

Senate Bill No. 141–Senator Brooks

CHAPTER.....

AN ACT relating to public works; revising provisions relating to the scope of horizontal construction and vertical construction for certain purposes; removing the prospective expiration of provisions relating to construction managers at risk; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Under existing law, public bodies are authorized to construct public works under certain circumstances through a method by which a construction manager at risk provides preconstruction services on the public work and, in some cases, construction services on the public work with a guaranteed maximum price, a fixed price or a fixed price plus reimbursement for certain costs. (NRS 338.1685-338.16995) Existing law eliminates the authority for public bodies to enter into contracts with construction managers at risk effective June 30, 2021. **Sections 1.5-4** of this bill remove the prospective expiration of this authority, thereby making the authorization to enter into contracts with construction managers at risk permanent.

Existing law identifies certain work on public works as “horizontal construction” and “vertical construction” for certain purposes. (NRS 338.010, 338.01165, 338.16985) **Section 1** of this bill revises the type of work that is included in the scope of those types of construction to specifically include the alteration, repair, renovation, demolition and remodeling, and any incidental work, necessary to complete a public work.

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

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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. “Bona fide fringe benefit” means a benefit in the form of a contribution that is made not less frequently than monthly to an independent third party pursuant to a fund, plan or program:

(a) Which is established for the sole and exclusive benefit of a worker and his or her family and dependents; and

(b) For which none of the assets will revert to, or otherwise be credited to, any contributing employer or sponsor of the fund, plan or program.

↪ The term includes, without limitation, benefits for a worker that are determined pursuant to a collective bargaining agreement and



included in the determination of the prevailing wage by the Labor Commissioner pursuant to NRS 338.030.

3. "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.

4. "Contractor" means:

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

(b) A design-build team.

5. "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.

6. "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.

7. "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.

8. "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.



9. "Division" means the State Public Works Division of the Department of Administration.

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.

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.

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.

13. "Horizontal construction" means ~~the~~ **any** construction ~~of any—fixed~~ , **alteration, repair, renovation, demolition or remodeling necessary to complete a public** work, including , **without limitation**, any irrigation, drainage, water supply, flood control, harbor, railroad, highway, tunnel, airport or airway, sewer, sewage disposal plant or water treatment facility and any ancillary vertical components thereof, bridge, inland waterway, pipeline for the transmission of petroleum or any other liquid or gaseous substance, pier, and **any other** work incidental thereto. The term does not include vertical construction, the construction of any terminal or other building of an airport or airway, or the construction of any other building.

14. "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.

15. "Offense" means:

(a) Failing to:

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

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

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

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

(b) Discharging an obligation to pay wages in a manner that violates the provisions of NRS 338.035.

16. "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.

17. "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.

18. "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.

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



20. “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,

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

21. “Subcontract” means a written contract entered into between:

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

(b) A subcontractor and another subcontractor or supplier,

↳ for the provision of labor, materials, equipment or supplies for a construction project.

22. “Subcontractor” means a person who:

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

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

23. “Supplier” means a person who provides materials, equipment or supplies for a construction project.

24. “Vertical construction” means ~~the~~ **any** construction, **alteration, repair, renovation, demolition** or remodeling ~~of~~ **necessary to complete a public work for** any building, structure or other improvement that is predominantly vertical, including, without limitation, a building, structure or improvement for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, and any **other work or** improvement appurtenant thereto.

25. “Wages” means:

(a) The basic hourly rate of pay; and

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

26. “Worker” means a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker or unskilled worker in the service of a contractor or subcontractor under any appointment or contract of hire or apprenticeship, express or implied, oral or



written, whether lawfully or unlawfully employed. The term does not include a design professional.

**Sec. 1.5.** Section 15 of chapter 487, Statutes of Nevada 2013, as amended by chapter 562, Statutes of Nevada 2017, at page 4035, is hereby amended to read as follows:

Sec. 15. ~~[1.]~~ This section and sections 1, 2, 3, 4, 5, 6, 7.5 to 13, inclusive, 14, 14.3 and 14.5 of this act become effective on July 1, 2013.

~~[2.—Section 1 of this act expires by limitation on June 30, 2021.~~

~~—3.—Sections 2.3, 2.5, 3.5, 4.5, 5.3, 5.5, 5.7, 6.5, 13.5, 14.1 and 14.7 of this act become effective on July 1, 2021.]~~

**Sec. 2.** Section 9 of chapter 123, Statutes of Nevada 2015, as amended by chapter 562, Statutes of Nevada 2017, at page 4035, is hereby amended to read as follows:

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

~~[2.—Sections 6 and 7.5 of this act expire by limitation on June 30, 2021.]~~

**Sec. 3.** Section 7 of chapter 562, Statutes of Nevada 2017, at page 4035, is hereby amended to read as follows:

Sec. 7. 1. This section and sections 5 and 6 of this act become effective upon passage and approval.

2. Sections 1 to 4, inclusive, of this act become effective on July 1, 2017.

~~[3.—Sections 1 to 3, inclusive, of this act expire by limitation on June 30, 2021.]~~

**Sec. 4.** Sections 2.3, 2.5, 3.5, 4.5, 5.3, 5.5, 5.7, 6.5, 13.5, 14.1 and 14.7 of chapter 487, Statutes of Nevada 2013, at pages 2961, 2964, 2966, 2967, 2968, 2972, 2983, 2984 and 2986, respectively, are hereby repealed.

**Sec. 5.** This act becomes effective upon passage and approval.

