

SENATE BILL NO. 426—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE LEGISLATIVE COMMISSION’S
AUDIT SUBCOMMITTEE)

MARCH 29, 2005

Referred to Committee on Government Affairs

SUMMARY—Clarifies certain provisions relating to public works.
(BDR 28-1032)

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; clarifying the definition of “public work”; requiring that annual energy savings resulting from energy retrofit projects meet or exceed the total annual contract payments; requiring that annual operating cost savings resulting from state performance contracts meet or exceed the total annual contract payments; 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. “Authorized representative” means a person designated by a
- 4 governing body to be responsible for the development and award of
- 5 contracts for public works pursuant to this chapter.
- 6 2. “Contract” means a written contract entered into between a
- 7 contractor and a public body for the provision of labor, materials,
- 8 equipment or supplies for a public work.
- 9 3. “Contractor” means:



1 (a) A person who is licensed pursuant to the provisions of
2 chapter 624 of NRS or performs such work that he is not required to
3 be licensed pursuant to chapter 624 of NRS.

4 (b) A design-build team.

5 4. "Day labor" means all cases where public bodies, their
6 officers, agents or employees, hire, supervise and pay the wages
7 thereof directly to a workman or workmen employed by them on
8 public works by the day and not under a contract in writing.

9 5. "Design-build contract" means a contract between a public
10 body and a design-build team in which the design-build team agrees
11 to design and construct a public work.

12 6. "Design-build team" means an entity that consists of:

13 (a) At least one person who is licensed as a general engineering
14 contractor or a general building contractor pursuant to chapter 624
15 of NRS; and

16 (b) For a public work that consists of:

17 (1) A building and its site, at least one person who holds a
18 certificate of registration to practice architecture pursuant to chapter
19 623 of NRS.

20 (2) Anything other than a building and its site, at least one
21 person who holds a certificate of registration to practice architecture
22 pursuant to chapter 623 of NRS or landscape architecture pursuant
23 to chapter 623A of NRS or who is licensed as a professional
24 engineer pursuant to chapter 625 of NRS.

25 7. "Design professional" means:

26 (a) A person who is licensed as a professional engineer pursuant
27 to chapter 625 of NRS;

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

30 (c) A person who holds a certificate of registration to engage in
31 the practice of architecture, interior design or residential design
32 pursuant to chapter 623 of NRS;

33 (d) A person who holds a certificate of registration to engage in
34 the practice of landscape architecture pursuant to chapter 623A of
35 NRS; or

36 (e) A business entity that engages in the practice of professional
37 engineering, land surveying, architecture or landscape architecture.

38 8. "Eligible bidder" means a person who is:

39 (a) Found to be a responsible and responsive contractor by a
40 local government or its authorized representative which requests
41 bids for a public work in accordance with paragraph (b) of
42 subsection 1 of NRS 338.1373; or

43 (b) Determined by a public body or its authorized representative
44 which awarded a contract for a public work pursuant to NRS



1 338.1375 to 338.139, inclusive, to be qualified to bid on that
2 contract pursuant to NRS 338.1379 or 338.1382.

3 9. "General contractor" means a person who is licensed to
4 conduct business in one, or both, of the following branches of the
5 contracting business:

6 (a) General engineering contracting, as described in subsection 2
7 of NRS 624.215.

8 (b) General building contracting, as described in subsection 3 of
9 NRS 624.215.

10 10. "Governing body" means the board, council, commission
11 or other body in which the general legislative and fiscal powers of a
12 local government are vested.

13 11. "Local government" means every political subdivision or
14 other entity which has the right to levy or receive money from ad
15 valorem or other taxes or any mandatory assessments, and includes,
16 without limitation, counties, cities, towns, boards, school districts
17 and other districts organized pursuant to chapters 244A, 309, 318,
18 379, 474, 538, 541, 543 and 555 of NRS ~~4~~ and NRS 450.550 to
19 450.750, inclusive, and any agency or department of a county or city
20 which prepares a budget separate from that of the parent political
21 subdivision. The term includes a person who has been designated by
22 a local government to serve as its authorized representative.

23 12. "Offense" means failing to:

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

25 (b) Pay the contributions for unemployment compensation
26 required pursuant to chapter 612 of NRS;

27 (c) Provide and secure compensation for employees required
28 pursuant to chapters 616A to 617, inclusive, of NRS; or

29 (d) Comply with subsection 4 or 5 of NRS 338.070.

30 13. "Prime contractor" means a contractor who:

31 (a) Contracts to construct an entire project;

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

33 (c) Uses his own workforce to perform all or a part of the public
34 work; and

35 (d) Contracts for the services of any subcontractor or
36 independent contractor or is responsible for payment to any
37 contracted subcontractors or independent contractors.

38 ➤ The term includes, without limitation, a general contractor or a
39 specialty contractor who is authorized to bid on a project pursuant to
40 NRS 338.139 or 338.148.

41 14. "Public body" means the State, county, city, town, school
42 district or any public agency of this State or its political subdivisions
43 sponsoring or financing a public work.

44 15. "Public work" means any project for the new construction,
45 repair or reconstruction of:



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

- (1) Public buildings;
- (2) Jails and prisons;
- (3) Public roads;
- (4) Public highways;
- (5) Public streets and alleys;
- (6) Public utilities;
- (7) Publicly owned water mains and sewers;
- (8) Public parks and playgrounds;
- (9) Public convention facilities which are financed at least in part with public money; and
- (10) All other publicly owned works and property.

(b) A ~~building~~ project for the University and Community College System of Nevada of which 25 percent or more of the costs of the ~~building~~ project as a whole are paid from money appropriated by ~~this State~~ the Legislature or from federal money.

16. "Specialty contractor" means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.

17. "Stand-alone underground utility project" means an underground utility project that is not integrated into a larger project, including, without limitation:

(a) An underground sewer line or an underground pipeline for the conveyance of water, including facilities appurtenant thereto; and

(b) A project for the construction or installation of a storm drain, including facilities appurtenant thereto,

➔ that is not located at the site of a public work for the design and construction of which a public body is authorized to contract with a design-build team pursuant to subsection 2 of NRS 338.1711.

18. "Subcontract" means a written contract entered into between:

(a) A contractor and a subcontractor or supplier; or

(b) A subcontractor and another subcontractor or supplier, for the provision of labor, materials, equipment or supplies for a construction project.

19. "Subcontractor" means a person who:

(a) Is licensed pursuant to the provisions of chapter 624 of NRS or performs such work that he is not required to be licensed pursuant to chapter 624 of NRS; and

(b) Contracts with a contractor, another subcontractor or a supplier to provide labor, materials or services for a construction project.

20. "Supplier" means a person who provides materials, equipment or supplies for a construction project.



1 21. "Wages" means:

2 (a) The basic hourly rate of pay; and

3 (b) The amount of pension, health and welfare, vacation and
4 holiday pay, the cost of apprenticeship training or other similar
5 programs or other bona fide fringe benefits which are a benefit to
6 the workman.

7 22. "Workman" means a skilled mechanic, skilled workman,
8 semiskilled mechanic, semiskilled workman or unskilled workman
9 in the service of a contractor or subcontractor under any
10 appointment or contract of hire or apprenticeship, express or
11 implied, oral or written, whether lawfully or unlawfully employed.
12 The term does not include a design professional.

13 **Sec. 2.** NRS 338.1906 is hereby amended to read as follows:

14 338.1906 1. Upon request by or consultation with an officer
15 or employee of the State who is responsible for the budget of a
16 department, board, commission, agency or other entity of the State,
17 the appropriate energy retrofit coordinator may request the approval
18 of the State Board of Examiners to advertise a request for proposals
19 to retrofit a building, or any portion thereof, that is occupied by the
20 department, board, commission, agency or other entity, to make the
21 use of energy in the building, or portion thereof, more efficient.

22 2. Upon approval of the State Board of Examiners, the
23 coordinator shall prepare a request for proposals for the retrofitting
24 of one or more buildings, or any portion thereof, which includes:

25 (a) The name and location of the coordinator;

26 (b) A brief description of the requirements for the initial audit of
27 the use of energy and the retrofitting;

28 (c) Where and how specifications of the requirements for the
29 initial audit of the use of energy and the retrofitting may be
30 obtained;

31 (d) The date and time not later than which proposals must be
32 received by the coordinator; and

33 (e) The date and time when responses will be opened.

34 3. The request for proposals must be published in at least one
35 newspaper of general circulation in the State.

36 4. After receiving the proposals but before making a decision
37 on the proposals, the coordinator shall consider:

38 (a) The best interests of the State;

39 (b) The experience and financial stability of the persons
40 submitting the proposals;

41 (c) Whether the proposals conform with the terms of the request
42 for proposals;

43 (d) The prices of the proposals; and

44 (e) Any other factor disclosed in the request for proposals.



1 5. The coordinator shall determine the relative weight of each
2 factor before a request for proposals is advertised. The weight of
3 each factor must not be disclosed before the date proposals are
4 required to be submitted to the coordinator.

5 6. After reviewing the proposals, if the coordinator determines
6 that ~~[sufficient energy could be saved to justify retrofitting the~~
7 ~~building or buildings, or portion thereof,]~~ *the dollar value of the*
8 *annual energy savings resulting from the retrofit will meet or*
9 *exceed the total annual contract payments to be made by the State,*
10 *including any financing charges to be incurred by the State over*
11 *the life of the contract,* the coordinator shall select the best proposal
12 and request the approval of the State Board of Examiners to award
13 the contract. The request for approval must include the proposed
14 method of financing the audit and retrofit, which may include an
15 installment contract, a shared savings contract or any other contract
16 for a reasonable financing arrangement. Such a contract may
17 commit the State to make payments beyond the biennium in which
18 the contract is executed, but the interest due on any debt created
19 pursuant to this section must be paid at least semiannually,
20 payments must be made on the principal at least annually and the
21 debt must be fully repaid on or before May 1, 2013.

22 7. Before approving a retrofit pursuant to this section, the State
23 Board of Examiners shall evaluate any projects that would utilize
24 shared savings as a method of payment or any method of financing
25 that would commit the State to make payments beyond the biennium
26 in which the contract is executed to ensure that:

27 (a) The ~~[amount of energy to be saved will likely justify the~~
28 ~~cost]~~ *dollar value of the annual energy savings resulting from the*
29 *retrofit [;] will meet or exceed the total annual contract payments*
30 *to be made by the State, including any financing charges to be*
31 *incurred by the State over the life of the contract;*

32 (b) The State is likely to continue to occupy the building for the
33 entire period required to recoup the cost of the retrofit in energy
34 savings; and

35 (c) The limitation set forth in subsection 9 will not be exceeded.

36 8. Upon approval of the State Board of Examiners, the
37 coordinator shall execute the contract and notify:

38 (a) The State Board of Examiners of the total amount of money
39 committed by the contract per year; and

40 (b) Each officer or employee who is responsible for the budget
41 of a department, board, commission, agency or other entity which
42 occupies a portion of a building that will be retrofitted of the amount
43 of money it will be required to pay annually for its portion of the
44 retrofit.



9. The total amount of money committed beyond the biennium for all contracts executed pursuant to this section must not exceed \$15,000,000 at any one time.

10. The Legislature hereby pledges that a tax will be levied to pay the principal and interest on any indebtedness resulting from a contract executed pursuant to this section as they become due if the required payments will not be made by the entity that executed the contract from its budgeted accounts and the proceeds from any such taxes are hereby specially appropriated for this purpose.

11. *A change order to a contract executed pursuant to this section may not be approved by the State if the cost of the change order would cause the dollar value of the annual energy savings resulting from the retrofit to be less than the total annual contract payments to be made by the State, including any financing charges to be incurred by the State over the life of the contract.*

12. NRS 338.1385 does not apply to a project for which a request for proposals is advertised and the contract is awarded pursuant to the provisions of this section.

Sec. 3. NRS 338.1907 is hereby amended to read as follows:

338.1907 1. A governing body may designate one or more energy retrofit coordinators for the buildings occupied by the local government.

2. If such a coordinator is designated, upon request by or consultation with an officer or employee of the local government who is responsible for the budget of a department, board, commission or other entity of the local government, the coordinator may request the approval of the governing body to advertise a request for proposals to retrofit a building, or any portion thereof, that is occupied by the department, board, commission or other entity, to make the use of energy in the building, or portion thereof, more efficient.

3. Upon approval of the governing body, the coordinator shall prepare a request for proposals for the retrofitting of one or more buildings, or any portion thereof, which includes:

(a) The name and location of the coordinator;

(b) A brief description of the requirements for the initial audit of the use of energy and the retrofitting;

(c) Where and how specifications of the requirements for the initial audit of the use of energy and the retrofitting may be obtained;

(d) The date and time not later than which proposals must be received by the coordinator; and

(e) The date and time when responses will be opened.

4. The request for proposals must be published in a newspaper qualified pursuant to chapter 238 of NRS that is published in the



1 county where the public work will be performed. If no qualified
2 newspaper is published in the county where the public work will be
3 performed, the required advertisement must be published in some
4 qualified newspaper that is printed in the State of Nevada and has a
5 general circulation in the county where the public work will be
6 performed.

7 5. After receiving the proposals but before making a decision
8 on the proposals, the coordinator shall consider:

9 (a) The best interests of the local government;

10 (b) The experience and financial stability of the persons
11 submitting the proposals;

12 (c) Whether the proposals conform with the terms of the request
13 for proposals;

14 (d) The prices of the proposals; and

15 (e) Any other factor disclosed in the request for proposals.

16 6. The coordinator shall determine the relative weight of each
17 factor before a request for proposals is advertised. The weight of
18 each factor must not be disclosed before the date proposals are
19 required to be submitted to the coordinator.

20 7. After reviewing the proposals, if the coordinator determines
21 that ~~{sufficient energy could be saved to justify retrofitting the~~
22 ~~building or buildings, or portion thereof,}~~ *the dollar value of the*
23 *annual energy savings resulting from the retrofit will meet or*
24 *exceed the total annual contract payments to be made by the local*
25 *government, including any financing charges to be incurred by*
26 *the local government over the life of the contract,* the coordinator
27 shall select the best proposal and request the approval of the
28 governing body to award the contract. The request for approval must
29 include the proposed method of financing the audit and retrofit,
30 which may include an installment contract, a shared savings contract
31 or any other contract for a reasonable financing arrangement. Such a
32 contract may commit the local government to make payments
33 beyond the fiscal year in which the contract is executed or beyond
34 the terms of office of the governing body, or both.

35 8. Before approving a retrofit pursuant to this section, the
36 governing body shall evaluate any projects that would utilize shared
37 savings as a method of payment or any method of financing that
38 would commit the local government to make payments beyond the
39 fiscal year in which the contract is executed or beyond the terms of
40 office of the governing body to ensure that:

41 (a) The ~~{amount of energy to be saved will likely justify the~~
42 ~~cost}~~ *dollar value of the annual energy savings resulting from the*
43 *retrofit {;} will meet or exceed the total annual contract payments*
44 *to be made by the local government related to the retrofit,*



1 *including any financing charges to be incurred by the local*
2 *government over the life of the contract;* and

3 (b) The local government is likely to continue to occupy the
4 building for the entire period required to recoup the cost of the
5 retrofit in energy savings.

6 9. Upon approval of the governing body, the coordinator shall
7 execute the contract and notify each officer or employee who is
8 responsible for the budget of a department, board, commission or
9 other entity which occupies a portion of a building that will be
10 retrofitted of the amount of money it will be required to pay
11 annually for its portion of the retrofit.

12 10. *A change order to a contract executed pursuant to this*
13 *section may not be approved by the local government if the cost of*
14 *the change order would cause the dollar value of the annual*
15 *energy savings resulting from the retrofit to be less than the total*
16 *annual contract payments to be made by the local government,*
17 *including financing charges to be incurred by the local*
18 *government over the life of the contract.*

19 11. NRS 338.1385 and 338.143 do not apply to a project for
20 which a request for proposals is advertised and the contract is
21 awarded pursuant to the provisions of this section.

22 **Sec. 4.** NRS 333A.090 is hereby amended to read as follows:

23 333A.090 1. A performance contract may be financed
24 through a person other than the qualified service company.

25 2. A performance contract may be structured as:

26 (a) A performance contract that guarantees operating cost
27 savings, which includes, without limitation, the design and
28 installation of equipment, the operation and maintenance, if
29 applicable, of any of the operating cost-savings measures and the
30 guaranteed annual savings which must meet or exceed the total
31 annual contract payments to be made by the using agency, including
32 any financing charges to be incurred by the using agency over the
33 life of the performance contract. The using agency may require that
34 these savings be verified annually or over a sufficient period that
35 demonstrates savings.

36 (b) A shared-savings contract which includes provisions
37 mutually agreed upon by the using agency and qualified service
38 company as to the negotiated rate of payments based upon operating
39 cost savings and a stipulated maximum consumption level of energy
40 or water, or both energy and water, over the life of the contract.

41 3. *The annual operating cost savings resulting from a*
42 *performance contract must meet or exceed the total annual*
43 *contract payments to be made by the using agency, including any*
44 *financing charges to be incurred by the using agency over the life*
45 *of the performance contract.*



1 **4. A change order to a performance contract executed**
2 **pursuant to NRS 333A.080 may not be approved by the using**
3 **agency if the cost of the change order would cause the annual**
4 **operating cost savings resulting from the performance contract to**
5 **be less than the total annual contract payments to be made by the**
6 **using agency, including any financing charges to be incurred by**
7 **the using agency over the life of the performance contract.**

8 **Sec. 5.** 1. This act becomes effective on July 1, 2005.

9 2. Sections 2 and 3 of this act expire by limitation on May 1,
10 2013.



