

ASSEMBLY BILL NO. 43—COMMITTEE ON TRANSPORTATION

(ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION)

PREFILED DECEMBER 20, 2014

Referred to Committee on Transportation

SUMMARY—Clarifies confidentiality provisions governing certain documents. (BDR 35-377)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

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

AN ACT relating to public works; providing that certain documents and other information submitted by a person seeking a contract with a public body to construct certain public works are confidential until the contract is awarded; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the Department of Transportation is authorized to advertise for proposals from design-build teams and contract with a design-build team for the design and construction of certain projects. (NRS 408.388, 408.3883) The Department is also authorized to accept requests from certain persons seeking to develop, construct, improve, maintain or operate certain transportation facilities. (NRS 408.5475) The Department may authorize the person who requested such a project to carry out the project or may request that other persons submit proposals for the project. (NRS 408.5473, 408.548) **Sections 2 and 3** of this bill provide that certain documents or other information submitted to the Department by a person seeking a contract with the Department for a design-build project or a transportation facility project are confidential until the contract is awarded.

Existing law authorizes public bodies to construct public works by advertising for proposals for a construction manager at risk and then selecting and entering into a contract with a construction manager at risk. (NRS 338.169, 338.1692) **Section 6** of this bill provides that certain documents or other information submitted to a public body by a construction manager at risk seeking a contract with a public body for a public works project are confidential until the contract is awarded.

Under existing law, all public books and records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, are required to be open at all times during office hours for inspection and copying by the public. (NRS 239.010) **Section 8** of this bill adds to the list of public books and records



22 which are declared confidential those documents and other information as reflected
23 in **sections 2, 3 and 6.**

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

1 **Section 1.** Chapter 408 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2. 1.** *Any document or other information submitted to*
4 *the Department by a person who is a member of a design-build*
5 *team seeking a design-build contract pursuant to NRS 408.3875 to*
6 *408.3887, inclusive, is confidential and may not be disclosed until*
7 *the contract is awarded.*

8 2. *As used in this section, the term “document or other*
9 *information” means any submittal by a person who is a member of*
10 *a design-build team to the Department required pursuant to NRS*
11 *408.3875 to 408.3887, inclusive, for the selection of a design-build*
12 *team and includes, without limitation, a preliminary proposal*
13 *made pursuant to NRS 408.3883, a statement that the person*
14 *satisfies the requirements of NRS 408.3884 and a final proposal*
15 *submitted pursuant to NRS 408.3886.*

16 **Sec. 3. 1.** *Any document or other information submitted to*
17 *the Department by a person seeking a contract to develop,*
18 *construct, improve, maintain or operate, or any combination*
19 *thereof, a transportation facility pursuant to NRS 408.5471 to*
20 *408.549, inclusive, is confidential and may not be disclosed until*
21 *the contract is awarded.*

22 2. *As used in this section, the term “document or other*
23 *information” means any submittal by a person to the Department*
24 *required pursuant to NRS 408.5471 to 408.549, inclusive, as part*
25 *of the submission or approval of a request or proposal and*
26 *includes, without limitation, a request made pursuant to NRS*
27 *408.5475, a proposal made pursuant to NRS 408.548 and any*
28 *submittal required by regulations promulgated by the Department*
29 *pursuant to NRS 408.548.*

30 **Sec. 4.** NRS 408.3875 is hereby amended to read as follows:
31 408.3875 As used in NRS 408.3875 to 408.3887, inclusive,
32 *and section 2 of this act*, unless the context otherwise requires, the
33 words and terms defined in NRS 408.3876 to 408.3879, inclusive,
34 have the meanings ascribed to them in those sections.

35 **Sec. 5.** NRS 408.5471 is hereby amended to read as follows:
36 408.5471 As used in NRS 408.5471 to 408.549, inclusive, *and*
37 *section 3 of this act*, unless the context otherwise requires,
38 “transportation facility” means a road, railroad, bridge, tunnel,
39 overpass, airport, mass transit facility, parking facility for vehicles



1 or similar commercial facility used for the support of or the
2 transportation of persons or goods, including, without limitation,
3 any other property that is needed to operate the facility. The term
4 does not include a toll bridge or toll road.

5 **Sec. 6.** Chapter 338 of NRS is hereby amended by adding
6 thereto a new section to read as follows:

7 **1. Any document or other information submitted to a public**
8 **body by a contractor seeking a contract between the public body**
9 **and a construction manager at risk pursuant to NRS 338.1685 to**
10 **338.16995, inclusive, is confidential and may not be disclosed until**
11 **the contract is awarded.**

12 **2. As used in this section, the term "document or other**
13 **information" means any submittal by a contractor to a public body**
14 **required pursuant to NRS 338.1685 to 338.16995, inclusive, as**
15 **part of the selection process for a construction manager at risk**
16 **and includes, without limitation, a proposal made pursuant to**
17 **NRS 338.1692.**

18 **Sec. 7.** NRS 338.1685 is hereby amended to read as follows:

19 338.1685 The Legislature hereby declares that the provisions
20 of NRS 338.1685 to 338.16995, inclusive, **and section 6 of this act,**
21 relating to contracts involving construction managers at risk, are
22 intended:

23 1. To promote public confidence and trust in the contracting
24 and bidding procedures for public works established therein;

25 2. For the benefit of the public, to promote the philosophy of
26 obtaining the best possible value as compared to low-bid
27 contracting; and

28 3. To better equip public bodies to address public works that
29 present unique and complex construction challenges.

30 **Sec. 8.** NRS 239.010 is hereby amended to read as follows:

31 239.010 1. Except as otherwise provided in this section and
32 NRS 1.4683, 1A.110, 49.095, 62D.420, 62D.440, 62E.516,
33 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 76.160,
34 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413,
35 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345,
36 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270,
37 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280,
38 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130,
39 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057,
40 127.130, 127.140, 127.2817, 130.312, 159.044, 172.075, 172.245,
41 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801,
42 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450,
43 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662,
44 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140,
45 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464,



1 217.475, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350,
2 228.270, 228.450, 228.495, 228.570, 231.069, 233.190, 237.300,
3 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140,
4 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020,
5 241.030, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140,
6 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281A.350,
7 281A.440, 281A.550, 284.4068, 286.110, 287.0438, 289.025,
8 289.080, 289.387, 293.5002, 293.503, 293.558, 293B.135,
9 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070,
10 338.1379, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205,
11 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255,
12 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 372A.080,
13 378.290, 378.300, 379.008, 386.655, 387.626, 387.631, 388.5275,
14 388.528, 388.5315, 388.750, 391.035, 392.029, 392.147, 392.264,
15 392.271, 392.652, 392.850, 394.167, 394.1698, 394.447, 394.460,
16 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885,
17 408.3886, 412.153, 416.070, 422.290, 422.305, 422A.320,
18 422A.350, 425.400, 427A.1236, 427A.872, 432.205, 432B.175,
19 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534,
20 433A.360, 439.270, 439.840, 439B.420, 440.170, 441A.195,
21 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570,
22 449.209, 449.245, 449.720, 453.1545, 453.720, 453A.610,
23 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555,
24 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403,
25 463.3407, 463.790, 467.1005, 467.137, 481.063, 482.170, 482.5536,
26 483.340, 483.363, 483.800, 484E.070, 485.316, 503.452, 522.040,
27 534A.031, 561.285, 571.160, 584.655, 598.0964, 598A.110,
28 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015,
29 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131,
30 623A.353, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418,
31 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368,
32 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.212,
33 634.214, 634A.185, 635.158, 636.107, 637.085, 637A.315,
34 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075,
35 640A.220, 640B.730, 640C.400, 640C.745, 640C.760, 640D.190,
36 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524,
37 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082,
38 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135,
39 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945,
40 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110,
41 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310,
42 671.170, 673.430, 675.380, 676A.340, 676A.370, 677.243,
43 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690,
44 680A.270, 681A.440, 681B.260, 681B.280, 683A.0873, 685A.077,
45 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010,



1 688C.230, 688C.480, 688C.490, 692A.117, 692C.190, 692C.420,
2 693A.480, 693A.615, 696B.550, 703.196, 704B.320, 704B.325,
3 706.1725, 710.159, 711.600, *sections 2, 3 and 6 of this act*, sections
4 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2
5 of chapter 391, Statutes of Nevada 2013 and unless otherwise
6 declared by law to be confidential, all public books and public
7 records of a governmental entity must be open at all times during
8 office hours to inspection by any person, and may be fully copied or
9 an abstract or memorandum may be prepared from those public
10 books and public records. Any such copies, abstracts or memoranda
11 may be used to supply the general public with copies, abstracts or
12 memoranda of the records or may be used in any other way to the
13 advantage of the governmental entity or of the general public. This
14 section does not supersede or in any manner affect the federal laws
15 governing copyrights or enlarge, diminish or affect in any other
16 manner the rights of a person in any written book or record which is
17 copyrighted pursuant to federal law.

18 2. A governmental entity may not reject a book or record
19 which is copyrighted solely because it is copyrighted.

20 3. A governmental entity that has legal custody or control of a
21 public book or record shall not deny a request made pursuant to
22 subsection 1 to inspect or copy or receive a copy of a public book or
23 record on the basis that the requested public book or record contains
24 information that is confidential if the governmental entity can
25 redact, delete, conceal or separate the confidential information from
26 the information included in the public book or record that is not
27 otherwise confidential.

28 4. A person may request a copy of a public record in any
29 medium in which the public record is readily available. An officer,
30 employee or agent of a governmental entity who has legal custody
31 or control of a public record:

32 (a) Shall not refuse to provide a copy of that public record in a
33 readily available medium because the officer, employee or agent has
34 already prepared or would prefer to provide the copy in a different
35 medium.

36 (b) Except as otherwise provided in NRS 239.030, shall, upon
37 request, prepare the copy of the public record and shall not require
38 the person who has requested the copy to prepare the copy himself
39 or herself.

40 **Sec. 9.** 1. This act becomes effective upon passage and
41 approval.

42 2. Section 6 of this act expires by limitation on June 30, 2017.

