
ASSEMBLY BILL NO. 179—ASSEMBLYMEN SWANK; BILBRAY-
AXELROD, COHEN, DALY, ELLISON, FLORES, KRAMER,
MCCURDY, PETERS, ROBERTS AND TORRES

FEBRUARY 18, 2019

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works.
(BDR 28-622)

FISCAL NOTE: Effect on Local Government: No.
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 public works; 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:

1 Existing law prohibits a provision in a contract for a public work, other than a
2 contract entered into by the Nevada Department of Transportation, that requires a
3 contractor to waive a right to damages or an extension of time acquired as a result
4 of a delay caused by certain actions by the public body. (NRS 338.480, 338.485)
5 This bill extends this provision to both prime contractors and subcontractors. This
6 bill also prohibits the waiver of a right to damages or an extension of time acquired
7 that results from an acceleration, disruption or impact event that is unreasonable in
8 length, caused by the public body in certain circumstances or within the control of
9 the public body.

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

1 **Section 1.** NRS 338.485 is hereby amended to read as follows:
2 338.485 1. A person may not waive or modify a right,
3 obligation or liability set forth in the provisions of NRS 338.400 to
4 338.645, inclusive.
5 2. A condition, stipulation or provision in a contract or other
6 agreement that:



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

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

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

10 (1) So unreasonable in length as to amount to an
11 abandonment of the public work;

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

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

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

17 (5) *Within the control of the public body; or*

18 (d) Requires a *prime* contractor, *subcontractor* or public body
19 to be responsible for any consequential damages suffered or
20 incurred by the other party that arise from or relate to a contract for
21 a public work, including, without limitation, rental expenses or other
22 damages resulting from a loss of use or availability of the public
23 work, lost income, lost profit, lost financing or opportunity, business
24 or reputation, and loss of management or employee availability,
25 productivity, opportunity or services,

26 ↪ is against public policy and is void and unenforceable.

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

30 4. *As used in this section, "active interference by the public*
31 *body" means affirmative or positive interference by the public*
32 *body with the work of a prime contractor or a subcontractor or a*
33 *failure on the part of the public body to act in a manner essential*
34 *to the completion of the work provided for in the contract.*

35 **Sec. 2.** This act becomes effective on July 1, 2019.

