

SENATE BILL NO. 426—COMMITTEE ON GOVERNMENT AFFAIRS

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

MARCH 29, 2005

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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.

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AN ACT relating to public works; clarifying the definition of “public work”; providing that certain documents furnished to a public body may be transmitted and stored electronically; 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 338.140 is hereby amended to read as follows:

14 338.140 1. A public body shall not draft or cause to be  
15 drafted specifications for bids, in connection with a public work:

16 (a) In such a manner as to limit the bidding, directly or  
17 indirectly, to any one specific concern.

18 (b) Except in those instances where the product is designated to  
19 match others in use on a particular public improvement either  
20 completed or in the course of completion, calling for a designated  
21 material, product, thing or service by specific brand or trade name  
22 unless the specification lists at least two brands or trade names of  
23 comparable quality or utility and is followed by the words "or  
24 equal" so that bidders may furnish any equal material, product, thing  
25 or service.

26 (c) In such a manner as to hold the bidder to whom such  
27 contract is awarded responsible for extra costs incurred as a result of  
28 errors or omissions by the public body in the contract documents.

29 (d) In such a manner as to require a bidder to furnish to the  
30 public body, whether before or after the bid is submitted, documents  
31 generated in the preparation or determination of prices included in  
32 the bid, except when requested by the public body for:

33 (1) A determination of the price of additional work  
34 performed pursuant to a change order;

35 (2) An evaluation of claims for costs incurred for the  
36 performance of additional work;

37 (3) Preparation for arbitration or litigation; or

38 (4) Any combination thereof.

39 ↪ A document furnished to a public body pursuant to this paragraph  
40 is confidential and must be returned to the bidder. *Any document  
41 furnished to a public body by a bidder pursuant to this paragraph  
42 may be transmitted and stored electronically if the manner of  
43 transmission ensures that the documents are exclusively accessible  
44 to the bidder. Electronic transmission and storage of such*



1 *documents does not waive or otherwise affect the proprietary*  
2 *interests of the bidder in the documents.*

3 2. In those cases involving a unique or novel product  
4 application required to be used in the public interest, or where only  
5 one brand or trade name is known to the public body, it may list  
6 only one.

7 3. Specifications must provide a period of time of at least 7  
8 days after award of the contract for submission of data  
9 substantiating a request for a substitution of "an equal" item.

10 **Sec. 3.** NRS 338.1906 is hereby amended to read as follows:

11 338.1906 1. Upon request by or consultation with an officer  
12 or employee of the State who is responsible for the budget of a  
13 department, board, commission, agency or other entity of the State,  
14 the appropriate energy retrofit coordinator may request the approval  
15 of the State Board of Examiners to advertise a request for proposals  
16 to retrofit a building, or any portion thereof, that is occupied by the  
17 department, board, commission, agency or other entity, to make the  
18 use of energy in the building, or portion thereof, more efficient.

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

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

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

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

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

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

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

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

35 (a) The best interests of the State;

36 (b) The experience and financial stability of the persons  
37 submitting the proposals;

38 (c) Whether the proposals conform with the terms of the request  
39 for proposals;

40 (d) The prices of the proposals; and

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

42 5. The coordinator shall determine the relative weight of each  
43 factor before a request for proposals is advertised. The weight of  
44 each factor must not be disclosed before the date proposals are  
45 required to be submitted to the coordinator.



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

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

(a) The ~~[amount of energy to be saved will likely justify the cost]~~ *dollar value of the annual energy savings resulting from the retrofit ~~[:]~~ will meet or exceed 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;*

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

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

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

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

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



1 contract executed pursuant to this section as they become due if the  
2 required payments will not be made by the entity that executed the  
3 contract from its budgeted accounts and the proceeds from any such  
4 taxes are hereby specially appropriated for this purpose.

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

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

14 **Sec. 4.** NRS 338.1907 is hereby amended to read as follows:

15 338.1907 1. A governing body may designate one or more  
16 energy retrofit coordinators for the buildings occupied by the local  
17 government.

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

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

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

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

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

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

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

39 4. The request for proposals must be published in a newspaper  
40 qualified pursuant to chapter 238 of NRS that is published in the  
41 county where the public work will be performed. If no qualified  
42 newspaper is published in the county where the public work will be  
43 performed, the required advertisement must be published in some  
44 qualified newspaper that is printed in the State of Nevada and has a



1 general circulation in the county where the public work will be  
2 performed.

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

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

6 (b) The experience and financial stability of the persons  
7 submitting the proposals;

8 (c) Whether the proposals conform with the terms of the request  
9 for proposals;

10 (d) The prices of the proposals; and

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

12 6. The coordinator shall determine the relative weight of each  
13 factor before a request for proposals is advertised. The weight of  
14 each factor must not be disclosed before the date proposals are  
15 required to be submitted to the coordinator.

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

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

37 (a) The ~~{amount of energy to be saved will likely justify the~~  
38 ~~cost}~~ *dollar value of the annual energy savings resulting from the*  
39 *retrofit {;} will meet or exceed the total annual contract payments*  
40 *to be made by the local government related to the retrofit,*  
41 *including any financing charges to be incurred by the local*  
42 *government over the life of the contract;* and

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



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

10. *A change order to a contract executed pursuant to this section may not be approved by the local government 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 local government, including financing charges to be incurred by the local government over the life of the contract.*

11. NRS 338.1385 and 338.143 do 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. 5.** NRS 333A.090 is hereby amended to read as follows:

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

2. A performance contract may be structured as:

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

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

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

4. *A change order to a performance contract executed pursuant to NRS 333A.080 may not be approved by the using agency if the cost of the change order would cause the annual operating cost savings resulting from the performance contract to be less than the total annual contract payments to be made by the*



- 1 *using agency, including any financing charges to be incurred by*  
2 *the using agency over the life of the performance contract.*  
3 **Sec. 6.** 1. This act becomes effective on July 1, 2005.  
4 2. Sections 3 and 4 of this act expire by limitation on May 1,  
5 2013.



