

ASSEMBLY BILL NO. 156—ASSEMBLYMEN CONKLIN, HARDY,  
PARKS, ATKINSON, CHRISTENSEN, KIRKPATRICK AND  
SIBLEY

MARCH 1, 2005

JOINT SPONSORS: SENATORS HARDY, LEE AND TIFFANY

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing terms of certain  
contracts between public bodies and certain design  
professionals. (BDR 28-858)

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; 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:**

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

16 This bill clarifies that a design professional may not name a public body as an  
17 additional insured unless the applicable insurance policy allows such an addition.



18 This bill also provides that if the insurer by which the design professional is insured  
19 against professional liability does not defend a public body and its employees,  
20 officers and agents in a matter arising out of certain acts or omissions of the design  
21 professional or his employees or agents in the performance of the contract and the  
22 design professional is adjudicated to be liable by a trier of fact, the trier of fact is  
23 required to award reasonable attorney's fees to be paid to the public body by the  
24 design professional in an amount that is proportionate to the liability of the design  
25 professional.

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

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

2     338.155 If a public body enters into a contract with a design  
3 professional who is not a member of a design-build team, for the  
4 provision of services in connection with a public work, the contract:

5         1. Must set forth:

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

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

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

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

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

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

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

32         5. ~~May~~ *Except as otherwise provided in this subsection, may*  
33 require the design professional to defend, indemnify and hold  
34 harmless the public body, and the employees, officers and agents of



1 the public body from any liabilities, damages, losses, claims, actions  
2 or proceedings, including, without limitation, reasonable attorneys’  
3 fees, that are caused by the negligence, errors, omissions,  
4 recklessness or intentional misconduct of the design professional or  
5 the employees or agents of the design professional in the  
6 performance of the contract. *If the insurer by which the design  
7 professional is insured against professional liability does not so  
8 defend the public body and the employees, officers and agents of  
9 the public body and the design professional is adjudicated to be  
10 liable by a trier of fact, the trier of fact shall award reasonable  
11 attorney’s fees to be paid to the public body by the design  
12 professional in an amount which is proportionate to the liability of  
13 the design professional. As used in this subsection, “agents”  
14 means those persons who are directly involved in and acting on  
15 behalf of the public body in furtherance of the contract or the  
16 public work to which the contract pertains.*

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



