

SENATE BILL NO. 255—COMMITTEE ON GOVERNMENT AFFAIRS

FEBRUARY 27, 2001

Referred to Committee on Government Affairs

SUMMARY—Makes various changes concerning contract between design professional and public body for provision of services in connection with public work. (BDR 28-236)

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; requiring and authorizing certain terms in a contract between a design professional who is a member of a design-build team and a public body; prohibiting a public body from requiring a design professional to indemnify the public body against any liability in a contract with the design professional; providing an exception to such a prohibition; 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.** NRS 338.010 is hereby amended to read as follows:
2 338.010 As used in this chapter:
3 1. “Day labor” means all cases where public bodies, their officers,
4 agents or employees, hire, supervise and pay the wages thereof directly to a
5 workman or workmen employed by them on public works by the day and
6 not under a contract in writing.
7 2. “Design-build contract” means a contract between a public body
8 and a design-build team in which the design-build team agrees to design
9 and construct a public work.
10 3. “Design-build team” means an entity that consists of:
11 (a) At least one person who is licensed as a general engineering
12 contractor or a general building contractor pursuant to chapter 624 of NRS;
13 and
14 (b) For a public work that consists of:
15 (1) A building and its site, at least one person who holds a certificate
16 of registration to practice architecture pursuant to chapter 623 of NRS.
17 (2) Anything other than a building and its site, at least one person
18 who holds a certificate of registration to practice architecture pursuant to



1 chapter 623 of NRS or is licensed as a professional engineer pursuant to
2 chapter 625 of NRS.

3 4. "Design professional" means ~~la person with a professional license~~
4 ~~or certificate issued pursuant to chapter 623, 623A or 625 of NRS.:~~

5 *(a) A person who is licensed as a professional engineer pursuant to*
6 *chapter 625 of NRS;*

7 *(b) A person who is licensed as a professional land surveyor pursuant*
8 *to chapter 625 of NRS;*

9 *(c) A person who holds a certificate of registration to engage in the*
10 *practice of architecture pursuant to chapter 623 of NRS; or*

11 *(d) A business entity that employs a person described in paragraph*
12 *(a), (b) or (c).*

13 5. "Eligible bidder" means a person who is:

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

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

21 6. "Local government" means every political subdivision or other
22 entity which has the right to levy or receive money from ad valorem or
23 other taxes or any mandatory assessments, and includes, without limitation,
24 counties, cities, towns, boards, school districts and other districts organized
25 pursuant to chapters 244A, 309, 318, 379, 474, 541, 543 and 555 of NRS,
26 NRS 450.550 to 450.750, inclusive, and any agency or department of a
27 county or city which prepares a budget separate from that of the parent
28 political subdivision.

29 7. "Offense" means failing to:

30 (a) Pay the prevailing wage required pursuant to this chapter;

31 (b) Pay the contributions for unemployment compensation required
32 pursuant to chapter 612 of NRS; or

33 (c) Provide and secure compensation for employees required pursuant
34 to chapters 616A to 617, inclusive, of NRS.

35 8. "Prime contractor" means a person who:

36 (a) Contracts to construct an entire project;

37 (b) Coordinates all work performed on the entire project;

38 (c) Uses his own work force to perform all or a part of the construction,
39 repair or reconstruction of the project; and

40 (d) Contracts for the services of any subcontractor or independent
41 contractor or is responsible for payment to any contracted subcontractors or
42 independent contractors.

43 9. "Public body" means the state, county, city, town, school district or
44 any public agency of this state or its political subdivisions sponsoring or
45 financing a public work.

46 10. "Public work" means any project for the new construction, repair
47 or reconstruction of:

48 (a) A project financed in whole or in part from public money for:

49 (1) Public buildings;



1 (2) Jails and prisons;
2 (3) Public roads;
3 (4) Public highways;
4 (5) Public streets and alleys;
5 (6) Public utilities which are financed in whole or in part by public
6 money;
7 (7) Publicly owned water mains and sewers;
8 (8) Public parks and playgrounds;
9 (9) Public convention facilities which are financed at least in part
10 with public funds; and
11 (10) All other publicly owned works and property whose cost as a
12 whole exceeds \$20,000. Each separate unit that is a part of a project is
13 included in the cost of the project to determine whether a project meets that
14 threshold.
15 (b) A building for the University and Community College System of
16 Nevada of which 25 percent or more of the costs of the building as a whole
17 are paid from money appropriated by this state or from federal money.
18 11. "Specialty contractor" means a contractor whose operations as
19 such are the performance of construction work requiring special skill and
20 whose principal contracting business involves the use of specialized
21 building trades or crafts.
22 12. "Stand-alone underground utility project" means an underground
23 utility project that is not integrated into a larger project, including, without
24 limitation:
25 (a) An underground sewer line or an underground pipeline for the
26 conveyance of water, including facilities appurtenant thereto; and
27 (b) A project for the construction or installation of a storm drain,
28 including facilities appurtenant thereto,
29 that is not located at the site of a public work for the design and
30 construction of which a public body is authorized to contract with a design-
31 build team pursuant to subsection 2 of NRS 338.1711.
32 13. "Wages" means:
33 (a) The basic hourly rate of pay; and
34 (b) The amount of pension, health and welfare, vacation and holiday
35 pay, the cost of apprenticeship training or other similar programs or other
36 bona fide fringe benefits which are a benefit to the workman.
37 14. "Workman" means a skilled mechanic, skilled workman,
38 semiskilled mechanic, semiskilled workman or unskilled workman. The
39 term does not include a design professional.
40 **Sec. 2.** NRS 338.155 is hereby amended to read as follows:
41 338.155 **1.** If a public body enters into a contract with a design
42 professional , *including, without limitation, a design professional* who is
43 ~~not~~ a member of a design-build team , for the provision of services in
44 connection with a public work, the contract:
45 ~~(a)~~ **(a)** Must set forth:
46 ~~(a)~~ **(1)** The specific period within which the public body must pay the
47 design professional.



1 ~~(b)~~ (2) The specific period and manner in which the public body may
2 dispute a payment or portion thereof that the design professional alleges is
3 due.

4 ~~(c)~~ (3) The terms of any penalty that will be imposed upon the public
5 body if the public body fails to pay the design professional within the
6 specific period set forth in the contract pursuant to ~~paragraph (a)~~.

7 ~~(d)~~ *subparagraph (1).*

8 (4) That the prevailing party in an action to enforce the contract is
9 entitled to reasonable attorney's fees and costs.

10 ~~(2)~~ (b) May set forth the terms of any discount that the public body
11 will receive if the public body pays the design professional within the
12 specific period set forth in the contract pursuant to ~~paragraph (a) of~~
13 ~~subsection 1~~ *subparagraph (1) of paragraph (a).*

14 (c) *Except as otherwise provided in paragraph (d), must not require*
15 *the design professional to defend, indemnify or hold harmless the public*
16 *body and the employees, officers and agents of that public body from any*
17 *liability, damage, loss, claim, action or proceeding.*

18 (d) *May require the design professional to indemnify and hold*
19 *harmless the public body, and the employees, officers and agents of the*
20 *public body from any liabilities, damages, losses and costs, including,*
21 *without limitation, reasonable attorneys' fees, that are caused by the*
22 *negligence, recklessness or intentional wrongful conduct of the design*
23 *professional or the employees or agents of the design professional in the*
24 *performance of the contract.*

25 2. *Any provision of a contract that is in violation of paragraph (c) or*
26 *(d) of subsection 1 is declared to be contrary to the public policy of this*
27 *state and is void.*

28 **Sec. 3.** NRS 338.155 is hereby amended to read as follows:

29 338.155 1. If a public body enters into a contract with a design
30 professional for the provision of services in connection with a public work,
31 the contract:

32 (a) Must set forth:

33 (1) The specific period within which the public body must pay the
34 design professional.

35 (2) The specific period and manner in which the public body may
36 dispute a payment or portion thereof that the design professional alleges is
37 due.

38 (3) The terms of any penalty that will be imposed upon the public
39 body if the public body fails to pay the design professional within the
40 specific period set forth in the contract pursuant to subparagraph (1).

41 (4) That the prevailing party in an action to enforce the contract is
42 entitled to reasonable attorney's fees and costs.

43 (b) May set forth the terms of any discount that the public body
44 will receive if the public body pays the design professional within the
45 specific period set forth in the contract pursuant to subparagraph (1) of
46 paragraph (a).

47 (c) *Except as otherwise provided in paragraph (d), must not require*
48 *the design professional to defend, indemnify or hold harmless the public*



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1 *body and the employees, officers and agents of that public body from any*
2 *liability, damage, loss, claim, action or proceeding.*
3 *(d) May require the design professional to indemnify and hold*
4 *harmless the public body, and the employees, officers and agents of the*
5 *public body from any liabilities, damages, losses and costs, including,*
6 *without limitation, reasonable attorneys' fees, that are caused by the*
7 *negligence, recklessness or intentional wrongful conduct of the design*
8 *professional or the employees or agents of the design professional in the*
9 *performance of the contract.*
10 2. *Any provision of a contract that is in violation of paragraph (c) of*
11 *subsection 1 is declared to be contrary to the public policy of this state*
12 *and is void.*
13 3. As used in this section, "design professional" means ~~1a person with~~
14 ~~a professional license or certificate issued pursuant to chapter 623, 623A or~~
15 ~~625 of NRS.~~ :
16 *(a) A person who is licensed as a professional engineer pursuant to*
17 *chapter 625 of NRS;*
18 *(b) A person who is licensed as a professional land surveyor pursuant*
19 *to chapter 625 of NRS;*
20 *(c) A person who holds a certificate of registration to engage in the*
21 *practice of architecture pursuant to chapter 623 of NRS; and*
22 *(d) A business entity that employs a person described in paragraph*
23 *(a), (b) or (c).*
24 **Sec. 4.** The amendatory provisions of this act do not apply to contracts
25 entered into before October 1, 2001.
26 **Sec. 5.** 1. This section and sections 1, 2 and 4 of this act become
27 effective on October 1, 2001.
28 2. Sections 1 and 2 of this act expire by limitation on October 1, 2003.
29 3. Section 3 of this act becomes effective at 12:01 a.m. on October 1,
30 2003.

