

Amendment No. 710

Senate Amendment to Assembly Bill No. 483 First Reprint
(BDR 28-932)

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	☐	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.

SJA/EGO



Date: 5/17/2009

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 clarifies the extent of the obligation of a design professional to defend, indemnify and hold harmless a public body against liabilities, damages, losses, claims, actions or proceedings 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. ***This bill also provides that any provision in such a contract that conflicts with certain 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 1. 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)~~ (a) Must set forth:

~~(a)~~ (1) The specific period within which the public body must pay the design professional.

~~(b)~~ (2) 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)~~ (3) 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 (c).~~

~~(d)~~ subparagraph (1).

1 (4) That the prevailing party in an action to enforce the contract is entitled
2 to reasonable attorney's fees and costs.

3 ~~(2)~~ (b) May set forth the terms of any discount that the public body will
4 receive if the public body pays the design professional within the specific period
5 set forth in the contract pursuant to subparagraph (1) of paragraph (a). ~~to~~

6 ~~subsection 1.~~
7 ~~(3)~~ (c) May set forth the terms by which the design professional agrees to
8 name the public body, at the cost of the public body, as an additional insured in an
9 insurance policy held by the design professional, if the policy allows such an
10 addition.

11 ~~(4)~~ (d) ~~Except as otherwise provided in subsection 5, must~~ **Must** not require
12 the design professional to defend, indemnify or hold harmless the public body or
13 the employees, officers or agents of that public body from any liability, damage,
14 loss, claim, action or proceeding caused by the negligence, errors, omissions,
15 recklessness or intentional misconduct of the employees, officers or agents of the
16 public body.

17 ~~(5)~~ (e) Except as otherwise provided in this ~~subsection,~~ paragraph, may
18 require the design professional to defend, indemnify and hold harmless the public
19 body, and the employees, officers and agents of the public body from any liabilities,
20 damages, losses, claims, actions or proceedings, including, without limitation,
21 reasonable attorneys' fees ~~and costs,~~ to the extent that such liabilities, damages,
22 losses, claims, actions or proceedings are caused by the negligence, errors,
23 omissions, recklessness or intentional misconduct of the design professional or the
24 employees or agents of the design professional in the performance of the contract.
25 If the insurer by which the design professional is insured against professional
26 liability does not so defend the public body and the employees, officers and agents
27 of the public body and the design professional is adjudicated to be liable by a trier
28 of fact, the trier of fact shall award reasonable attorney's fees and costs to be paid
29 to the public body by the design professional in an amount which is proportionate
30 to the liability of the design professional.

31 ~~(6)~~ 2. Any provision of a contract entered into by a public body and a
32 design professional who is not a member of a design-build team that conflicts
33 with the provisions of paragraph (d) or (e) of subsection 1 is void.

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

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