

Assembly Bill No. 156—Assemblymen Conklin, Hardy, Parks,
Atkinson, Christensen, Kirkpatrick and Sibley

Joint Sponsors: Senators Hardy, Lee and Tiffany

CHAPTER.....

AN ACT relating to public works; revising the provisions governing the terms of certain contracts between public bodies and certain design professionals; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes mandatory, optional and prohibited provisions in a contract for the provision of services in connection with a public work entered into between a public body and a design professional who is not a member of a design-build team. The contract must include provisions relating to payment and costs for enforcement of the contract. In addition, the contract may include provisions relating to a discount for prompt payment, the terms by which the design professional agrees to name the public body at its own cost as an additional insured in an insurance policy held by the design professional and a requirement that the design professional defend, indemnify and hold harmless the public body and its employees, officers and agents in certain matters arising out of the acts or omissions of the design professional or his employees or agents in the performance of the contract. The contract may not, however, require the design professional to defend, indemnify or hold harmless the public body or its employees, officers or agents in certain matters arising out of the acts or omissions of the employees, officers or agents of the public body. (NRS 338.155)

This bill clarifies that a design professional may not name a public body as an additional insured unless the applicable insurance policy allows such an addition. This bill also provides that if the insurer by which the design professional is insured against professional liability does not defend a public body and its employees, officers and agents in a matter arising out of certain acts or omissions of the design professional or his employees or agents in the performance of the contract and the design professional is adjudicated to be liable by a trier of fact, the trier of fact is required to award reasonable attorney's fees to be paid to the public body by the design professional in an amount that is proportionate to the liability of the design professional.

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

Section 1. NRS 338.155 is hereby amended to read as follows:

338.155 If a public body enters into a contract with a design professional who is not a member of a design-build team, for the provision of services in connection with a public work, the contract:

1. Must set forth:

(a) The specific period within which the public body must pay the design professional.

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

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

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

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

3. May set forth the terms by which the design professional agrees to name the public body, at the cost of the public body, as an additional insured in an insurance policy held by the design professional ~~H~~, *if the policy allows such an addition.*

4. Except as otherwise provided in subsection 5, must not require the design professional to defend, indemnify or hold harmless the public body or the employees, officers or agents of that public body from any liability, damage, loss, claim, action or proceeding caused by the negligence, errors, omissions, recklessness or intentional misconduct of the employees, officers or agents of the public body.

5. ~~May~~ *Except as otherwise provided in this subsection, may* require the design professional to defend, indemnify and hold harmless the public body, and the employees, officers and agents of the public body from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys' fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the design professional or the employees or agents of the design professional in the performance of the contract. *If the insurer by which the design professional is insured against professional liability does not so defend the public body and the employees, officers and agents of the public body and the design professional is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees to be paid to the public body by the design professional in an amount which is proportionate to the liability of the design professional. As used in this subsection, "agents" means those persons who are directly involved in and acting on behalf of the public body in furtherance of the contract or the public work to which the contract pertains.*

Sec. 2. The amendatory provisions of this act do not apply to contracts entered into before October 1, 2005.