

SENATE BILL NO. 141—SENATOR BROOKS

FEBRUARY 23, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to public works.
(BDR 28-44)

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; 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:

1 Under existing law, public bodies are authorized to construct public works
2 under certain circumstances through a method by which a construction manager at
3 risk provides preconstruction services on the public work and, in some cases,
4 construction services on the public work with a guaranteed maximum price, a fixed
5 price or a fixed price plus reimbursement for certain costs. (NRS 338.1685-
6 338.16995) Existing law eliminates the authority for public bodies to enter into
7 contracts with construction managers at risk effective June 30, 2021. **Sections 1.5-4**
8 of this bill remove the prospective expiration of this authority, thereby making the
9 authorization to enter into contracts with construction managers at risk permanent.
10 Existing law identifies certain work on public works as “horizontal
11 construction” and “vertical construction” for certain purposes. (NRS 338.010,
12 338.01165, 338.16985) **Section 1** of this bill revises the type of work that is
13 included in the scope of those types of construction to specifically include the
14 alteration, repair, renovation, demolition and remodeling, and any incidental work,
15 necessary to complete a public work.

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

1 **Section 1.** NRS 338.010 is hereby amended to read as follows:
2 338.010 As used in this chapter:



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

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

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

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

13 ↪ The term includes, without limitation, benefits for a worker that
14 are determined pursuant to a collective bargaining agreement and
15 included in the determination of the prevailing wage by the Labor
16 Commissioner pursuant to NRS 338.030.

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

20 4. "Contractor" means:

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

23 (b) A design-build team.

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

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

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

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

35 (b) For a public work that consists of:

36 (1) A building and its site, at least one person who holds a
37 certificate of registration to practice architecture pursuant to chapter
38 623 of NRS.

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

44 8. "Design professional" means:



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

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

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

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

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

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

15 10. "Eligible bidder" means a person who is:

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

20 (b) Determined by a public body or its authorized representative
21 which awarded a contract for a public work pursuant to NRS
22 338.1375 to 338.139, inclusive, to be qualified to bid on that
23 contract pursuant to NRS 338.1379 or 338.1382.

24 11. "General contractor" means a person who is licensed to
25 conduct business in one, or both, of the following branches of the
26 contracting business:

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

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

31 12. "Governing body" means the board, council, commission
32 or other body in which the general legislative and fiscal powers of a
33 local government are vested.

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



1 14. "Local government" means every political subdivision or
2 other entity which has the right to levy or receive money from ad
3 valorem or other taxes or any mandatory assessments, and includes,
4 without limitation, counties, cities, towns, boards, school districts
5 and other districts organized pursuant to chapters 244A, 318, 318A,
6 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,
7 inclusive, and any agency or department of a county or city which
8 prepares a budget separate from that of the parent political
9 subdivision. The term includes a person who has been designated by
10 the governing body of a local government to serve as its authorized
11 representative.

12 15. "Offense" means:

13 (a) Failing to:

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

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

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

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

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

22 16. "Prime contractor" means a contractor who:

23 (a) Contracts to construct an entire project;

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

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

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

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

33 17. "Public body" means the State, county, city, town, school
34 district or any public agency of this State or its political subdivisions
35 sponsoring or financing a public work.

36 18. "Public work" means any project for the new construction,
37 repair or reconstruction of a project financed in whole or in part
38 from public money for:

39 (a) Public buildings;

40 (b) Jails and prisons;

41 (c) Public roads;

42 (d) Public highways;

43 (e) Public streets and alleys;

44 (f) Public utilities;

45 (g) Publicly owned water mains and sewers;



- 1 (h) Public parks and playgrounds;
- 2 (i) Public convention facilities which are financed at least in part
- 3 with public money; and

4 (j) All other publicly owned works and property.

5 19. "Specialty contractor" means a person who is licensed to

6 conduct business as described in subsection 4 of NRS 624.215.

7 20. "Stand-alone underground utility project" means an

8 underground utility project that is not integrated into a larger

9 project, including, without limitation:

10 (a) An underground sewer line or an underground pipeline for

11 the conveyance of water, including facilities appurtenant thereto;

12 and

13 (b) A project for the construction or installation of a storm drain,

14 including facilities appurtenant thereto,

15 ➔ that is not located at the site of a public work for the design and

16 construction of which a public body is authorized to contract with a

17 design-build team pursuant to subsection 2 of NRS 338.1711.

18 21. "Subcontract" means a written contract entered into

19 between:

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

21 (b) A subcontractor and another subcontractor or supplier,

22 ➔ for the provision of labor, materials, equipment or supplies for a

23 construction project.

24 22. "Subcontractor" means a person who:

25 (a) Is licensed pursuant to the provisions of chapter 624 of NRS

26 or performs such work that the person is not required to be licensed

27 pursuant to chapter 624 of NRS; and

28 (b) Contracts with a contractor, another subcontractor or a

29 supplier to provide labor, materials or services for a construction

30 project.

31 23. "Supplier" means a person who provides materials,

32 equipment or supplies for a construction project.

33 24. "Vertical construction" means ~~the~~ **any** construction ,

34 **alteration, repair, renovation, demolition** or remodeling ~~of~~

35 **necessary to complete a public work for** any building, structure or

36 other improvement that is predominantly vertical, including, without

37 limitation, a building, structure or improvement for the support,

38 shelter and enclosure of persons, animals, chattels or movable

39 property of any kind, and any **other work or** improvement

40 appurtenant thereto.

41 25. "Wages" means:

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

43 (b) The amount of pension, health and welfare, vacation and

44 holiday pay, the cost of apprenticeship training or other bona fide

45 fringe benefits which are a benefit to the worker.



1 26. "Worker" means a skilled mechanic, skilled worker,
2 semiskilled mechanic, semiskilled worker or unskilled worker in the
3 service of a contractor or subcontractor under any appointment or
4 contract of hire or apprenticeship, express or implied, oral or
5 written, whether lawfully or unlawfully employed. The term does
6 not include a design professional.

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

10 Sec. 15. ~~[1.]~~ This section and sections 1, 2, 3, 4, 5, 6,
11 7.5 to 13, inclusive, 14, 14.3 and 14.5 of this act become
12 effective on July 1, 2013.

13 ~~[2.—Section 1 of this act expires by limitation on June 30,~~
14 ~~2021.]~~

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

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

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

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

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

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

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

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

32 **Sec. 4.** Sections 2.3, 2.5, 3.5, 4.5, 5.3, 5.5, 5.7, 6.5, 13.5, 14.1
33 and 14.7 of chapter 487, Statutes of Nevada 2013, at pages 2961,
34 2964, 2966, 2967, 2968, 2972, 2983, 2984 and 2986, respectively,
35 are hereby repealed.

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



TEXT OF REPEALED SECTIONS

Section 2.3 of chapter 487, Statutes of Nevada 2013:

Sec. 2.3. 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. "Division" means the State Public Works Division of the Department of Administration.

9. "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. "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. "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. ~~["Horizontal construction" means the construction of any fixed work, including 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 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.~~

~~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, 309, 318, 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.

~~14.]~~ 13. “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 4 or 5 of NRS 338.070.

~~15.]~~ 14. “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.

~~16.]~~ 15. “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.

~~17.]~~ 16. “Public work” means any project for the new construction, repair or reconstruction of:

(a) A project financed in whole or in part from public money for:

(1) Public buildings;

(2) Jails and prisons;

(3) Public roads;

(4) Public highways;



- (5) Public streets and alleys;
- (6) Public utilities;
- (7) Publicly owned water mains and sewers;
- (8) Public parks and playgrounds;
- (9) Public convention facilities which are financed at least in part with public money; and
- (10) All other publicly owned works and property.

(b) A building for the Nevada System of Higher Education of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by this State or from federal money.

~~{18.}~~ **17.** “Specialty contractor” means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.

~~{19.}~~ **18.** “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.

~~{20.}~~ **19.** “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.

~~{21.}~~ **20.** “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.

~~{22.}~~ **21.** “Supplier” means a person who provides materials, equipment or supplies for a construction project.

~~{23.} “Vertical construction” means the construction or remodeling of 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 improvement appurtenant thereto.~~

~~—24.]~~ 22. “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 similar programs or other bona fide fringe benefits which are a benefit to the worker.

~~[25.]~~ 23. “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.

Section 2.5 of chapter 487, Statutes of Nevada 2013:

Sec. 2.5. NRS 338.0117 is hereby amended to read as follows:

338.0117 1. To qualify to receive a preference in bidding pursuant to subsection 2 of NRS 338.1389, subsection 2 of NRS 338.147, ~~[subsection 3 of NRS 338.1693.]~~ subsection 3 of NRS 338.1727 or subsection 2 of NRS 408.3886, a contractor, an applicant or a design-build team, respectively, must submit to the public body sponsoring or financing a public work a signed affidavit which certifies that, for the duration of the project:

(a) At least 50 percent of all workers employed on the public work, including, without limitation, any employees of the contractor, applicant or design-build team and of any subcontractor engaged on the public work, will hold a valid driver’s license or identification card issued by the Department of Motor Vehicles;

(b) All vehicles used primarily for the public work will be:

(1) Registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the Department of Motor Vehicles pursuant to NRS 706.826; or

(2) Registered in this State;

(c) At least 50 percent of the design professionals working on the public work, including, without limitation, any employees of the contractor, applicant or design-build team and of any subcontractor engaged on the public work,



will have a valid driver's license or identification card issued by the Department of Motor Vehicles;

(d) At least 25 percent of the suppliers of the materials used for the public work will be located in this State unless the public body requires the acquisition of materials or equipment that cannot be obtained from a supplier located in this State; and

(e) The contractor, applicant or design-build team and any subcontractor engaged on the public work will maintain and make available for inspection within this State his or her records concerning payroll relating to the public work.

2. Any contract for a public work awarded to a contractor, applicant or design-build team who submits the affidavit described in subsection 1 and who receives a preference in bidding described in subsection 1 must:

(a) Include a provision in the contract that substantially incorporates the requirements of paragraphs (a) to (e), inclusive, of subsection 1; and

(b) Provide that a failure to comply with any requirement of paragraphs (a) to (e), inclusive, of subsection 1 is a material breach of the contract and entitles the public body to liquidated damages only as provided in subsections 5 and 6.

3. A person or entity who believes that a contractor, applicant or design-build team has obtained a preference in bidding as described in subsection 1 but has failed to comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1 may file a written objection with the public body for which the contractor, applicant or design-build team is performing the public work. A written objection authorized pursuant to this subsection must set forth proof or substantiating evidence to support the belief of the person or entity that the contractor, applicant or design-build team has failed to comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1.

4. If a public body receives a written objection pursuant to subsection 3, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to that subsection. If the public body determines that the objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection. If the public body determines that the objection is accompanied by the required proof or substantiating evidence or if the public body determines on its own initiative that proof or substantiating evidence of a failure to comply with a requirement of paragraphs (a) to (e),



inclusive, of subsection 1 exists, the public body shall determine whether the contractor, applicant or design-build team has failed to comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1 and the public body or its authorized representative may proceed to award the contract accordingly or, if the contract has already been awarded, seek the remedy authorized in subsection 5.

5. A public body may recover, by civil action against the party responsible for a failure to comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1, liquidated damages as described in subsection 6 for a breach of a contract for a public work caused by a failure to comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1. If a public body recovers liquidated damages pursuant to this subsection for a breach of a contract for a public work, the public body shall report to the State Contractors' Board the date of the breach, the name of each entity which breached the contract and the cost of the contract. The Board shall maintain this information for not less than 6 years. Upon request, the Board shall provide this information to any public body or its authorized representative.

6. If a contractor, applicant or design-build team submits the affidavit described in subsection 1, receives a preference in bidding described in subsection 1 and is awarded the contract, the contract between the contractor, applicant or design-build team and the public body, each contract between the contractor, applicant or design-build team and a subcontractor or supplier and each contract between a subcontractor and a subcontractor or supplier must provide that:

(a) If a party to the contract causes a material breach of the contract between the contractor, applicant or design-build team and the public body as a result of a failure to comply with a requirement of paragraphs (a) to (e), inclusive, of subsection 1, the party is liable to the public body for liquidated damages in the amount of 1 percent of the cost of the largest contract to which he or she is a party;

(b) The right to recover the amount determined pursuant to paragraph (a) by the public body pursuant to subsection 5 may be enforced by the public body directly against the party that causes the material breach; and

(c) No other party to the contract is liable to the public body for liquidated damages.



7. A public body that awards a contract for a public work to a contractor, applicant or design-build team who submits the affidavit described in subsection 1 and who receives a preference in bidding described in subsection 1 shall, on or before July 31 of each year, submit a written report to the Director of the Legislative Counsel Bureau for transmittal to the Legislative Commission. The report must include information on each contract for a public work awarded to a contractor, applicant or design-build team who submits the affidavit described in subsection 1 and who receives a preference in bidding described in subsection 1, including, without limitation, the name of the contractor, applicant or design-build team who was awarded the contract, the cost of the contract, a brief description of the public work and a description of the degree to which the contractor, applicant or design-build team and each subcontractor complied with the requirements of paragraphs (a) to (e), inclusive, of subsection 1.

Section 3.5 of chapter 487, Statutes of Nevada 2013:

Sec. 3.5. NRS 338.018 is hereby amended to read as follows:

338.018 The provisions of NRS 338.013 to 338.018, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds \$100,000 even if the construction work does not qualify as a public work, as defined in subsection ~~17~~ 16 of NRS 338.010.

Section 4.5 of chapter 487, Statutes of Nevada 2013:

Sec. 4.5. NRS 338.075 is hereby amended to read as follows:

338.075 The provisions of NRS 338.020 to 338.090, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds \$100,000 even if the construction work does not qualify as a public work, as defined in subsection ~~17~~ 16 of NRS 338.010.

Section 5.3 of chapter 487, Statutes of Nevada 2013:

Sec. 5.3. NRS 338.1373 is hereby amended to read as follows:

338.1373 1. A local government or its authorized representative shall award a contract for a public work pursuant to the provisions of NRS 338.1415 and:



- (a) NRS 338.1377 to 338.139, inclusive;
- (b) NRS 338.143 to 338.148, inclusive; *or*
- (c) ~~NRS 338.169 to 338.16995, inclusive, and section 1 of this act; or~~
- ~~—(d)]~~ NRS 338.1711 to 338.173, inclusive.

2. Except as otherwise provided in this subsection, subsection 3 and chapter 408 of NRS, the provisions of this chapter apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the Department of Transportation pursuant to NRS 408.201 and 408.313 to 408.433, inclusive. The provisions of NRS 338.1375 to 338.1382, inclusive, 338.1386, 338.13862, 338.13864, 338.139, 338.142 and 338.1711 to 338.1727, inclusive, do not apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the Department of Transportation pursuant to NRS 408.201 and 408.313 to 408.433, inclusive.

3. To the extent that a provision of this chapter precludes the granting of federal assistance or reduces the amount of such assistance with respect to a contract for the construction, reconstruction, improvement or maintenance of highways that is awarded by the Department of Transportation pursuant to NRS 408.201 and 408.313 to 408.433, inclusive, that provision of this chapter does not apply to the Department of Transportation or the contract.

Section 5.5 of chapter 487, Statutes of Nevada 2013:

Sec. 5.5. NRS 338.1381 is hereby amended to read as follows:

338.1381 1. If, within 10 days after receipt of the notice denying an application pursuant to NRS 338.1379 ~~for 338.16991~~ or disqualifying a subcontractor pursuant to NRS 338.1376, the applicant or subcontractor, as applicable, files a written request for a hearing with the Division or the local government, the State Public Works Board or governing body shall set the matter for a hearing within 20 days after receipt of the request. The hearing must be held not later than 45 days after the receipt of the request for a hearing unless the parties, by written stipulation, agree to extend the time.

2. The hearing must be held at a time and place prescribed by the Board or local government. At least 10 days before the date set for the hearing, the Board or local government shall serve the applicant or subcontractor with written notice of the hearing. The notice may be served by



personal delivery to the applicant or subcontractor or by certified mail to the last known business or residential address of the applicant or subcontractor.

3. The applicant or subcontractor has the burden at the hearing of proving by substantial evidence that the applicant is entitled to be qualified to bid on a contract for a public work, or that the subcontractor is qualified to be a subcontractor on a contract for a public work.

4. In conducting a hearing pursuant to this section, the Board or governing body may:

- (a) Administer oaths;
- (b) Take testimony;
- (c) Issue subpoenas to compel the attendance of witnesses to testify before the Board or governing body;
- (d) Require the production of related books, papers and documents; and
- (e) Issue commissions to take testimony.

5. If a witness refuses to attend or testify or produce books, papers or documents as required by the subpoena issued pursuant to subsection 4, the Board or governing body may petition the district court to order the witness to appear or testify or produce the requested books, papers or documents.

6. The Board or governing body shall issue a decision on the matter during the hearing. The decision of the Board or governing body is a final decision for purposes of judicial review.

Section 5.7 of chapter 487, Statutes of Nevada 2013:

Sec. 5.7. NRS 338.1385 is hereby amended to read as follows:

338.1385 1. Except as otherwise provided in subsection 9, this State, or a governing body or its authorized representative that awards a contract for a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:

- (a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and having a general circulation within the county.



(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1386, 338.13862 and 338.13864 and, with respect to the State, NRS 338.1384 to 338.13847, inclusive.

(c) Divide a public work into separate portions to avoid the requirements of paragraph (a) or (b).

2. At least once each quarter, the authorized representative of a public body shall report to the public body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Each advertisement for bids must include a provision that sets forth the requirement that a contractor must be qualified pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

4. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the public work must be awarded on the basis of bids received.

5. Except as otherwise provided in subsection 6 and NRS 338.1389, a public body or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

6. Any bids received in response to an advertisement for bids may be rejected if the public body or its authorized representative responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;

(b) The bidder is not responsive or responsible;

(c) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or

(d) The public interest would be served by such a rejection.

7. A public body may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The public body publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The public body considers any bid submitted in response to the notice published pursuant to paragraph (a);



(c) The public body lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

8. Before a public body may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the public body shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the public body intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the public body intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including, the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the public body expects to save by rejecting the bids and performing the public work itself.

9. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive; *or*



(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435 . ~~}; or~~

~~—(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.169 to 338.16995, inclusive.]~~

Section 6.5 of chapter 487, Statutes of Nevada 2013:

Sec. 6.5. NRS 338.143 is hereby amended to read as follows:

338.143 1. Except as otherwise provided in subsection 8, a local government or its authorized representative that awards a contract for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published within the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation within the county.

(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1442, 338.1444 or 338.1446.

(c) Divide a public work into separate portions to avoid the requirements of paragraph (a) or (b).

2. At least once each quarter, the authorized representative of a local government shall report to the governing body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the public work must be awarded on the basis of bids received.

4. Except as otherwise provided in subsection 5 and NRS 338.147, the local government or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

5. Any bids received in response to an advertisement for bids may be rejected if the local government or its authorized



representative responsible for awarding the contract determines that:

- (a) The bidder is not responsive or responsible;
- (b) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or
- (c) The public interest would be served by such a rejection.

6. A local government may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

- (a) The local government publishes a notice stating that no bids were received and that the contract may be let without further bidding;
- (b) The local government considers any bid submitted in response to the notice published pursuant to paragraph (a);
- (c) The local government lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and
- (d) The contract is awarded to the lowest responsive and responsible bidder.

7. Before a local government may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the local government shall prepare and make available for public inspection a written statement containing:

- (a) A list of all persons, including supervisors, whom the local government intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;
- (b) A list of all equipment that the local government intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;
- (c) An estimate of the cost of administrative support for the persons assigned to the public work;
- (d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and
- (e) An estimate of the amount of money the local government expects to save by rejecting the bids and performing the public work itself.

8. This section does not apply to:



(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive; *or*

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435 . ~~}; or~~

~~(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.169 to 338.16995, inclusive.]~~

Section 13.5 of chapter 487, Statutes of Nevada 2013:

Sec. 13.5. NRS 338.1711 is hereby amended to read as follows:

338.1711 1. Except as otherwise provided in this section and NRS 338.161 to ~~[338.16995.]~~ **338.168**, inclusive, a public body shall contract with a prime contractor for the construction of a public work for which the estimated cost exceeds \$100,000.

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

Section 14.1 of chapter 487, Statutes of Nevada 2013:

Sec. 14.1. NRS 338.1908 is hereby amended to read as follows:

338.1908 1. The governing body of each local government shall, by July 28, 2009, develop a plan to retrofit public buildings, facilities and structures, including, without limitation, traffic-control systems, and to otherwise use



sources of renewable energy to serve those buildings, facilities and structures. Such a plan must:

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

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

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

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

(4) The estimated cost of the project.

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

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

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

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

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

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

(b) Include a list of potential funding sources for use in implementing the projects, including, without limitation, money available through the Energy Efficiency and Conservation Block Grant Program as set forth in 42 U.S.C. § 17152 and grants, gifts, donations or other sources of money from public and private 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 ~~H3~~ 12 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.

Section 14.7 of chapter 487, Statutes of Nevada 2013:

Sec. 14.7. NRS 338.169, 338.1691, 338.1692, 338.1693, 338.16935, 338.1696, 338.1697, 338.1698, 338.16985, 338.16991 and 338.16995 are hereby repealed.

