

Amendment No. 246

Senate Amendment to Senate Bill No. 199

(BDR 28-348)

Proposed by: Senate Committee on Government Affairs**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

| ASSEMBLY ACTION | | | | Initial and Date | SENATE ACTION | | | | Initial and Date |
|-----------------|--------------------------|------|--------------------------|------------------|---------------|--------------------------|------|--------------------------|------------------|
| Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ | Adopted | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ |
| Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Concurred In | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |
| Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ | Receded | <input type="checkbox"/> | Not | <input type="checkbox"/> | _____ |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

SJA/EGO



Date: 4/22/2007

S.B. No. 199—Makes various changes to requirements for a public work involving the construction of a traffic-control signal. (BDR 28-348)



SENATE BILL NO. 199—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF CLARK COUNTY)

MARCH 1, 2007

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to requirements for a public work involving the construction of a traffic-control signal. (BDR 28-348)

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; making various changes to requirements for a public work involving the construction of a traffic-control signal; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits a public body from dividing a public work into separate portions to avoid the requirement of advertising for bids for the public work and requires a public body to award contracts to the lowest responsive responsible bidder. Existing law also requires a public body to prepare and make available for public inspection a written statement containing certain information, including, without limitation, an estimate of the total cost of the public work before the public body may perform the work itself. (NRS 338.1385, 338.143) This bill allows a public body to divide the work on a traffic-control signal ~~and to perform part or all the work itself~~ if the public body complies with certain requirements, including completing a study on the need for a traffic-control signal and determining that dividing the work ~~for performing part or all the work itself~~ is the most cost-effective and expeditious manner in which to complete the traffic-control signal. **This bill also authorizes a public body to advertise for contracts under which the contractor agrees for a 1-year period to construct traffic-control signals or portions of traffic-control signals upon demand by the public body. Additionally, this bill allows a public body to perform all or part of the construction of a traffic-control signal if the public body advertises for and does not receive any bids for the construction or if the public body awards a 1-year contract and the contractor who was awarded the contract is unavailable to perform the work within the time required by the public body.**

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

Section 1. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A public body may divide a public work for the construction of a traffic-control signal into separate portions and may advertise for bids for each portion ~~for may perform the work itself for any portion~~ if the public body:

(a) Conducts a study of the need for a traffic-control signal at a specific location and the public body determines pursuant to the study that the signal is warranted;

(b) Finds that the interest of public safety would be served best if the traffic-control signal is constructed in the most expeditious and cost-effective manner;

(c) Finds that dividing the work into separate portions ~~and, if it intends to perform any portion of the work, performing at least a portion of the work itself~~ is the most expeditious and cost-effective manner in which to construct the traffic-control signal; and

(d) Advertises for bids for each separate portion of the public work ~~which it is not performing~~ in the same manner that it would publish any other advertisement for bids.

2. A public body may advertise for bids for a contract under which the contractor agrees for a 1-year period to construct traffic-control signals or portions of traffic-control signals upon demand by the public body. A public body may include in the specifications for bids for such a contract:

(a) The maximum time allowed between the date on which the public body provides notice to the contractor to commence construction of a traffic-control signal or portion thereof and the date by which the construction must be completed to the satisfaction of the public body; and

(b) The maximum time allowed for the delivery of materials to complete the construction and, if deemed appropriate by the public body, measures for expediting delivery of such materials, including, without limitation, delivery of any or all materials by the public body.

3. A public body may perform all or a portion of the work on the construction of a traffic-control signal if:

(a) The public body advertised for bids pursuant to subsection 1 or 2 and did not receive any bids; or

(b) The public body entered into a contract pursuant to subsection 2 and the contractor to whom the contract was awarded is unavailable to perform the work within the time required by the public body.

4. As used in this section, "traffic-control signal" has the meaning ascribed to it in NRS 484.205.

Sec. 2. NRS 338.0115 is hereby amended to read as follows:

338.0115 1. Except as otherwise provided in subsection 2, the provisions of this chapter and chapters 332 and 339 of NRS do not apply to a contract under which a private developer, for the benefit of a private development, constructs a water or sewer line extension and any related appurtenances:

(a) Which qualify as a public work pursuant to NRS 338.010; and

(b) For which he will receive a monetary contribution or refund from a public body as reimbursement for a portion of the costs of the project.

2. If, pursuant to the provisions of such a contract, the developer is not responsible for paying all of the initial construction costs of the project, the

provisions of NRS 338.013 to 338.090, inclusive, 338.1373 to 338.139, inclusive, *and section 1 of this act* and 338.140 to 338.148, inclusive, apply to the contract.

Sec. 3. NRS 338.1385 is hereby amended to read as follows:

338.1385 1. Except as otherwise provided in subsection 9 and NRS 338.1906 and 338.1907, *and section 1 of this act*, this State, or a governing body or its authorized representative that awards a contract for a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county.

(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1386, 338.13862 and 338.13864.

(c) Divide a public work into separate portions to avoid the requirements of paragraph (a) or (b).

2. At least once each quarter, the authorized representative of a public body shall report to the public body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Each advertisement for bids must include a provision that sets forth the requirement that a contractor must be qualified pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

4. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the public work must be awarded on the basis of bids received.

5. Except as otherwise provided in subsection 6 and NRS 338.1389, *and section 1 of this act*, a public body or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

6. Any bids received in response to an advertisement for bids may be rejected if the public body or its authorized representative responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;

(b) The bidder is not responsive or responsible;

(c) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or

(d) The public interest would be served by such a rejection.

7. A public body may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The public body publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The public body considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The public body lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the bidder who has submitted the lowest responsive and responsible bid.

8. ~~Before~~ *Except as otherwise provided in section 1 of this act, before* a public body may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids,

the public body shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the public body intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the public body intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the public body expects to save by rejecting the bids and performing the public work itself.

9. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993; or

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive.

Sec. 4. NRS 338.1385 is hereby amended to read as follows:

338.1385 1. Except as otherwise provided in subsection 9, *and section 1 of this act*, this State, or a governing body or its authorized representative that awards a contract for a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and having a general circulation within the county.

(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1386, 338.13862 and 338.13864.

(c) Divide a public work into separate portions to avoid the requirements of paragraph (a) or (b).

2. At least once each quarter, the authorized representative of a public body shall report to the public body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Each advertisement for bids must include a provision that sets forth the requirement that a contractor must be qualified pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

4. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the public work must be awarded on the basis of bids received.

1 5. Except as otherwise provided in subsection 6 and NRS 338.1389, *and*
2 *section 1 of this act*, a public body or its authorized representative shall award a
3 contract to the lowest responsive and responsible bidder.

4 6. Any bids received in response to an advertisement for bids may be rejected
5 if the public body or its authorized representative responsible for awarding the
6 contract determines that:

- 7 (a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;
8 (b) The bidder is not responsive or responsible;
9 (c) The quality of the services, materials, equipment or labor offered does not
10 conform to the approved plans or specifications; or
11 (d) The public interest would be served by such a rejection.

12 7. A public body may let a contract without competitive bidding if no bids
13 were received in response to an advertisement for bids and:

- 14 (a) The public body publishes a notice stating that no bids were received and
15 that the contract may be let without further bidding;
16 (b) The public body considers any bid submitted in response to the notice
17 published pursuant to paragraph (a);
18 (c) The public body lets the contract not less than 7 days after publishing a
19 notice pursuant to paragraph (a); and
20 (d) The contract is awarded to the lowest responsive and responsible bidder.

21 8. ~~{Before}~~ *Except as otherwise provided in section 1 of this act, before* a
22 public body may commence the performance of a public work itself pursuant to the
23 provisions of this section, based upon a determination that the public interest would
24 be served by rejecting any bids received in response to an advertisement for bids,
25 the public body shall prepare and make available for public inspection a written
26 statement containing:

27 (a) A list of all persons, including supervisors, whom the public body intends
28 to assign to the public work, together with their classifications and an estimate of
29 the direct and indirect costs of their labor;

30 (b) A list of all equipment that the public body intends to use on the public
31 work, together with an estimate of the number of hours each item of equipment will
32 be used and the hourly cost to use each item of equipment;

33 (c) An estimate of the cost of administrative support for the persons assigned to
34 the public work;

35 (d) An estimate of the total cost of the public work, including, the fair market
36 value of or, if known, the actual cost of all materials, supplies, labor and equipment
37 to be used for the public work; and

38 (e) An estimate of the amount of money the public body expects to save by
39 rejecting the bids and performing the public work itself.

40 9. This section does not apply to:

41 (a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

42 (b) Any work of construction, reconstruction, improvement and maintenance
43 of highways subject to NRS 408.323 or 408.327;

44 (c) Normal maintenance of the property of a school district;

45 (d) The Las Vegas Valley Water District created pursuant to chapter 167,
46 Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to
47 chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created
48 pursuant to chapter 100, Statutes of Nevada 1993; or

49 (e) The design and construction of a public work for which a public body
50 contracts with a design-build team pursuant to NRS 338.1711 to 338.1727,
51 inclusive.

1 **Sec. 5.** NRS 338.143 is hereby amended to read as follows:

2 338.143 1. Except as otherwise provided in subsection 8 and NRS
3 338.1907, *and section 1 of this act*, a local government or its authorized
4 representative that awards a contract for a public work in accordance with
5 paragraph (b) of subsection 1 of NRS 338.1373 shall not:

6 (a) Commence a public work for which the estimated cost exceeds \$100,000
7 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is
8 published in the county where the public work will be performed for bids for the
9 public work. If no qualified newspaper is published in the county where the public
10 work will be performed, the required advertisement must be published in some
11 qualified newspaper that is printed in the State of Nevada and has a general
12 circulation in the county.

13 (b) Commence a public work for which the estimated cost is \$100,000 or less
14 unless it complies with the provisions of NRS 338.1442, 338.1444 and 338.1446.

15 (c) Divide a project work into separate portions to avoid the requirements of
16 paragraph (a) or (b).

17 2. At least once each quarter, the authorized representative of a local
18 government shall report to the governing body any contract that the authorized
19 representative awarded pursuant to subsection 1 in the immediately preceding
20 quarter.

21 3. Approved plans and specifications for the bids must be on file at a place
22 and time stated in the advertisement for the inspection of all persons desiring to bid
23 thereon and for other interested persons. Contracts for the public work must be
24 awarded on the basis of bids received.

25 4. Except as otherwise provided in subsection 5 and NRS 338.147, *and*
26 *section 1 of this act*, the local government or its authorized representative shall
27 award a contract to the lowest responsive and responsible bidder.

28 5. Any bids received in response to an advertisement for bids may be rejected
29 if the local government or its authorized representative responsible for awarding the
30 contract determines that:

31 (a) The bidder is not responsive or responsible;

32 (b) The quality of the services, materials, equipment or labor offered does not
33 conform to the approved plans or specifications; or

34 (c) The public interest would be served by such a rejection.

35 6. A local government may let a contract without competitive bidding if no
36 bids were received in response to an advertisement for bids and:

37 (a) The local government publishes a notice stating that no bids were received
38 and that the contract may be let without further bidding;

39 (b) The local government considers any bid submitted in response to the notice
40 published pursuant to paragraph (a);

41 (c) The local government lets the contract not less than 7 days after publishing
42 a notice pursuant to paragraph (a); and

43 (d) The contract is awarded to the lowest responsive and responsible bidder.

44 7. ~~Before~~ *Except as otherwise provided in section 1 of this act, before* a
45 local government may commence the performance of a public work itself pursuant
46 to the provisions of this section, based upon a determination that the public interest
47 would be served by rejecting any bids received in response to an advertisement for
48 bids, the local government shall prepare and make available for public inspection a
49 written statement containing:

50 (a) A list of all persons, including supervisors, whom the local government
51 intends to assign to the public work, together with their classifications and an
52 estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the local government intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the local government expects to save by rejecting the bids and performing the public work itself.

8. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993; or

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive.

Sec. 6. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 8, *and section 1 of this act*, a local government or its authorized representative that awards a contract for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published within the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation within the county.

(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1442, 338.1444 or 338.1446.

(c) Divide a public work into separate portions to avoid the requirements of paragraph (a) or (b).

2. At least once each quarter, the authorized representative of a local government shall report to the governing body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the public work must be awarded on the basis of bids received.

4. Except as otherwise provided in subsection 5 and NRS 338.147, *and section 1 of this act*, the local government or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

5. Any bids received in response to an advertisement for bids may be rejected if the local government or its authorized representative responsible for awarding the contract determines that:

(a) The bidder is not responsive or responsible;

(b) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or

(c) The public interest would be served by such a rejection.

6. A local government may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The local government publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The local government considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The local government lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

7. ~~Before~~ *Except as otherwise provided in section 1 of this act, before* a local government may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the local government shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the local government intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the local government intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the local government expects to save by rejecting the bids and performing the public work itself.

8. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993; or

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive.

Sec. 7. 1. This section and sections 1, 2, 3 and 5 of this act become effective on July 1, 2007.

2. Sections 3 and 5 of this act expire by limitation on April 30, 2013.

3. Sections 4 and 6 of this act become effective on May 1, 2013.