

(Reprinted with amendments adopted on May 23, 2019)

SECOND REPRINT

S.B. 175

SENATE BILL NO. 175—SENATORS PARKS, BROOKS, CANCELA,
SPEARMAN; CANNIZZARO, DENIS, DONDERO LOOP,
D. HARRIS, OHRENSCHALL, RATTI, SCHEIBLE AND
WOODHOUSE

FEBRUARY 18, 2019

JOINT SPONSORS: ASSEMBLYMEN CARRILLO, ELLISON; BILBRAY-
AXELROD, DURAN, GORELOW, MARTINEZ, MCCURDY AND MUNK

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works.
(BDR 28-618)

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; defining “discrete project”;
revising provisions relating to the authority of a public
body to enter into a contract with a design-build team for
the construction of certain public works; and providing
other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, a public body in a county whose population is less than 100,000 may enter into contracts with a construction manager at risk for the construction of not more than two public works in a calendar year that are discrete projects. (NRS 338.169) Under existing law, a public body in any county may contract with a design-build team for the design and construction of a discrete public works project if the public body has approved the use of the design-build team and the project has an estimated cost of more than \$5,000,000. Within a 12-month period, a public body may contract with a design-build team for the design and construction of not more than two discrete public works projects which each have an estimated cost of \$5,000,000 or less. (NRS 338.1711)

Section 1.5 of this bill eliminates the authority of a public body to contract with a design-build team for the design and construction of not more than two discrete public works projects per year which each have an estimated cost of \$5,000,000 or less, effective July 1, 2021.

Section 1 of this bill defines a “discrete project.”



* S B 1 7 5 R 2 *

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

Section 1. NRS 338.010 is hereby amended to read as follows:
338.010 As used in this chapter:

1. "Authorized representative" means a person designated by a public body to be responsible for the development, solicitation, award or administration of contracts for public works pursuant to this chapter.

2. "Contract" means a written contract entered into between a contractor and a public body for the provision of labor, materials, equipment or supplies for a public work.

3. "Contractor" means:

(a) A person who is licensed pursuant to the provisions of chapter 624 of NRS.

(b) A design-build team.

4. "Day labor" means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a worker or workers employed by them on public works by the day and not under a contract in writing.

5. "Design-build contract" means a contract between a public body and a design-build team in which the design-build team agrees to design and construct a public work.

6. "Design-build team" means an entity that consists of:

(a) At least one person who is licensed as a general engineering contractor or a general building contractor pursuant to chapter 624 of NRS; and

(b) For a public work that consists of:

(1) A building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS.

(2) Anything other than a building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS or landscape architecture pursuant to chapter 623A of NRS or who is licensed as a professional engineer pursuant to chapter 625 of NRS.

7. "Design professional" means:

(a) A person who is licensed as a professional engineer pursuant to chapter 625 of NRS;

(b) A person who is licensed as a professional land surveyor pursuant to chapter 625 of NRS;

(c) A person who holds a certificate of registration to engage in the practice of architecture, interior design or residential design pursuant to chapter 623 of NRS;



(d) A person who holds a certificate of registration to engage in the practice of landscape architecture pursuant to chapter 623A of NRS; or

(e) A business entity that engages in the practice of professional engineering, land surveying, architecture or landscape architecture.

8. *“Discrete project” means one or more public works which are undertaken on a single construction site for a single public body. The term does not include one or more public works that are undertaken on multiple construction sites regardless of whether the public body which sponsors or finances the public works bundles the public works together.*

9. “Division” means the State Public Works Division of the Department of Administration.

~~9.~~ 10. “Eligible bidder” means a person who is:

(a) Found to be a responsible and responsive contractor by a local government or its authorized representative which requests bids for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373; or

(b) Determined by a public body or its authorized representative which awarded a contract for a public work pursuant to NRS 338.1375 to 338.139, inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or 338.1382.

~~10.~~ 11. “General contractor” means a person who is licensed to conduct business in one, or both, of the following branches of the contracting business:

(a) General engineering contracting, as described in subsection 2 of NRS 624.215.

(b) General building contracting, as described in subsection 3 of NRS 624.215.

~~11.~~ 12. “Governing body” means the board, council, commission or other body in which the general legislative and fiscal powers of a local government are vested.

~~12.~~ 13. “Local government” means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 318, 318A, 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision. The term includes a person who has been designated by the governing body of a local government to serve as its authorized representative.

~~13.~~ 14. “Offense” means failing to:

(a) Pay the prevailing wage required pursuant to this chapter;



(b) Pay the contributions for unemployment compensation required pursuant to chapter 612 of NRS;

(c) Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS; or

(d) Comply with subsection 5 or 6 of NRS 338.070.

~~14.1~~ 15. "Prime contractor" means a contractor who:

(a) Contracts to construct an entire project;

(b) Coordinates all work performed on the entire project;

(c) Uses his or her own workforce to perform all or a part of the public work; and

(d) Contracts for the services of any subcontractor or independent contractor or is responsible for payment to any contracted subcontractors or independent contractors.

➤ The term includes, without limitation, a general contractor or a specialty contractor who is authorized to bid on a project pursuant to NRS 338.139 or 338.148.

~~15.1~~ 16. "Public body" means the State, county, city, town, school district or any public agency of this State or its political subdivisions sponsoring or financing a public work.

~~16.1~~ 17. "Public work" means any project for the new construction, repair or reconstruction of a project financed in whole or in part from public money for:

(a) Public buildings;

(b) Jails and prisons;

(c) Public roads;

(d) Public highways;

(e) Public streets and alleys;

(f) Public utilities;

(g) Publicly owned water mains and sewers;

(h) Public parks and playgrounds;

(i) Public convention facilities which are financed at least in part with public money; and

(j) All other publicly owned works and property.

~~17.1~~ 18. "Specialty contractor" means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.

~~18.1~~ 19. "Stand-alone underground utility project" means an underground utility project that is not integrated into a larger project, including, without limitation:

(a) An underground sewer line or an underground pipeline for the conveyance of water, including facilities appurtenant thereto; and

(b) A project for the construction or installation of a storm drain, including facilities appurtenant thereto,



1 ➤ that is not located at the site of a public work for the design and
2 construction of which a public body is authorized to contract with a
3 design-build team pursuant to subsection 2 of NRS 338.1711.

4 ~~{19-}~~ 20. "Subcontract" means a written contract entered into
5 between:

6 (a) A contractor and a subcontractor or supplier; or

7 (b) A subcontractor and another subcontractor or supplier,
8 ➤ for the provision of labor, materials, equipment or supplies for a
9 construction project.

10 ~~{20-}~~ 21. "Subcontractor" means a person who:

11 (a) Is licensed pursuant to the provisions of chapter 624 of NRS
12 or performs such work that the person is not required to be licensed
13 pursuant to chapter 624 of NRS; and

14 (b) Contracts with a contractor, another subcontractor or a
15 supplier to provide labor, materials or services for a construction
16 project.

17 ~~{21-}~~ 22. "Supplier" means a person who provides materials,
18 equipment or supplies for a construction project.

19 ~~{22-}~~ 23. "Wages" means:

20 (a) The basic hourly rate of pay; and

21 (b) The amount of pension, health and welfare, vacation and
22 holiday pay, the cost of apprenticeship training or other similar
23 programs or other bona fide fringe benefits which are a benefit to
24 the worker.

25 ~~{23-}~~ 24. "Worker" means a skilled mechanic, skilled worker,
26 semiskilled mechanic, semiskilled worker or unskilled worker in the
27 service of a contractor or subcontractor under any appointment or
28 contract of hire or apprenticeship, express or implied, oral or
29 written, whether lawfully or unlawfully employed. The term does
30 not include a design professional.

31 **Sec. 1.2.** NRS 338.018 is hereby amended to read as follows:
32 338.018 The provisions of NRS 338.013 to 338.018, inclusive,
33 apply to any contract for construction work of the Nevada System of
34 Higher Education for which the estimated cost exceeds \$250,000
35 even if the construction work does not qualify as a public work, as
36 defined in ~~{subsection 17 of}~~ NRS 338.010.

37 **Sec. 1.3.** NRS 338.075 is hereby amended to read as follows:
38 338.075 The provisions of NRS 338.020 to 338.090, inclusive,
39 apply to any contract for construction work of the Nevada System of
40 Higher Education for which the estimated cost exceeds \$250,000
41 even if the construction work does not qualify as a public work, as
42 defined in ~~{subsection 17 of}~~ NRS 338.010.

43 **Sec. 1.5.** NRS 338.1711 is hereby amended to read as follows:
44 338.1711 1. Except as otherwise provided in this section and
45 NRS 338.158 to 338.168, inclusive, a public body shall contract



1 with a prime contractor for the construction of a public work for
2 which the estimated cost exceeds \$100,000.

3 2. A public body may contract with a design-build team for the
4 design and construction of a public work that is a discrete project if
5 the public body has approved the use of a design-build team for the
6 design and construction of the public work and the public work has
7 an estimated cost which exceeds \$5,000,000.

8 ~~{3. Within any 12 month period, a public body may contract~~
9 ~~with a design build team for the design and construction of not more~~
10 ~~than two discrete public works projects, each of which have an~~
11 ~~estimated cost of \$5,000,000 or less if the public body has approved~~
12 ~~the use of a design build team.}~~

13 **Sec. 1.7.** NRS 338.1908 is hereby amended to read as follows:

14 338.1908 1. The governing body of each local government
15 shall, by July 28, 2009, develop a plan to retrofit public buildings,
16 facilities and structures, including, without limitation, traffic-control
17 systems, and to otherwise use sources of renewable energy to serve
18 those buildings, facilities and structures. Such a plan must:

19 (a) Include a list of specific projects. The projects must be
20 prioritized and selected on the basis of the following criteria:

21 (1) The length of time necessary to commence the project.

22 (2) The number of workers estimated to be employed on the
23 project.

24 (3) The effectiveness of the project in reducing energy
25 consumption.

26 (4) The estimated cost of the project.

27 (5) Whether the project is able to be powered by or otherwise
28 use sources of renewable energy.

29 (6) Whether the project has qualified for participation in one
30 or more of the following programs:

31 (I) The Solar Energy Systems Incentive Program created
32 by NRS 701B.240;

33 (II) The Renewable Energy School Pilot Program created
34 by NRS 701B.350;

35 (III) The Wind Energy Systems Demonstration Program
36 created by NRS 701B.580; or

37 (IV) The Waterpower Energy Systems Demonstration
38 Program created by NRS 701B.820.

39 (b) Include a list of potential funding sources for use in
40 implementing the projects, including, without limitation, money
41 available through the Energy Efficiency and Conservation Block
42 Grant Program as set forth in 42 U.S.C. § 17152 and grants, gifts,
43 donations or other sources of money from public and private
44 sources.



2. The governing body of each local government shall transmit the plan developed pursuant to subsection 1 to the Director of the Office of Energy and to any other entity designated for that purpose by the Legislature.

3. As used in this section:

(a) "Local government" means each city or county that meets the definition of "eligible unit of local government" as set forth in 42 U.S.C. § 17151 and each unit of local government, as defined in ~~subsection 13 of~~ NRS 338.010, that does not meet the definition of "eligible entity" as set forth in 42 U.S.C. § 17151.

(b) "Renewable energy" means a source of energy that occurs naturally or is regenerated naturally, including, without limitation:

- (1) Biomass;
- (2) Fuel cells;
- (3) Geothermal energy;
- (4) Solar energy;
- (5) Waterpower; and
- (6) Wind.

↪ The term does not include coal, natural gas, oil, propane or any other fossil fuel, or nuclear energy.

(c) "Retrofit" means to alter, improve, modify, remodel or renovate a building, facility or structure to make that building, facility or structure more energy-efficient.

Sec. 1.8. Section 31 of the Southern Nevada Tourism Improvements Act, being chapter 2, Statutes of Nevada 2016, 30th Special Session, at page 28, is hereby amended to read as follows:

Sec. 31. 1. Except as otherwise provided in sections 21 to 37, inclusive, of this act and notwithstanding any other provision of law to the contrary:

(a) Any contract, lease, sublease, lease-purchase agreement, management agreement or other agreement entered into pursuant to sections 21 to 37, inclusive, of this act by the Stadium Authority, a developer partner or any related entity relating to the National Football League stadium project financed in whole or in part pursuant to sections 21 to 37, inclusive, of this act, and any contract, lease, sublease, lease-purchase agreement, management agreement or other agreement that provides for the design, acquisition, construction, improvement, repair, demolition, reconstruction, equipment, financing, promotion, leasing, subleasing, management, operation or maintenance, or any combination thereof, of the National Football League stadium project or any portion thereof, or the provision of materials or services for the project are exempt from any law:



(1) Requiring competitive bidding or otherwise specifying procedures for the award of agreements of a type described in this paragraph;

(2) Specifying procedures for the procurement of goods or services; or

(3) Limiting the term of any agreement of a type described in this paragraph.

(b) The provisions of chapter 341 of NRS do not apply to the National Football League stadium project financed in whole or in part pursuant to sections 21 to 37, inclusive, of this act or to any agreement of a type described in paragraph (a).

(c) The provisions of chapter 338 of NRS do not apply to the National Football League stadium project financed in whole or in part pursuant to sections 21 to 37, inclusive, of this act or to any agreement of a type described in paragraph (a), except that:

(1) The provisions of NRS 338.013 to 338.090, inclusive, apply to any construction work to be performed under any contract or other agreement pertaining to the project even if the estimated cost of the construction work is not greater than \$250,000 or the construction work does not qualify as a public work, as defined in ~~subsection 17 of~~ NRS 338.010;

(2) Any person or entity that executes one or more contracts or agreements for the actual construction, alteration, repair or remodeling of the project shall include in such a contract or agreement the contractual provisions and stipulations that are required to be included in a contract for a public work pursuant to the provisions of NRS 338.013 to 338.090, inclusive; and

(3) The Stadium Authority, any contractor who is awarded a contract or enters into an agreement to perform the construction, alteration, repair or remodeling of such an undertaking and any subcontractor on the undertaking shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the County had undertaken the project or had awarded the contract.

2. The Stadium Authority and any prime contractor, construction manager or project manager selected by the Stadium Authority or a developer partner shall competitively bid all subcontracts involving construction which the Stadium Authority determines can be competitively bid without affecting the quality of the National Football League stadium project. Any determination by the Stadium Authority that



such a subcontract can or cannot be competitively bid without affecting the quality of the National Football League stadium project is conclusive in the absence of fraud or a gross abuse of discretion. The Stadium Authority shall establish one or more procedures for competitive bidding which:

(a) Must prohibit bidders from engaging in bid-shopping;
(b) Must not permit subcontractors to avoid or circumvent the provisions of paragraph (c) of subsection 1; and

(c) Must, in addition to the requirements of section 31.5 of this act, provide a preference for Nevada subcontractors in a manner that is similar to, and with a preference that is equivalent to, the preference provided in NRS 338.1389.

3. Any determination by the Stadium Authority regarding the establishment of one or more procedures for competitive bidding, and any determination by a developer partner or its prime contractor, construction manager or project manager regarding the award of a contract to any bidder, is conclusive in the absence of fraud or a gross abuse of discretion.

Sec. 1.9. Section 48 of the Southern Nevada Tourism Improvements Act, being chapter 2, Statutes of Nevada 2016, 30th Special Session, at page 48, is hereby amended to read as follows:

Sec. 48. 1. Except as otherwise provided in sections 39 to 52, inclusive, of this act and notwithstanding any other provision of law to the contrary:

(a) Any contract, lease, sublease, lease-purchase agreement, management agreement or other agreement entered into pursuant to sections 39 to 52, inclusive, of this act by the Campus Improvement Authority, the System or any related entity relating to the college football stadium project financed in whole or in part pursuant to sections 39 to 52, inclusive, of this act, and any contract, lease, sublease, lease-purchase agreement, management agreement or other agreement that provides for the design, acquisition, construction, improvement, repair, demolition, reconstruction, equipment, financing, promotion, leasing, subleasing, management, operation or maintenance, or any combination thereof, of the college football stadium project or any portion thereof, or the provision of materials or services for the college football stadium project are exempt from any law:

(1) Requiring competitive bidding or otherwise specifying procedures for the award of agreements of a type described in this paragraph;



(2) Specifying procedures for the procurement of goods or services; or

(3) Limiting the term of any agreement of a type described in this paragraph.

(b) The provisions of chapter 341 of NRS do not apply to the college football stadium project financed in whole or in part pursuant to sections 39 to 52, inclusive, of this act or to any agreement of a type described in paragraph (a).

(c) The provisions of chapter 338 of NRS do not apply to the college football stadium project financed in whole or in part pursuant to sections 39 to 52, inclusive, of this act or to any agreement of a type described in paragraph (a), except that:

(1) The provisions of NRS 338.013 to 338.090, inclusive, apply to any construction work to be performed under any contract or other agreement pertaining to the project even if the estimated cost of the construction work is not greater than \$250,000 or the construction work does not qualify as a public work, as defined in ~~subsection 17 of~~ NRS 338.010;

(2) Any person or entity that executes one or more contracts or agreements for the actual construction, alteration, repair or remodeling of the project shall include in such a contract or agreement the contractual provisions and stipulations that are required to be included in a contract for a public work pursuant to the provisions of NRS 338.013 to 338.090, inclusive; and

(3) The Campus Improvement Authority, any contractor who is awarded a contract or enters into an agreement to perform the construction, alteration, repair or remodeling of the college football stadium project and any subcontractor on the college football stadium project shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the State had undertaken the project or had awarded the contract.

2. The Campus Improvement Authority and any prime contractor, construction manager or project manager selected by the Campus Improvement Authority shall competitively bid all subcontracts involving construction which the Campus Improvement Authority determines can be competitively bid without affecting the quality of the college football stadium project. Any determination by the Campus Improvement Authority that such a subcontract can or cannot be competitively bid without affecting the quality of the project is conclusive in the absence of fraud or a gross abuse of



discretion. The Campus Improvement Authority shall establish one or more procedures for competitive bidding which:

(a) Must prohibit bidders from engaging in bid-shopping;

(b) Must not permit subcontractors to avoid or circumvent the provisions of paragraph (c) of subsection 1; and

(c) Must, in addition to the requirements of section 48.5 of this act, provide a preference for Nevada subcontractors in a manner that is similar to, and with a preference that is equivalent to, the preference provided in NRS 338.1389.

3. Any determination by the Campus Improvement Authority regarding the establishment of one or more procedures for competitive bidding, and any determination by the Authority or its prime contractor, construction manager or project manager regarding the award of a contract to any bidder is conclusive in the absence of fraud or a gross abuse of discretion.

Sec. 2. This act becomes effective on July 1, 2021.

