

Assembly Bill No. 106—Committee
on Government Affairs

CHAPTER.....

AN ACT relating to public works; revising provisions relating to contracts between a public body and a design professional; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides standard provisions that must be included in a public works contract between a public body and a design professional who is not a member of a design-build team. (NRS 338.155) A design professional is defined in existing law as a professional engineer, professional land surveyor, architect, interior designer, residential designer or landscape architect, or a business entity that is engaged in the business of professional engineering, land surveying, architecture or landscape architecture. (NRS 338.010) This bill eliminates the authority of a public body to include in a contract with such a design professional a provision requiring that the design professional defend the public body in any lawsuit alleging negligence, errors or omissions, recklessness or intentional misconduct on the part of the design professional or his or her employees or agents which are based upon or arising out of the professional services of the design professional. In such circumstances, this bill provides that if the design professional is held to be liable as a result of a lawsuit, the judge or jury shall order the design professional to reimburse the public body for a proportionate share of the attorney's fees and costs the public body incurred in defending the action. However, this bill retains the authority in existing law for a public body to include a provision in a contract with a design professional requiring that the design professional defend the public body in any lawsuit alleging negligence, errors or omissions, recklessness or intentional misconduct of the design professional or his or her employees or agents which are not based upon or arising out of the professional services of the design professional.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

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:

(a) Must set forth:

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

(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.



(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 subparagraph (1).

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

(b) 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 subparagraph (1) of paragraph (a).

(c) 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.

(d) 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.

(e) ~~{Except as otherwise provided in this paragraph, may}~~ *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 and costs, 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}~~

(f) Must not require the design professional to defend the public body and the employees, officers and agents of the public body ~~{and}~~ with respect to the liabilities, damages, losses, claims, actions or proceedings caused by the negligence, errors, omissions, recklessness or intentional misconduct of the design professional or the employees or agents of the design professional which are based upon or arising out of the professional services of the design professional. If the design professional is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees and costs to be paid to the public body , as reimbursement for the attorney's fees and costs incurred by the public body in defending the action, by the design professional in



an amount which is proportionate to the liability of the design professional.

(g) May require the design professional to defend the public body and the employees, officers and agents of the public body with respect to the liabilities, damages, losses, claims, actions or proceedings caused by the negligence, errors, omissions, recklessness or intentional misconduct of the design professional or the employees or agents of the design professional which are not based upon or arising out of the professional services of the design professional.

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

3. As used in this 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 upon passage and approval.

