 (a) Any felony; or  
2 (b) Any crime, an essential element of which is dishonesty, or which is  
3 directly related to the practice of landscape architecture.

4 11. A certificate holder is guilty of aiding or abetting any person in the  
5 violation of the provisions of this chapter or any regulation adopted by the  
6 board.

7 12. A person is practicing as a landscape architect with a certificate  
8 which has expired or has been suspended or revoked.

9 13. A certificate holder is disciplined by an agency of another state or  
10 foreign country which regulates the practice of landscape architecture and  
11 at least one of the grounds for the disciplinary action taken is a ground for  
12 disciplinary action pursuant to this chapter.

13 **Sec. 6.** NRS 625.565 is hereby amended to read as follows:

14 625.565 1. A professional land surveyor may practice land surveying  
15 and prepare:

16 (a) Maps, plats, reports and descriptions; and

17 (b) Grading and drainage plans for residential subdivisions containing  
18 four lots or less,  
19 or other documentary evidence in connection therewith.

20 2. ~~HH~~ *Except as otherwise provided in section 1 of this act, it* is  
21 unlawful for a professional land surveyor to sign or stamp any map, plat,  
22 report, description, grading and drainage plan or other document relating to  
23 land surveying which was not prepared by him or for which he did not  
24 have responsible charge of the work.

25 3. ~~HH~~ *Except as otherwise provided in section 1 of this act, it* is  
26 unlawful for a professional engineer to sign or stamp any plans,  
27 specifications or reports that were not prepared by him or for which he did  
28 not have responsible charge of the work.

29 4. It is unlawful for any person to impress any documents with the  
30 stamp of a professional engineer or professional land surveyor after the  
31 license of the professional engineer or professional land surveyor named on  
32 the stamp has expired or has been suspended or revoked, unless his license  
33 has been renewed or reissued.

34 5. It is unlawful for any person to impress any documents with the  
35 stamp of a professional engineer or professional land surveyor after the  
36 professional engineer or professional land surveyor has retired from the  
37 practice of professional engineering or land surveying.

38 6. The board shall, by regulation, prescribe additional requirements  
39 relating to the signing and stamping of documents produced by a  
40 professional engineer or a professional land surveyor.

41 7. A person who violates any of the provisions of this section is guilty  
42 of a gross misdemeanor.

43 **Sec. 7.** Section 1 of this act does not apply to contracts between a  
44 public body and a design professional for the provision of services in  
45 connection with a public work entered into before October 1, 2001.

46 **Sec. 8.** 1. This section and sections 1 and 4 to 7, inclusive, of this act  
47 become effective on October 1, 2001.



1       2. Sections 2 and 3 of this act become effective at 12:01 a.m. on  
2       October 1, 2003.

