

Amendment No. 542

Assembly Amendment to Assembly Bill No. 483	(BDR 28-932)
Proposed by: Assemblywoman Kirkpatrick	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

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 dashed underlining* is newly added transitory language.

EGO



Date: 4/20/2009

A.B. No. 483—Revises the provisions governing the terms of certain contracts between public bodies and certain design professionals on public works. (BDR 28-932)



ASSEMBLY BILL NO. 483—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 20, 2009

Referred to Committee on Government Affairs

SUMMARY—Revises the provisions governing the terms of certain contracts between public bodies and certain design professionals on public works. (BDR 28-932)

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:

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. (NRS 338.155) This bill ~~relieves~~ **clarifies the extent of the obligation of** a design professional ~~of any contractual duty~~ to defend, **indemnify and hold harmless** a public body against liabilities, damages, losses, claims, actions or proceedings ~~to the extent they~~ **that** are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the design professional or his employees or agents in the performance of the contract. ~~If the professional liability insurer of the design professional refuses to defend the public body. This bill specifically provides that any provision in such a contract that conflicts with the requirements and prohibitions concerning such contracts is void.~~

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, if the policy allows such an addition.

4. ~~Except as otherwise provided in subsection 5, must~~ **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. 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, **to the extent that such liabilities, damages, losses, claims, actions or proceedings** 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 if the design professional is relieved of any duty to so defend the public body and the employees, officers and agents of the public body. If~~ 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.

6. ~~Any provision of a contract that conflicts with this section is void.~~

~~7.~~ As used in this ~~subsection,~~ **section**, "agents" means those persons who are directly involved in and acting on behalf of the public body **or the design professional, as applicable**, in furtherance of the contract or the public work to which the contract pertains.

Sec. 2. This act becomes effective on July 1, 2009.