

Amendment No. 763

Senate Amendment to Assembly Bill No. 172 First Reprint	(BDR 28-565)
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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

RAE/MSM



Date: 5/14/2015

A.B. No. 172—Revises provisions relating to public works. (BDR 28-565)



ASSEMBLY BILL NO. 172—ASSEMBLYMEN O’NEILL,  
OSCARSON; KIRNER AND STEWART

FEBRUARY 17, 2015

JOINT SPONSORS: SENATORS GOICOECHEA;  
AND SETTELMEYER

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works. (BDR 28-565)

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

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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; raising the estimated thresholds at or above which prevailing wage requirements apply to certain public work construction projects; increasing the amount of a preference in bidding on certain public works given to contractors and certain other persons who meet certain eligibility requirements; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Under existing law, any contract for a public work whose cost is \$100,000 or more is subject to the prevailing wage requirements. (NRS 338.080) The prevailing wage requirements also apply if a redevelopment agency provides financial incentives to the developer with a value of more than \$100,000. (NRS 279.500) **Sections 3 and 4** of this bill raise the threshold for the applicability of prevailing wage requirements from \$100,000 to ~~(\$250,000)~~ ***\$500,000***, require this amount to be adjusted every 5 years for inflation, and also make a technical correction in **section 4** clarifying that if the relevant work will cost exactly ~~(\$250,000)~~ ***\$500,000***, the work is subject to the prevailing wage requirements.

Under existing law, a contractor, applicant to serve as a construction manager at risk or design-build team may qualify to receive a 5 percent preference in bidding on certain contracts for public works if certain conditions, including the employment of a specified percentage of Nevada employees, are met. (NRS 338.1389, 338.147, 338.1693, 338.1725, 338.1727, 408.3886) **Sections 3.3, 3.5, 3.6, 3.7, 3.8 and 4.5** increase the amount of that preference in bidding to 7.5 percent.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:**Section 1.** (Deleted by amendment.)**Sec. 2.** (Deleted by amendment.)

1       **Sec. 3.** NRS 338.080 is hereby amended to read as follows:

2       338.080 1. None of the provisions of NRS 338.020 to 338.090, inclusive,  
3       apply to:

4       ~~1-1~~ (a) Any work, construction, alteration, repair or other employment  
5       performed, undertaken or carried out, by or for any railroad company or any person  
6       operating the same, whether such work, construction, alteration or repair is incident  
7       to or in conjunction with a contract to which a public body is a party, or otherwise.

8       ~~1-2~~ (b) Apprentices recorded under the provisions of chapter 610 of NRS.

9       ~~1-3~~ (c) Any contract for a public work whose cost is less than ~~1-100,000-~~  
10       ~~350,000-~~ 500,000. A unit of the project must not be separated from the total  
11       project, even if that unit is to be completed at a later time, in order to lower the cost  
12       of the project below ~~1-100,000-~~ ~~350,000-~~ 500,000.

13       2. *The Labor Commissioner shall, on or before January 1, 2020, and every*  
14       *5 years thereafter, adjust the amount set forth in paragraph (c) of subsection 1 to*  
15       *reflect inflation, as measured by the average percentage of increase or decrease*  
16       *in the Consumer Price Index for All Urban Consumers of the United States*  
17       *Department of Labor, Bureau of Labor Statistics, for the preceding 5 years. The*  
18       *Labor Commissioner shall determine the amount of the increase or decrease*  
19       *required by this subsection and establish the adjusted amounts to take effect on*  
20       *January 1 of that year.*

21       **Sec. 3.3.** NRS 338.1389 is hereby amended to read as follows:

22       338.1389 1. Except as otherwise provided in subsection 10 and NRS  
23       338.1385, 338.1386 and 338.13864, a public body or its authorized representative  
24       shall award a contract for a public work for which the estimated cost exceeds  
25       \$250,000 to the contractor who submits the best bid.

26       2. Except as otherwise provided in subsection 10 or limited by subsection 11,  
27       the lowest bid that is:

28       (a) Submitted by a responsive and responsible contractor who:

29       (1) Has been determined by the public body to be a qualified bidder  
30       pursuant to NRS 338.1379 or 338.1382;

31       (2) At the time the contractor submits his or her bid, provides a valid  
32       certificate of eligibility to receive a preference in bidding on public works issued to  
33       the contractor by the State Contractors' Board pursuant to subsection 3 or 4; and

34       (3) Within 2 hours after the completion of the opening of the bids by the  
35       public body or its authorized representative, submits a signed affidavit that meets  
36       the requirements of subsection 1 of NRS 338.0117; and

37       (b) Not more than ~~1-5~~ 7.5 percent higher than the bid submitted by the lowest  
38       responsive and responsible bidder who:

39       (1) Does not provide, at the time he or she submits the bid, a valid  
40       certificate of eligibility to receive a preference in bidding on public works issued to  
41       him or her by the State Contractors' Board pursuant to subsection 3 or 4; or

42       (2) Does not submit, within 2 hours after the completion of the opening of  
43       the bids by the public body or its authorized representative, a signed affidavit  
44       certifying that he or she will comply with the requirements of paragraphs (a) to (d),  
45       inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract,

46       ➤ shall be deemed to be the best bid for the purposes of this section.

47       3. The State Contractors' Board shall issue a certificate of eligibility to  
48       receive a preference in bidding on public works to a general contractor who is  
49       licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board  
50       an affidavit from a certified public accountant setting forth that the general  
51       contractor has, while licensed as a general contractor in this State:

52       (a) Paid directly, on his or her own behalf:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a general contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

4. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a specialty contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

5. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 and paragraph (a) of subsection 4, a contractor shall be deemed to have paid:

(a) Sales and use taxes and governmental services taxes that were paid in this State by an affiliate or parent company of the contractor, if the affiliate or parent company is also a general contractor or specialty contractor, as applicable; and

1 (b) Sales and use taxes that were paid in this State by a joint venture in which  
2 the contractor is a participant, in proportion to the amount of interest the contractor  
3 has in the joint venture.

4 6. A contractor who has received a certificate of eligibility to receive a  
5 preference in bidding on public works from the State Contractors' Board pursuant  
6 to subsection 3 or 4 shall, at the time for the renewal of his or her contractor's  
7 license pursuant to NRS 624.283, submit to the Board an affidavit from a certified  
8 public accountant setting forth that the contractor has, during the immediately  
9 preceding 12 months, paid the taxes required pursuant to paragraph (a) of  
10 subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain eligibility  
11 to hold such a certificate.

12 7. A contractor who fails to submit an affidavit to the Board pursuant to  
13 subsection 6 ceases to be eligible to receive a preference in bidding on public works  
14 unless the contractor reapplies for and receives a certificate of eligibility pursuant to  
15 subsection 3 or 4, as applicable.

16 8. If a contractor holds more than one contractor's license, the contractor must  
17 submit a separate application for each license pursuant to which the contractor  
18 wishes to qualify for a preference in bidding. Upon issuance, the certificate of  
19 eligibility to receive a preference in bidding on public works becomes part of the  
20 contractor's license for which the contractor submitted the application.

21 9. If a contractor who applies to the State Contractors' Board for a certificate  
22 of eligibility to receive a preference in bidding on public works:

23 (a) Submits false information to the Board regarding the required payment of  
24 taxes, the contractor is not eligible to receive a preference in bidding on public  
25 works for a period of 5 years after the date on which the Board becomes aware of  
26 the submission of the false information; or

27 (b) Is found by the Board to have, within the preceding 5 years, materially  
28 breached a contract for a public work for which the cost exceeds \$5,000,000, the  
29 contractor is not eligible to receive a preference in bidding on public works.

30 10. If any federal statute or regulation precludes the granting of federal  
31 assistance or reduces the amount of that assistance for a particular public work  
32 because of the provisions of subsection 2, those provisions do not apply insofar as  
33 their application would preclude or reduce federal assistance for that work.

34 11. If a bid is submitted by two or more contractors as a joint venture or by  
35 one of them as a joint venturer, the bid may receive a preference in bidding only if  
36 both or all of the joint venturers separately meet the requirements of subsection 2.

37 12. The State Contractors' Board shall adopt regulations and may assess  
38 reasonable fees relating to the certification of contractors for a preference in  
39 bidding on public works.

40 13. A person who submitted a bid on the public work or an entity who  
41 believes that the contractor who was awarded the contract for the public work  
42 wrongfully holds a certificate of eligibility to receive a preference in bidding on  
43 public works may challenge the validity of the certificate by filing a written  
44 objection with the public body to which the contractor has submitted a bid on a  
45 contract for the construction of a public work. A written objection authorized  
46 pursuant to this subsection must:

47 (a) Set forth proof or substantiating evidence to support the belief of the person  
48 or entity that the contractor wrongfully holds a certificate of eligibility to receive a  
49 preference in bidding on public works; and

50 (b) Be filed with the public body not later than 3 business days after the  
51 opening of the bids by the public body or its authorized representative.

52 14. If a public body receives a written objection pursuant to subsection 13, the  
53 public body shall determine whether the objection is accompanied by the proof or

1 substantiating evidence required pursuant to paragraph (a) of that subsection. If the  
2 public body determines that the objection is not accompanied by the required proof  
3 or substantiating evidence, the public body shall dismiss the objection and the  
4 public body or its authorized representative may proceed immediately to award the  
5 contract. If the public body determines that the objection is accompanied by the  
6 required proof or substantiating evidence, the public body shall determine whether  
7 the contractor qualifies for the certificate pursuant to the provisions of this section  
8 and the public body or its authorized representative may proceed to award the  
9 contract accordingly.

10 **Sec. 3.5.** NRS 338.147 is hereby amended to read as follows:

11 338.147 1. Except as otherwise provided in subsection 10 and NRS  
12 338.143, 338.1442 and 338.1446, a local government or its authorized  
13 representative shall award a contract for a public work for which the estimated cost  
14 exceeds \$250,000 to the contractor who submits the best bid.

15 2. Except as otherwise provided in subsection 10 or limited by subsection 11,  
16 the lowest bid that is:

17 (a) Submitted by a contractor who:

18 (1) Has been found to be a responsible and responsive contractor by the  
19 local government or its authorized representative;


20 (2) At the time the contractor submits his or her bid, provides a valid  
21 certificate of eligibility to receive a preference in bidding on public works issued to  
22 the contractor by the State Contractors' Board pursuant to subsection 3 or 4; and

23 (3) Within 2 hours after the completion of the opening of the bids by the  
24 local government or its authorized representative, submits a signed affidavit that  
25 meets the requirements of subsection 1 of NRS 338.0117; and

26 (b) Not more than ~~15~~ 7.5 percent higher than the bid submitted by the lowest  
27 responsive and responsible bidder who:

28 (1) Does not provide, at the time he or she submits the bid, a valid  
29 certificate of eligibility to receive a preference in bidding on public works issued to  
30 him or her by the State Contractors' Board pursuant to subsection 3 or 4; or

31 (2) Does not submit, within 2 hours after the completion of the opening of  
32 the bids by the public body or its authorized representative, a signed affidavit  
33 certifying that he or she will comply with the requirements of paragraphs (a) to (d),  
34 inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract,

35  shall be deemed to be the best bid for the purposes of this section.

36 3. The State Contractors' Board shall issue a certificate of eligibility to  
37 receive a preference in bidding on public works to a general contractor who is  
38 licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board  
39 an affidavit from a certified public accountant setting forth that the general  
40 contractor has, while licensed as a general contractor in this State:

41 (a) Paid directly, on his or her own behalf:

42 (1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377  
43 of NRS on materials used for construction in this State, including, without  
44 limitation, construction that is undertaken or carried out on land within the  
45 boundaries of this State that is managed by the Federal Government or is on an  
46 Indian reservation or Indian colony, of not less than \$5,000 for each consecutive  
47 12-month period for 60 months immediately preceding the submission of the  
48 affidavit from the certified public accountant;

49 (2) The governmental services tax imposed pursuant to chapter 371 of  
50 NRS on the vehicles used in the operation of his or her business in this State of not  
51 less than \$5,000 for each consecutive 12-month period for 60 months immediately  
52 preceding the submission of the affidavit from the certified public accountant; or

1 (3) Any combination of such sales and use taxes and governmental  
2 services tax; or

3 (b) Acquired, by purchase, inheritance, gift or transfer through a stock option  
4 plan, all the assets and liabilities of a viable, operating construction firm that  
5 possesses a:

6 (1) License as a general contractor pursuant to the provisions of chapter  
7 624 of NRS; and

8 (2) Certificate of eligibility to receive a preference in bidding on public  
9 works.

10 4. The State Contractors' Board shall issue a certificate of eligibility to  
11 receive a preference in bidding on public works to a specialty contractor who is  
12 licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board  
13 an affidavit from a certified public accountant setting forth that the specialty  
14 contractor has, while licensed as a specialty contractor in this State:

15 (a) Paid directly, on his or her own behalf:

16 (1) The sales and use taxes pursuant to chapters 372, 374 and 377 of NRS  
17 on materials used for construction in this State, including, without limitation,  
18 construction that is undertaken or carried out on land within the boundaries of this  
19 State that is managed by the Federal Government or is on an Indian reservation or  
20 Indian colony, of not less than \$5,000 for each consecutive 12-month period for 60  
21 months immediately preceding the submission of the affidavit from the certified  
22 public accountant;

23 (2) The governmental services tax imposed pursuant to chapter 371 of  
24 NRS on the vehicles used in the operation of his or her business in this State of not  
25 less than \$5,000 for each consecutive 12-month period for 60 months immediately  
26 preceding the submission of the affidavit from the certified public accountant; or

27 (3) Any combination of such sales and use taxes and governmental  
28 services tax; or

29 (b) Acquired, by purchase, inheritance, gift or transfer through a stock option  
30 plan, all the assets and liabilities of a viable, operating construction firm that  
31 possesses a:

32 (1) License as a specialty contractor pursuant to the provisions of chapter  
33 624 of NRS; and

34 (2) Certificate of eligibility to receive a preference in bidding on public  
35 works.

36 5. For the purposes of complying with the requirements set forth in paragraph  
37 (a) of subsection 3 and paragraph (a) of subsection 4, a contractor shall be deemed  
38 to have paid:

39 (a) Sales and use taxes and governmental services taxes paid in this State by an  
40 affiliate or parent company of the contractor, if the affiliate or parent company is  
41 also a general contractor or specialty contractor, as applicable; and

42 (b) Sales and use taxes paid in this State by a joint venture in which the  
43 contractor is a participant, in proportion to the amount of interest the contractor has  
44 in the joint venture.

45 6. A contractor who has received a certificate of eligibility to receive a  
46 preference in bidding on public works from the State Contractors' Board pursuant  
47 to subsection 3 or 4 shall, at the time for the renewal of his or her contractor's  
48 license pursuant to NRS 624.283, submit to the Board an affidavit from a certified  
49 public accountant setting forth that the contractor has, during the immediately  
50 preceding 12 months, paid the taxes required pursuant to paragraph (a) of  
51 subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain eligibility  
52 to hold such a certificate.

1       7. A contractor who fails to submit an affidavit to the Board pursuant to  
2 subsection 6 ceases to be eligible to receive a preference in bidding on public works  
3 unless the contractor reapplies for and receives a certificate of eligibility pursuant to  
4 subsection 3 or 4, as applicable.

5       8. If a contractor holds more than one contractor's license, the contractor must  
6 submit a separate application for each license pursuant to which the contractor  
7 wishes to qualify for a preference in bidding. Upon issuance, the certificate of  
8 eligibility to receive a preference in bidding on public works becomes part of the  
9 contractor's license for which the contractor submitted the application.

10      9. If a contractor who applies to the State Contractors' Board for a certificate  
11 of eligibility to receive a preference in bidding on public works:

12      (a) Submits false information to the Board regarding the required payment of  
13 taxes, the contractor is not eligible to receive a preference in bidding on public  
14 works for a period of 5 years after the date on which the Board becomes aware of  
15 the submission of the false information; or

16      (b) Is found by the Board to have, within the preceding 5 years, materially  
17 breached a contract for a public work for which the cost exceeds \$5,000,000, the  
18 contractor is not eligible to receive a preference in bidding on public works.

19      10. If any federal statute or regulation precludes the granting of federal  
20 assistance or reduces the amount of that assistance for a particular public work  
21 because of the provisions of subsection 2, those provisions do not apply insofar as  
22 their application would preclude or reduce federal assistance for that work.

23      11. If a bid is submitted by two or more contractors as a joint venture or by  
24 one of them as a joint venturer, the bid may receive a preference in bidding only if  
25 both or all of the joint venturers separately meet the requirements of subsection 2.

26      12. The State Contractors' Board shall adopt regulations and may assess  
27 reasonable fees relating to the certification of contractors for a preference in  
28 bidding on public works.

29      13. A person who submitted a bid on the public work or an entity who  
30 believes that the contractor who was awarded the contract for the public work  
31 wrongfully holds a certificate of eligibility to receive a preference in bidding on  
32 public works may challenge the validity of the certificate by filing a written  
33 objection with the local government to which the contractor has submitted a bid on  
34 a contract for the construction of a public work. A written objection authorized  
35 pursuant to this subsection must:

36      (a) Set forth proof or substantiating evidence to support the belief of the person  
37 or entity that the contractor wrongfully holds a certificate of eligibility to receive a  
38 preference in bidding on public works; and

39      (b) Be filed with the local government not later than 3 business days after the  
40 opening of the bids by the local government or its authorized representative.

41      14. If a local government receives a written objection pursuant to subsection  
42 13, the local government shall determine whether the objection is accompanied by  
43 the proof or substantiating evidence required pursuant to paragraph (a) of that  
44 subsection. If the local government determines that the objection is not  
45 accompanied by the required proof or substantiating evidence, the local government  
46 shall dismiss the objection and the local government or its authorized representative  
47 may proceed immediately to award the contract. If the local government determines  
48 that the objection is accompanied by the required proof or substantiating evidence,  
49 the local government shall determine whether the contractor qualifies for the  
50 certificate pursuant to the provisions of this section and the local government or its  
51 authorized representative may proceed to award the contract accordingly.



1       **Sec. 3.6.** NRS 338.1693 is hereby amended to read as follows:

2       338.1693 1. The public body or its authorized representative shall appoint a  
3 panel consisting of at least three but not more than seven members, a majority of  
4 whom must have experience in the construction industry, to rank the proposals  
5 submitted to the public body by evaluating the proposals as required pursuant to  
6 subsections 2 and 3.

7       2. The panel appointed pursuant to subsection 1 shall rank the proposals by:

8       (a) Verifying that each applicant satisfies the requirements of NRS 338.1691;  
9 and

10       (b) Evaluating and assigning a score to each of the proposals received by the  
11 public body based on the factors and relative weight assigned to each factor that the  
12 public body specified in the request for proposals.

13       3. When ranking the proposals, the panel appointed pursuant to subsection 1  
14 shall assign a relative weight of ~~15~~ 7.5 percent to the applicant's possession of a  
15 certificate of eligibility to receive a preference in bidding on public works if the  
16 applicant submits a signed affidavit that meets the requirements of subsection 1 of  
17 NRS 338.0117. If any federal statute or regulation precludes the granting of federal  
18 assistance or reduces the amount of that assistance for a particular public work  
19 because of the provisions of this subsection, those provisions of this subsection do  
20 not apply insofar as their application would preclude or reduce federal assistance  
21 for that work.

22       4. After the panel appointed pursuant to subsection 1 ranks the proposals, the  
23 public body or its authorized representative shall, except as otherwise provided in  
24 subsection 8, select at least the two but not more than the five applicants whose  
25 proposals received the highest scores for interviews.

26       5. The public body or its authorized representative may appoint a separate  
27 panel to interview and rank the applicants selected pursuant to subsection 4. If a  
28 separate panel is appointed pursuant to this subsection, the panel must consist of at  
29 least three but not more than seven members, a majority of whom must have  
30 experience in the construction industry.

31       6. During the interview process, the panel conducting the interview may  
32 require the applicants to submit a preliminary proposed amount of compensation  
33 for managing the preconstruction and construction of the public work, but in no  
34 event shall the proposed amount of compensation exceed 20 percent of the scoring  
35 for the selection of the most qualified applicant. All presentations made at any  
36 interview conducted pursuant to this subsection or subsection 5 may be made only  
37 by key personnel employed by the applicant, as determined by the applicant, and  
38 the employees of the applicant who will be directly responsible for managing the  
39 preconstruction and construction of the public work.

40       7. After conducting such interviews, the panel that conducted the interviews  
41 shall rank the applicants by using a ranking process that is separate from the  
42 process used to rank the applicants pursuant to subsection 2 and is based only on  
43 information submitted during the interview process. The score to be given for the  
44 proposed amount of compensation, if any, must be calculated by dividing the  
45 lowest of all the proposed amounts of compensation by the applicant's proposed  
46 amount of compensation multiplied by the total possible points available to each  
47 applicant. When ranking the applicants, the panel that conducted the interviews  
48 shall assign a relative weight of ~~15~~ 7.5 percent to the applicant's possession of a  
49 certificate of eligibility to receive a preference in bidding on public works if the  
50 applicant submits a signed affidavit that meets the requirements of subsection 1 of  
51 NRS 338.0117. If any federal statute or regulation precludes the granting of federal  
52 assistance or reduces the amount of that assistance for a particular public work  
53 because of the provisions of this subsection, those provisions of this subsection do

not apply insofar as their application would preclude or reduce federal assistance for that work.

8. If the public body did not receive at least two proposals, the public body may not contract with a construction manager at risk.

9. Upon receipt of the final rankings of the applicants from the panel that conducted the interviews, the public body or its authorized representative shall enter into negotiations with the most qualified applicant determined pursuant to the provisions of this section for a contract for preconstruction services, unless the public body required the submission of a proposed amount of compensation, in which case the proposed amount of compensation submitted by the applicant must be the amount offered for the contract. If the public body or its authorized representative is unable to negotiate a contract with the most qualified applicant for an amount of compensation that the public body or its authorized representative and the most qualified applicant determine to be fair and reasonable, the public body or its authorized representative shall terminate negotiations with that applicant. The public body or its authorized representative may then undertake negotiations with the next most qualified applicant in sequence until an agreement is reached and, if the negotiation is undertaken by an authorized representative of the public body, approved by the public body or until a determination is made by the public body to reject all applicants.

10. The public body or its authorized representative shall make available to all applicants and the public the final rankings of the applicants, as determined by the panel that conducted the interviews, and shall provide, upon request, an explanation to any unsuccessful applicant of the reasons why the applicant was unsuccessful.

**Sec. 3.7.** NRS 338.1725 is hereby amended to read as follows:

338.1725 1. The public body shall select at least two but not more than four finalists from among the design-build teams that submitted preliminary proposals. If the public body does not receive at least two preliminary proposals from design-build teams that the public body determines to be qualified pursuant to this section and NRS 338.1721, the public body may not contract with a design-build team for the design and construction of the public work.

2. The public body shall select finalists pursuant to subsection 1 by:

(a) Verifying that each design-build team which submitted a preliminary proposal satisfies the requirements of NRS 338.1721;

(b) Conducting an evaluation of the qualifications of each design-build team that submitted a preliminary proposal, including, without limitation, an evaluation of:

(1) The professional qualifications and experience of the members of the design-build team;

(2) The performance history of the members of the design-build team concerning other recent, similar projects completed by those members, if any;

(3) The safety programs established and the safety records accumulated by the members of the design-build team; and

(4) The proposed plan of the design-build team to manage the design and construction of the public work that sets forth in detail the ability of the design-build team to design and construct the public work; and

(c) Except as otherwise provided in this paragraph, assigning, without limitation, a relative weight of ~~15~~ 7.5 percent to the possession of both a certificate of eligibility to receive a preference in bidding on public works by all contractors on the design-build team and a certificate of eligibility to receive a preference when competing for public works by all design professionals on the design-build team. If any federal statute or regulation precludes the granting of federal assistance or

1 reduces the amount of that assistance for a particular public work because of the  
2 provisions of this paragraph relating to a preference in bidding on public works or a  
3 preference when competing for public works, those provisions of this paragraph do  
4 not apply insofar as their application would preclude or reduce federal assistance  
5 for that public work.

6 3. After the selection of finalists pursuant to this section, the public body shall  
7 make available to the public the results of the evaluations of preliminary proposals  
8 conducted pursuant to paragraph (b) of subsection 2 and identify which of the  
9 finalists, if any, received an assignment of ~~5~~ 7.5 percent pursuant to paragraph (c)  
10 of subsection 2.

11 **Sec. 3.8.** NRS 338.1727 is hereby amended to read as follows:

12 338.1727 1. After selecting the finalists pursuant to NRS 338.1725, the  
13 public body shall provide to each finalist a request for final proposals for the public  
14 work. The request for final proposals must:

15 (a) Set forth the factors that the public body will use to select a design-build  
16 team to design and construct the public work, including the relative weight to be  
17 assigned to each factor; and

18 (b) Set forth the date by which final proposals must be submitted to the public  
19 body.

20 2. If one or more of the finalists selected pursuant to NRS 338.1725 is  
21 disqualified or withdraws, the public body may select a design-build team from the  
22 remaining finalist or finalists.

23 3. Except as otherwise provided in this subsection, in assigning the relative  
24 weight to each factor for selecting a design-build team pursuant to subsection 1, the  
25 public body shall assign, without limitation, a relative weight of ~~5~~ 7.5 percent to  
26 the possession of both a certificate of eligibility to receive a preference in bidding  
27 on public works by all contractors on the design-build team if the contractors  
28 submit signed affidavits that meet the requirements of subsection 1 of NRS  
29 338.0117, and a certificate of eligibility to receive a preference when competing for  
30 public works by all design professionals on the design-build team, and a relative  
31 weight of at least 30 percent to the proposed cost of design and construction of the  
32 public work. If any federal statute or regulation precludes the granting of federal  
33 assistance or reduces the amount of that assistance for a particular public work  
34 because of the provisions of this subsection relating to a preference in bidding on  
35 public works, or a preference when competing for public works, those provisions of  
36 this subsection do not apply insofar as their application would preclude or reduce  
37 federal assistance for that public work.

38 4. A final proposal submitted by a design-build team pursuant to this section  
39 must be prepared thoroughly and be responsive to the criteria that the public body  
40 will use to select a design-build team to design and construct the public work  
41 described in subsection 1. A design-build team that submits a final proposal which  
42 is not responsive shall not be awarded the contract and shall not be eligible for the  
43 partial reimbursement of costs provided for in subsection 7.

44 5. A final proposal is exempt from the requirements of NRS 338.141.

45 6. After receiving and evaluating the final proposals for the public work, the  
46 public body or its authorized representative shall enter into negotiations with the  
47 most qualified applicant, as determined pursuant to the criteria set forth pursuant to  
48 subsections 1 and 3, and award the design-build contract to the design-build team  
49 whose proposal is selected. If the public body or its authorized representative is  
50 unable to negotiate with the most qualified applicant a contract that is determined  
51 by the parties to be fair and reasonable, the public body may terminate negotiations  
52 with that applicant. The public body or its authorized representative may then  
53 undertake negotiations with the next most qualified applicant in sequence until an

1 agreement is reached and, if the negotiation is undertaken by an authorized  
2 representative of the public body, approved by the public body or until a  
3 determination is made by the public body to reject all applicants.

4 7. If a public body selects a final proposal and awards a design-build contract  
5 pursuant to subsection 6, the public body shall:

6 (a) Partially reimburse the unsuccessful finalists if partial reimbursement was  
7 provided for in the request for preliminary proposals pursuant to paragraph (j) of  
8 subsection 2 of NRS 338.1723. The amount of reimbursement must not exceed, for  
9 each unsuccessful finalist, 3 percent of the total amount to be paid to the design-  
10 build team as set forth in the design-build contract.

11 (b) Make available to the public the results of the evaluation of final proposals  
12 that was conducted and the ranking of the design-build teams who submitted final  
13 proposals. The public body shall not release to a third party, or otherwise make  
14 public, financial or proprietary information submitted by a design-build team.

15 8. A contract awarded pursuant to this section:

16 (a) Must comply with the provisions of NRS 338.020 to 338.090, inclusive.

17 (b) Must specify:

18 (1) An amount that is the maximum amount that the public body will pay  
19 for the performance of all the work required by the contract, excluding any amount  
20 related to costs that may be incurred as a result of unexpected conditions or  
21 occurrences as authorized by the contract;

22 (2) An amount that is the maximum amount that the public body will pay  
23 for the performance of the professional services required by the contract; and

24 (3) A date by which performance of the work required by the contract must  
25 be completed.

26 (c) May set forth the terms by which the design-build team agrees to name the  
27 public body, at the cost of the public body, as an additional insured in an insurance  
28 policy held by the design-build team.

29 (d) Except as otherwise provided in paragraph (e), must not require the design  
30 professional to defend, indemnify or hold harmless the public body or the  
31 employees, officers or agents of that public body from any liability, damage, loss,  
32 claim, action or proceeding caused by the negligence, errors, omissions,  
33 recklessness or intentional misconduct of the employees, officers and agents of the  
34 public body.

35 (e) May require the design-build team to defend, indemnify and hold harmless  
36 the public body, and the employees, officers and agents of the public body from any  
37 liabilities, damages, losses, claims, actions or proceedings, including, without  
38 limitation, reasonable attorneys' fees, that are caused by the negligence, errors,  
39 omissions, recklessness or intentional misconduct of the design-build team or the  
40 employees or agents of the design-build team in the performance of the contract.

41 (f) Must require that the design-build team to whom a contract is awarded  
42 assume overall responsibility for ensuring that the design and construction of the  
43 public work is completed in a satisfactory manner.

44 9. Upon award of the design-build contract, the public body shall make  
45 available to the public copies of all preliminary and final proposals received.

46 **Sec. 4.** NRS 279.500 is hereby amended to read as follows:

47 279.500 1. The provisions of NRS 338.010 to 338.090, inclusive, apply to  
48 any contract for new construction, repair or reconstruction which is awarded on or  
49 after October 1, 1991, by an agency for work to be done in a project.

50 2. If an agency:

51 (a) Provides property for development at less than the fair market value of the  
52 property;

(b) Provides a loan to a small business pursuant to NRS 279.700 to 279.740, inclusive; or

(c) Provides financial incentives to a developer with a value of ~~more than \$100,000, \$350,000, \$500,000 or more,~~

regardless of whether the project is publicly or privately owned, the agency must provide in the loan agreement with the small business or the agreement with the developer, as applicable, that the development project is subject to the provisions of NRS 338.010 to 338.090, inclusive, to the same extent as if the agency had awarded the contract for the project. This subsection applies only to the project covered by the loan agreement between the agency and the small business or the agreement between the agency and the developer, as applicable. This subsection does not apply to future development of the property unless an additional loan, or additional financial incentives with a value of ~~more than \$100,000, \$350,000, \$500,000 or more,~~ are provided to the small business or developer, as applicable.

*3. The Labor Commissioner shall, on or before January 1, 2020, and every 5 years thereafter, adjust the amount set forth in paragraph (c) of subsection 2 to reflect inflation, as measured by the average percentage of increase or decrease in the Consumer Price Index for All Urban Consumers of the United States Department of Labor, Bureau of Labor Statistics, for the preceding 5 years. The Labor Commissioner shall determine the amount of the increase or decrease required by this subsection and establish the adjusted amounts to take effect on January 1 of that year.*

**Sec. 4.5.** NRS 408.3886 is hereby amended to read as follows:

408.3886 1. After selecting the finalists pursuant to NRS 408.3885, the Department shall provide to each finalist a request for final proposals for the project. The request for final proposals must:

(a) Set forth the factors that the Department will use to select a design-build team to design and construct the project, including the relative weight to be assigned to each factor; and

(b) Set forth the date by which final proposals must be submitted to the Department.

2. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the Department shall assign, without limitation, a relative weight of ~~15~~ 7.5 percent to the design-build team's possession of both a certificate of eligibility to receive a preference in bidding on public works by the prime contractor on the design-build team, if the design-build team submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117, and a certificate of eligibility to receive a preference when competing for public works by all persons who hold a certificate of registration to practice architecture or a license as a professional engineer on the design-build team, and a relative weight of at least 30 percent for the proposed cost of design and construction of the project. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular project because of the provisions of this subsection relating to a preference in bidding on public works or a preference when competing for public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that project.

3. A final proposal submitted by a design-build team pursuant to this section must be prepared thoroughly, be responsive to the criteria that the Department will use to select a design-build team to design and construct the project described in subsection 1 and comply with the provisions of NRS 338.141.

4. After receiving the final proposals for the project, the Department shall:

1 (a) Select the most cost-effective and responsive final proposal, using the  
2 criteria set forth pursuant to subsections 1 and 2;

3 (b) Reject all the final proposals; or

4 (c) Request best and final offers from all finalists in accordance with  
5 subsection 5.

6 5. If the Department determines that no final proposal received is cost-  
7 effective or responsive and the Department further determines that requesting best  
8 and final offers pursuant to this subsection will likely result in the submission of a  
9 satisfactory offer, the Department may prepare and provide to each finalist a  
10 request for best and final offers for the project. In conjunction with preparing a  
11 request for best and final offers pursuant to this subsection, the Department may  
12 alter the scope of the project, revise the estimates of the costs of designing and  
13 constructing the project, and revise the selection factors and relative weights  
14 described in paragraph (a) of subsection 1. A request for best and final offers  
15 prepared pursuant to this subsection must set forth the date by which best and final  
16 offers must be submitted to the Department. After receiving the best and final  
17 offers, the Department shall:

18 (a) Select the most cost-effective and responsive best and final offer, using the  
19 criteria set forth in the request for best and final offers; or

20 (b) Reject all the best and final offers.

21 6. If the Department selects a final proposal pursuant to paragraph (a) of  
22 subsection 4 or selects a best and final offer pursuant to paragraph (a) of subsection  
23 5, the Department shall hold a public meeting to:

24 (a) Review and ratify the selection.

25 (b) Partially reimburse the unsuccessful finalists if partial reimbursement was  
26 provided for in the request for preliminary proposals pursuant to paragraph (f) of  
27 subsection 3 of NRS 408.3883. The amount of reimbursement must not exceed, for  
28 each unsuccessful finalist, 3 percent of the total amount to be paid to the design-  
29 build team as set forth in the design-build contract.

30 (c) Make available to the public a summary setting forth the factors used by the  
31 Department to select the successful design-build team and the ranking of the  
32 design-build teams who submitted final proposals and, if applicable, best and final  
33 offers. The Department shall not release to a third party, or otherwise make public,  
34 financial or proprietary information submitted by a design-build team.

35 7. A contract awarded pursuant to this section:

36 (a) Must comply with the provisions of NRS 338.020 to 338.090, inclusive;  
37 and

38 (b) Must specify:

39 (1) An amount that is the maximum amount that the Department will pay  
40 for the performance of all the work required by the contract, excluding any amount  
41 related to costs that may be incurred as a result of unexpected conditions or  
42 occurrences as authorized by the contract;

43 (2) An amount that is the maximum amount that the Department will pay  
44 for the performance of the professional services required by the contract; and

45 (3) A date by which performance of the work required by the contract must  
46 be completed.

47 8. A design-build team to whom a contract is awarded pursuant to this section  
48 shall:

49 (a) Assume overall responsibility for ensuring that the design and construction  
50 of the project is completed in a satisfactory manner; and

51 (b) Use the workforce of the prime contractor on the design-build team to  
52 construct at least 15 percent of the project.

1       **Sec. 5.** 1. The amendatory provisions of this act do not apply to a public  
2 work or other project of construction, repair or reconstruction that is awarded  
3 before July 1, 2015.

4       2. As used in this section, “public work” has the meaning ascribed to it in  
5 NRS 338.010.

6       **Sec. 6.** (Deleted by amendment.)

7       **Sec. 7.** This act becomes effective on July 1, 2015.