

Amendment No. 247

Assembly Amendment to Assembly Bill No. 100	(BDR 54-194)
Proposed by: Assembly Committee on Government Affairs	
Amends: Summary: Yes Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) 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.

JFD/EGO



Date: 4/22/2017

A.B. No. 100—Revises provisions governing contractors. (BDR 54-194)



ASSEMBLY BILL NO. 100—ASSEMBLYWOMAN SWANK

PREFILED FEBRUARY 3, 2017

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing contractors. (BDR ~~[54-194]~~ 28-194)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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

AN ACT relating to contractors; revising the requirement that certain types of provisions are void and unenforceable in certain agreements with contractors; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law ~~[provides that]~~ **prohibits a provision** in a contract for a public work, other than a contract entered into by the Nevada Department of Transportation, ~~[a provision]~~ that requires a contractor to waive a right to damages or an extension of time acquired as a result of a delay caused by certain actions by the public body, ~~[is void and unenforceable]~~ (NRS 338.480, 338.485). ~~[Section 2 of this bill removes this provision of existing law. Instead, section 1 of this bill makes applicable to an agreement between a public body and a prime contractor for work and labor on a public work a provision of existing law that provides that in an agreement between an owner and a prime contractor a provision that requires the prime contractor to waive a right to damages or an extension of time acquired as a result of certain disruptions or other events is void and unenforceable.]~~ **Existing law also prohibits a provision in an agreement, except contracts for public works and certain other agreements, that requires a prime contractor to waive, release, or extinguish a claim or right for damages or an extension of time that the prime contractor may otherwise possess or acquire as a result of delay, acceleration, disruption or an impact event that is unreasonable under the circumstances, that was not within the contemplation of the parties at the time the agreement was entered into, or for which the prime contractor is not responsible. (NRS 624.622) This bill adds those prohibited provisions to the list of provisions that are prohibited in existing law in contracts for public works other than contracts for public works entered into by the Nevada Department of Transportation.**

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

Section 1. ~~[NRS 624.622 is hereby amended to read as follows:~~
~~624.622 1. A prime contractor shall provide a copy of any notice given to an owner pursuant to subsection 1 or 2 of NRS 624.610 to each lower tiered subcontractor with whom the prime contractor has entered into an agreement. Upon receipt of payment pursuant to NRS 624.609, the prime contractor shall notify all such lower tiered subcontractors in writing of receipt of payment.~~

~~2. A condition, stipulation or provision in an agreement which:~~
~~(a) Requires a prime contractor to waive any rights provided in this section, NRS 624.609, 624.610, 624.620 or 624.620, or which limits those rights;~~
~~(b) Relieves an owner of any obligation or liability imposed pursuant to NRS 624.606 to 624.620, inclusive; or~~
~~(c) Requires a prime contractor to waive, release or extinguish a claim or right for damages or an extension of time that the prime contractor may otherwise possess or acquire as a result of delay, acceleration, disruption or an impact event that is unreasonable under the circumstances, that was not within the contemplation of the parties at the time the agreement was entered into, or for which the prime contractor is not responsible;~~

~~is against public policy and is void and unenforceable.~~

~~3. All notices required pursuant to NRS 624.609 to 624.622, inclusive, must be:~~

~~(a) Delivered personally, in which case the prime contractor shall obtain a notarized statement from the person who delivered the notice as proof of delivery;~~

~~(b) Sent by facsimile and delivered by regular mail, in which case the prime contractor shall retain proof of a successful transmission of the facsimile;~~

~~(c) Delivered by certified mail; or~~

~~(d) Delivered in the manner provided for in the agreement.~~

~~4. Except as otherwise provided in paragraph (b), NRS 624.609 to 624.622, inclusive, do not apply to an agreement between:~~

~~(a) A prime contractor and a natural person who owns a single family residence for the performance of qualified services with respect to the residence; or~~

~~(b) A public body and a prime contractor for the performance of work and labor on a public work [.] , except that this subsection and paragraph (c) of subsection 2 apply to such an agreement.~~

~~5. Within 5 days after an owner receives a written request for the information set forth in paragraphs (a), (b) and (c) from a lower tiered subcontractor, the owner shall notify the lower tiered subcontractor in writing of the following:~~

~~(a) The date the owner made a specified payment to the prime contractor;~~

~~(b) Whether the owner has paid the entire amount of a specified payment to the prime contractor; and~~

~~(c) The amount withheld by the owner from a specified payment to the prime contractor and the condition or reason for the withholding.] (Deleted by amendment.)~~

Sec. 2. NRS 338.485 is hereby amended to read as follows:

338.485 1. A person may not waive or modify a right, obligation or liability set forth in the provisions of NRS 338.400 to 338.645, inclusive.

2. A condition, stipulation or provision in a contract or other agreement that:

(a) Requires a person to waive a right set forth in the provisions of NRS 338.400 to 338.645, inclusive;

(b) Relieves a person of an obligation or liability imposed by the provisions of NRS 338.400 to 338.645, inclusive; ~~for~~

(c) Requires a contractor or subcontractor to waive, release or extinguish a claim or right for damages or an extension of time that the contractor or subcontractor may otherwise possess or acquire as a result of a delay, acceleration, disruption or an impact event that is:

(1) ~~Is~~ In the case of a disruption or delay, so unreasonable in length as to amount to an abandonment of the public work;

(2) Caused by fraud, misrepresentation, concealment or other bad faith by the public body;

(3) Caused by active interference by the public body; ~~for~~

(4) Caused by a decision by the public body to significantly add to the scope or duration of the public work; ~~for~~

(5) Unreasonable under the circumstances;

(6) Not a delay, acceleration, disruption or an impact event which was within the contemplation of the parties at the time the agreement was entered into; or

(7) Not a delay, acceleration, disruption or an impact event for which the contractor or subcontractor, as applicable, is responsible; or

(d) Requires a contractor or public body to be responsible for any consequential damages suffered or incurred by the other party that arise from or relate to a contract for a public work, including, without limitation, rental expenses or other damages resulting from a loss of use or availability of the public work, lost income, lost profit, lost financing or opportunity, business or reputation, and loss of management or employee availability, productivity, opportunity or services,
 is against public policy and is void and unenforceable.

3. The provisions of subsection 2 do not prohibit the use of a liquidated damages clause which otherwise satisfies the requirements of law.

Sec. 3. This act becomes effective on July 1, 2017.