

Amendment No. 83

Assembly Amendment to Assembly Bill No. 43	(BDR 35-377)
Proposed by: Assembly Committee on Transportation	
Amends: Summary: No Title: Yes 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.

MNM/BAW



Date: 4/6/2015

A.B. No. 43—Clarifies confidentiality provisions governing certain documents.
(BDR 35-377)



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.

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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; 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 notice of intent to award the contract is ~~forwarded;~~ issued; 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 notice of intent to award the contract is ~~forwarded;~~ issued.

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. As part of the selection process, a public body or its authorized representative is required to appoint a panel to rank the proposals submitted to the public body. After the proposals are ranked, the public body or its authorized representative is required to select for interviews a certain number of applicants whose proposals received the highest scores, and is then authorized to appoint a separate panel to interview and rank such selected applicants. (NRS 338.169, 338.1692, ~~338.1693~~) **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 notice of intent to award the contract is ~~forwarded;~~ issued. **Section 7.5** of this bill requires a public body or its authorized representative to make certain information determined by the panel that ranked the proposals and the panel that conducted the interviews of the selected applicants available to all applicants and the public.

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 which are declared confidential those documents and other information as reflected in **sections 2, 3 and 6**. **Section 7.7 of this bill clarifies that if a public book or record is declared by law to be open to the public, such a declaration does not imply, and must not be construed to mean, that a public book or record is confidential if it is not declared by law to be open to the public and is not otherwise declared by law to be confidential.**

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

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

Sec. 2. **1. Any document or other information submitted to the Department in response to a design-build project initiated pursuant to NRS 408.3881 by a person who is a member of a design-build team seeking a design-build contract pursuant to NRS 408.3875 to 408.3887, inclusive, is confidential and may not be disclosed until notice of intent to award the contract is forwarded, issued.**

2. As used in this section, the term "document or other information" means any submittal by a person who is a member of a design-build team to the Department ~~required pursuant to NRS 408.3875 to 408.3887, inclusive, for the selection of a design-build team~~ in response to a design-build project initiated pursuant to NRS 408.3881 and includes, without limitation, a preliminary proposal made pursuant to NRS 408.3883, a statement that the person satisfies the requirements of NRS 408.3884 and a final proposal submitted pursuant to NRS 408.3886.

Sec. 3. **1. Any document or other information submitted to the Department in response to a request for proposals pursuant to NRS 408.548 by a person seeking a contract to develop, construct, improve, maintain or operate, or any combination thereof, a transportation facility pursuant to NRS 408.5471 to 408.549, inclusive, is confidential and may not be disclosed until notice of intent to award the contract is forwarded, issued.**

2. As used in this section, the term "document or other information" means any submittal by a person to the Department ~~required pursuant to NRS 408.5471 to 408.549, inclusive, as part of the submission or approval of a request or proposal~~ in response to a request for proposals pursuant to NRS 408.548 and includes, without limitation, ~~a request made pursuant to NRS 408.5475,~~ a proposal made pursuant to NRS 408.548 and any submittal required by regulations promulgated by the Department pursuant to NRS 408.548.

Sec. 4. NRS 408.3875 is hereby amended to read as follows:

408.3875 As used in NRS 408.3875 to 408.3887, inclusive, **and section 2 of this act**, unless the context otherwise requires, the words and terms defined in NRS 408.3876 to 408.3879, inclusive, have the meanings ascribed to them in those sections.

Sec. 5. NRS 408.5471 is hereby amended to read as follows:

408.5471 As used in NRS 408.5471 to 408.549, inclusive, **and section 3 of this act**, unless the context otherwise requires, "transportation facility" means a road, railroad, bridge, tunnel, overpass, airport, mass transit facility, parking facility for vehicles or similar commercial facility used for the support of or the

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

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

6 *1. Any document or other information submitted to a public body in*
7 *response to a request for proposals pursuant to NRS 338.1692 by a contractor*
8 *seeking a contract between the public body and a construction manager at risk*
9 *pursuant to NRS 338.1685 to 338.16995, inclusive, is confidential and may not be*
10 *disclosed until notice of intent to award the contract is awarded, issued.*

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

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

18 338.1685 The Legislature hereby declares that the provisions of NRS
19 338.1685 to 338.16995, inclusive, *and section 6 of this act*, relating to contracts
20 involving construction managers at risk, are intended:

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

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

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

27 **Sec. 7.5. NRS 338.1693 is hereby amended to read as follows:**

28 338.1693 1. The public body or its authorized representative shall appoint a
29 panel consisting of at least three but not more than seven members, a majority of
30 whom must have experience in the construction industry, to rank the proposals
31 submitted to the public body by evaluating the proposals as required pursuant to
32 subsections 2 and 3.

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

34 (a) Verifying that each applicant satisfies the requirements of NRS 338.1691;
35 and

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

39 3. When ranking the proposals, the panel appointed pursuant to subsection 1
40 shall assign a relative weight of 5 percent to the applicant's possession of a
41 certificate of eligibility to receive a preference in bidding on public works if the
42 applicant submits a signed affidavit that meets the requirements of subsection 1 of
43 NRS 338.0117. If any federal statute or regulation precludes the granting of federal
44 assistance or reduces the amount of that assistance for a particular public work
45 because of the provisions of this subsection, those provisions of this subsection do
46 not apply insofar as their application would preclude or reduce federal assistance
47 for that work.

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

52 5. The public body or its authorized representative may appoint a separate
53 panel to interview and rank the applicants selected pursuant to subsection 4. If a

1 separate panel is appointed pursuant to this subsection, the panel must consist of at
2 least three but not more than seven members, a majority of whom must have
3 experience in the construction industry.

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

13 7. After conducting such interviews, the panel that conducted the interviews
14 shall rank the applicants by using a ranking process that is separate from the
15 process used to rank the applicants pursuant to subsection 2 and is based only on
16 information submitted during the interview process. The score to be given for the
17 proposed amount of compensation, if any, must be calculated by dividing the
18 lowest of all the proposed amounts of compensation by the applicant's proposed
19 amount of compensation multiplied by the total possible points available to each
20 applicant. When ranking the applicants, the panel that conducted the interviews
21 shall assign a relative weight of 5 percent to the applicant's possession of a
22 certificate of eligibility to receive a preference in bidding on public works if the
23 applicant submits a signed affidavit that meets the requirements of subsection 1 of
24 NRS 338.0117. If any federal statute or regulation precludes the granting of federal
25 assistance or reduces the amount of that assistance for a particular public work
26 because of the provisions of this subsection, those provisions of this subsection do
27 not apply insofar as their application would preclude or reduce federal assistance
28 for that work.

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

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

47 10. The public body or its authorized representative shall ~~make~~ :

48 (a) Make available to all applicants and the public the ~~final~~ following
49 information, as determined by the panel appointed pursuant to subsection 1 and
50 the panel that conducted the interviews, as applicable;

51 (1) The final rankings of the applicants, ~~as determined by the panel that~~
52 conducted the interviews; ;

53 (2) The score assigned to each proposal received by the public body; and

(3) For each proposal received by the public body, the score assigned to each factor that the public body specified in the request for proposals; and ~~to~~ ~~provide;~~

(b) Provide, upon request, an explanation to any unsuccessful applicant of the reasons why the applicant was unsuccessful.

Sec. 7.7. NRS 239.001 is hereby amended to read as follows:

239.001 The Legislature hereby finds and declares that:

1. The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law;

2. The provisions of this chapter must be construed liberally to carry out this important purpose;

3. Any exemption, exception or balancing of interests which limits or restricts access to public books and records by members of the public must be construed narrowly; ~~and;~~

4. The use of private entities in the provision of public services must not deprive members of the public access to inspect and copy books and records relating to the provision of those services ~~;~~ ~~and~~

5. If a public book or record is declared by law to be open to the public, such a declaration does not imply, and must not be construed to mean, that a public book or record is confidential if it is not declared by law to be open to the public and is not otherwise declared by law to be confidential.

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

239.010 1. Except as otherwise provided in this section and NRS 1.4683, 1A.110, 49.095, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 130.312, 158.044, 172.075, 172.245, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179A.450, 179D.160, 200.3771, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3925, 209.419, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 228.270, 228.450, 228.495, 228.570, 231.069, 233.190, 237.300, 239.0105, 239.0113, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 240.007, 241.020, 241.030, 242.105, 244.264, 244.335, 250.087, 250.130, 250.140, 250.150, 268.095, 268.490, 268.910, 271A.105, 281.195, 281A.350, 281A.440, 281A.550, 284.4068, 286.110, 287.0438, 289.025, 289.080, 289.387, 293.5002, 293.503, 293.558, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.085, 353A.100, 353C.240, 360.249, 360.247, 360.255, 360.755, 361.044, 361.610, 365.138, 366.160, 368A.180, 372A.080, 378.290, 378.300, 379.008, 386.655, 387.626, 387.631, 388.5275, 388.528, 388.5315, 388.750, 391.035, 392.029, 392.147, 392.264, 392.271, 392.652, 392.850, 394.167, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 398.403, 408.3885, 408.3886, 412.153, 416.070, 422.290, 422.305, 422A.320, 422A.350, 425.400, 427A.1236, 427A.872, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 433.534, 433A.360, 439.270, 439.840, 439B.420, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 445A.665, 445B.570, 449.209, 449.245, 449.720, 453.1545,

453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 467.137, 481.063, 482.170, 482.5536, 483.340, 483.363, 483.800, 484E.070, 485.316, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655, 598.0964, 598A.110, 603.070, 603A.210, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.310, 623.131, 623A.353, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 629.069, 630.133, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.405, 633.283, 633.301, 633.524, 634.212, 634.214, 634A.185, 635.158, 636.107, 637.085, 637A.315, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.400, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641A.191, 641B.170, 641C.760, 642.524, 643.189, 644.446, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645E.300, 645E.375, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 654.110, 656.105, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.430, 675.380, 676A.340, 676A.370, 677.243, 679B.122, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.280, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 692A.117, 692C.190, 692C.420, 693A.480, 693A.615, 696B.550, 703.196, 704B.320, 704B.325, 706.1725, 710.159, 711.600, and sections 2, 3 and 6 of this act, sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

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

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

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

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

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

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

2. ~~{Section}~~ Sections 6 and 7.5 of this act ~~{express}~~ expire by limitation on June 30, 2017.