

**ADOPTED REGULATION OF THE
STATE PUBLIC WORKS BOARD**

LCB File No. R096-04

Effective December 15, 2004

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

AUTHORITY: §§1, 3, 4, 6, 7, 19, 23 and 26, NRS 341.110; §§2 and 5, NRS 341.110, 341.161 and 341.166; §8, NRS 341.070, 341.100, 341.110, 341.161 and 341.166; §9, NRS 338.011, 341.100 and 341.110; §§10-14, NRS 341.070, 341.105 and 341.110; §15, NRS 341.100 and 341.110; §16, NRS 341.070, 341.100 and 341.110; §§17 and 28, NRS 341.110 and 393.110; §§18, 20 and 27, NRS 341.110 and 341.145; §§21 and 22, NRS 341.070 and 341.110; §24, NRS 341.110 and 341.143; §25, NRS 339.025 and 341.110; §29, NRS 341.110, 341.143 and 444.420.

A REGULATION relating to public works; establishing a procedure by which the State Public Works Board may select certain professional consultants under certain circumstances; providing for the selection of certain professional consultants in an emergency; providing a procedure by which the Manager of the Board may impose administrative penalties against a person who refuses to comply with an order issued to compel the cessation of work on a building under certain circumstances; providing a procedure to appeal a decision of the Manager of the Board in his capacity as building official; providing various fees for projects which are not part of the approved capital improvement program; providing criteria for determining whether a change in the scope of the design or construction of a project requires the approval of the Interim Finance Committee or the Legislature, as appropriate; changing the requirements for an insurer or surety that provides the insurance or bond required by the Board for contractors and subcontractors; and providing other matters properly relating thereto.

Section 1. Chapter 341 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this regulation.

Sec. 2. *“At-risk construction manager” means a contractor licensed pursuant to chapter 624 of NRS who is retained by the Board for a project of capital improvement pursuant to NRS 341.161 and who guarantees that the final price for the project will not be exceeded.*

Sec. 3. *“Board” has the meaning ascribed to it in NRS 341.013.*

Sec. 4. *“Chairman” means the Chairman of the Board.*

Sec. 5. *“Construction manager” means a contractor licensed pursuant to chapter 624 of NRS who is retained by the Board pursuant to NRS 341.161 and who assists in a project that is performed by this State or a local government itself in accordance with NRS 338.1386 and 338.13864.*

Sec. 6. *“Manager” has the meaning ascribed to it in NRS 341.015.*

Sec. 7. *“Vice Chairman” means the Vice Chairman of the Board.*

Sec. 8. *1. The Manager shall appoint a committee to:*

(a) Review applications received by the Board for retention by the Board in a position on a project of the Board as an architect, engineer, at-risk construction manager who will assist in a project that has an estimated cost of over \$100,000, construction manager or other professional consultant; and

(b) Create a list of not more than five applicants for each architect, engineer, at-risk construction manager who will assist in a project that has an estimated cost of over \$100,000, construction manager or other professional consultant that the Board wishes to retain.

2. The committee appointed pursuant to subsection 1 must consist of two members who are employed by the Board and one member who is employed by the agency for which the project is to be designed or constructed.

3. After a committee appointed pursuant to subsection 1 creates a list of applicants, the Manager shall appoint another committee to interview the applicants included on the list and to recommend to the Manager an applicant for selection. The committee appointed pursuant to this subsection must:

(a) Consist of three members who are employed by the Board and two members who are employed by the agency for which the project is to be designed or constructed.

(b) Not consist of any members of the committee appointed pursuant to subsection 1.

4. After reviewing the findings of the committees appointed pursuant to subsections 1 and 3, the Manager shall make a final recommendation to the Board for the selection of the applicant.

Sec. 9. *If the Chairman determines that an emergency which results from a natural or man-made disaster and which threatens the health, safety or welfare of the public exists, the Manager may, without the prior approval of the Board, award a contract to meet the emergency to:*

1. An architect, engineer, at-risk construction manager, construction manager or other professional consultant without complying with the provisions of section 8 of this regulation.

2. A contractor who is licensed pursuant to chapter 624 of NRS without complying with the provisions of chapters 338 and 341 of NRS and NAC governing the selection of contractors.

Sec. 10. *As used in sections 10 to 14, inclusive, of this regulation, “person” means a natural person, any form of business or social organization and any other legal entity, including, without limitation, a corporation, partnership, association, trust, unincorporated organization, government, governmental agency or political subdivision of a government.*

Sec. 11. *In addition to any other penalty provided by law, the Manager may impose against a person who knowingly refuses to comply, or a person who willfully encourages another person to refuse to comply, with an order issued pursuant to subsection 1 of NRS 341.105:*

1. *For a first offense, not more than \$250 for each day that the person violates the order.*
2. *For a second offense occurring within 7 years after a first offense, not more than \$750 for each day that the person violates the order.*
3. *For a third offense occurring within 7 years after a second offense, not more than \$1,000 for each day that the person violates the order.*

Sec. 12. *If the Manager determines, by substantial evidence, that a person has knowingly refused to comply, or has willfully encouraged another person to refuse to comply, with an order issued pursuant to subsection 1 of NRS 341.105, the Manager shall send to that person by certified mail a notice stating that:*

1. *The Manager intends to impose against the person an administrative penalty pursuant to section 11 of this regulation; and*
2. *The person has the right to request a hearing.*

Sec. 13. 1. *The Board will appoint a subcommittee consisting of three members of the Board to hear appeals from a determination by the Manager to impose administrative penalties pursuant to section 11 of this regulation.*

2. *Within 10 days after a person receives a notice sent pursuant to section 12 of this regulation, the person may file with the Board a written notice of appeal. The written notice must set forth the basis for the appeal and may be accompanied by copies of any supporting documents.*

3. *The subcommittee appointed pursuant to subsection 1 shall:*
 - (a) *Conduct a hearing within 45 days after the notice of appeal is received by the Board;*
 - (b) *Provide notice of the time and place of the hearing to the person who requested the appeal; and*

(c) Select from among its members a chairman.

4. The chairman of the subcommittee appointed pursuant to subsection 1 may:

(a) Compel the parties to the appeal to enter into negotiations for a settlement;

(b) Mediate between the parties to the appeal; and

(c) Order the parties to the appeal to provide discovery.

5. Each party to the appeal shall, within 5 business days before the hearing, provide to the subcommittee appointed pursuant to subsection 1 and each opposing party a prehearing statement. The statement must:

(a) Set forth the facts and legal issues concerning the case.

(b) Include a list of any witnesses the party intends to call during the hearing. The list must include the name, address and telephone number of each witness, if known, and a brief statement concerning the proposed testimony of the witness.

(c) Except as otherwise provided in this paragraph, include a copy of any documents intended to be introduced into evidence at the hearing. The statement provided to the subcommittee must include five copies of the documents.

6. Upon commencement of the hearing by the subcommittee, the person who requested the appeal must be the first to present evidence. The person who requested the appeal has the burden to prove his case by substantial evidence.

7. In conducting the hearing, the subcommittee is not bound by any technical rules of evidence.

8. If a party fails to appear at a hearing conducted pursuant to this section and was not granted a continuance or did not enter into a stipulation for a continuance, the subcommittee

may hear evidence from those parties present at the hearing and may make a decision based upon the available record.

9. The subcommittee shall, by majority vote, determine whether evidence is admissible during a hearing conducted pursuant to this section.

10. The subcommittee shall issue its decision concerning a hearing conducted pursuant to this section at a public meeting. The subcommittee shall send, by certified mail, its written decision to the parties to the appeal within 20 days after the conclusion of the meeting.

Sec. 14. If a person does not request an appeal pursuant to section 13 of this regulation, a decision by the Manager to impose an administrative penalty pursuant to section 11 of this regulation is final and the Manager may collect the administrative penalty pursuant to the collection procedures set forth in chapter 353C of NRS or as otherwise authorized by law.

Sec. 15. In determining whether to select an architect, engineer, at-risk construction manager, construction manager or other professional consultant for a project without complying with the provisions of section 8 of this regulation, the Board and the Manager may consider whether the person possesses:

- 1. Experience with the same or a similar project;*
- 2. Specialized technical knowledge or experience relevant to the project;*
- 3. The copyright to a certain design or prototype relevant to the project;*
- 4. Such experience or expertise as is necessary to complete the project in a more timely manner than other professionals; or*
- 5. Any other factor that the Board determines is relevant to the health, safety or welfare of the public.*

Sec. 16. 1. The Chairman shall appoint at least one person to serve as an expert in each of the following fields:

(a) Architecture;

(b) Construction;

(c) Engineering; and

(d) Issues relating to the accommodation of persons with disabilities in public facilities, to serve as a potential member of a board of appeals pursuant to this section and the provisions of section 112 of the 2003 International Building Code, which is adopted by reference pursuant to NAC 341.045. The term of a person appointed to serve as an expert pursuant to this subsection is 2 years. The Chairman may reappoint such a person at his discretion.

2. A person who is aggrieved by a decision made by the Manager in his capacity as the building official pursuant to paragraph (h) of subsection 5 of NRS 341.100 may, within 30 days after the Manager issues his decision in writing, file a written request for an appeal of that decision with the Manager.

3. Upon receipt of a request for an appeal pursuant to subsection 2, the Manager shall immediately forward the request to the Chairman. The Chairman shall appoint a board of appeals to hear the appeal.

4. A board of appeals appointed pursuant to subsection 3 must consist of:

(a) One member who is an expert in the field of architecture appointed pursuant to subsection 1;

(b) One member who is an expert in the field of construction appointed pursuant to subsection 1;

(c) One member who is an expert in the field of engineering appointed pursuant to subsection 1;

(d) One member who is a member of the general public and who is not licensed or registered as an architect, contractor or engineer and who is not employed in the design or contracting industry; and

(e) If, in the opinion of the Chairman, the appeal:

(1) Concerns any issues relating to the accommodation of persons with disabilities, one member who is an expert in issues concerning the accommodation of persons with disabilities in public facilities appointed pursuant to subsection 1; or

(2) Does not concern any issues relating to the accommodation of persons with disabilities, one additional member who is an expert in the field of architecture, construction or engineering.

5. Any person appointed to a board of appeals pursuant to this section must not be an employee of the State of Nevada.

6. The Chairman shall appoint a member of a board of appeals appointed pursuant to this section to act as chairman of the board of appeals.

7. A board of appeals appointed pursuant to this section shall:

(a) Conduct a hearing within 30 days after the notice of appeal is received by the Manager; and

(b) Provide notice of the time and place of the hearing to the person who requested the appeal.

8. The chairman of a board of appeals appointed pursuant to subsection 6 may:

(a) Compel the parties to the appeal to enter into negotiations for a settlement;

(b) Mediate between the parties to the appeal; and

(c) Order the parties to the appeal to provide discovery.

9. Each party to the appeal shall, within 5 business days before the hearing, provide to the board of appeals and each opposing party a prehearing statement. The statement must:

(a) Set forth the facts and legal issues concerning the case.

(b) Include a list of any witnesses the party intends to call during the hearing. The list must include the name, address and telephone number of each witness, if known, and a brief statement concerning the proposed testimony of the witness.

(c) Except as otherwise provided in this paragraph, include a copy of any documents intended to be introduced into evidence at the hearing. The statement provided to the board of appeals must include five copies of the documents.

10. Upon commencement of the hearing by the board of appeals, the person who requested the appeal must be the first to present evidence. The person who requested the appeal has the burden to prove his case by substantial evidence.

11. In conducting the hearing, the board of appeals is not bound by any technical rules of evidence.

12. If a party fails to appear at a hearing conducted pursuant to this section and was not granted a continuance or did not enter into a stipulation for a continuance, the board of appeals may hear evidence from those parties present at the hearing and may make a decision based upon the available record.

13. A board of appeals shall, by majority vote, determine whether evidence is admissible during a hearing conducted pursuant to this section.

14. A board of appeals shall conclude the hearing of an appeal pursuant to this section after it hears evidence and oral arguments.

15. A board of appeals shall issue its decision concerning a hearing conducted pursuant to this section at a public meeting. The board of appeals shall send, by certified mail, its written decision to the parties to the appeal within 20 days after the conclusion of the meeting.

Sec. 17. 1. *Except as otherwise provided in subsections 3 and 4, any plans and specifications for a project that is not part of the approved program for capital improvement which are submitted to the Board for review and approval must be accompanied by the following fees:*

(a) A basic fee for inspection services based on the proposed cost of construction of the project in accordance with the following schedule:

<i>Total Construction Cost</i>	<i>Fee</i>
<i>\$1 to \$500</i>	<i>\$23.50</i>
<i>\$501 to \$2,000</i>	<i>\$23.50 for the first \$500 plus \$3.05 for each additional \$100 or fraction thereof, to and including \$2,000.</i>
<i>\$2,001 to \$25,000</i>	<i>\$69.25 for the first \$2,000 plus \$14 for each additional \$1,000 or fraction thereof, to and including \$25,000.</i>
<i>\$25,001 to \$50,000</i>	<i>\$391.25 for the first \$50,000 plus \$10.10 for each additional \$1,000 or fraction thereof, to and including \$50,000.</i>
<i>\$50,001 to \$100,000</i>	<i>\$643.75 for the first \$50,000 plus \$7 for each additional \$1,000 or fraction thereof, to and including \$100,000.</i>

<i>\$100,001 to \$500,000</i>	<i>\$993.75 for the first \$100,000 plus \$5.60 for each additional \$1,000 or fraction thereof, to and including \$500,000.</i>
<i>\$500,001 to \$1,000,000</i>	<i>\$3,233.75 for the first \$500,000 plus \$4.75 for each \$1,000 or fraction thereof, to and including \$1,000,000.</i>
<i>\$1,000,001 and up</i>	<i>\$5,608.75 for the first \$1,000,000 plus \$3.15 for each \$1,000 or fraction thereof.</i>

(b) Except as otherwise provided in this paragraph, an additional fee for inspection services for each mechanical, electrical and plumbing system of the project in an amount equal to 15 percent of the basic fee for inspection services for each such system. If an application involves only one such system, no additional fee for inspection services is due pursuant to this paragraph.

(c) A fee for the review of the plans and specifications for the project in an amount equal to 65 percent of the total amount of the basic fee for inspection services calculated pursuant to paragraph (a) and any additional fees for inspection services calculated pursuant to paragraph (b).

2. In addition to the fees calculated for a project pursuant to subsection 1, the Board:

(a) May charge a fee for the following services on an hourly basis at a rate equal to the hourly cost of the Board for:

- (1) Inspections outside of normal business hours.*
- (2) Reinspections.*
- (3) Inspections for which no fee is specifically indicated.*

(4) Additional reviews of plans or specifications required by changes, additions or alterations to the plans or specifications.

(b) Will charge a fee for the use of outside consultants by the Board for inspections of the project in an amount equal to the actual cost to the Board for the outside consultants plus the hourly cost of the Board for obtaining the services of, and overseeing the work of, the outside consultants.

↳ The Board will calculate its hourly costs based on the average amount the Board pays for the position of employment which is applicable to the service being provided, including, without limitation, inspectors, project managers and plan checkers. The hourly costs of the Board will be maintained on file at the Board's offices in Carson City and Las Vegas and will be posted on the Board's website at <http://www.spwb.state.nv.us/>.

3. The review of plans, designs and specifications for a school building pursuant to NRS 393.110 must be accompanied only by the fee for the review of plans and specifications as set forth in paragraph (c) of subsection 1.

4. The Manager shall determine, based on the actual costs to the Board, the amount of the fee that must accompany the plans and specifications for a project which will be completed in phases or on an expedited schedule or which has unique or unusual requirements.

Sec. 18. *For the purposes of subsection 7 of NRS 341.145, the Board interprets the phrase "change in the scope of the design or construction of a project" to mean the:*

1. Addition or deletion of 10 percent or more of the square footage of the project that was originally authorized by the Legislature;

2. Change in the intended use of more than 10 percent of the square footage of the project that was originally authorized by the Legislature; or

3. Change of more than 10 percent of the users of the project that were originally intended by the Legislature.

Sec. 19. NAC 341.005 is hereby amended to read as follows:

341.005 As used in this chapter, unless the context otherwise requires ~~£~~:

- ~~—1. “Board” means the State Public Works Board.~~
- ~~—2. “Chairman” means the Chairman of the Board.~~
- ~~—3. “Manager” means the Manager and Technical Supervisor of the Board.]~~

, the words and terms defined in sections 2 to 7, inclusive, of this regulation have the meanings ascribed to them in those sections.

Sec. 20. NAC 341.015 is hereby amended to read as follows:

341.015 Unless the authority to take action is delegated by the Board to the Manager, an action by the Board is required for:

1. The designation of projects, budgets and priorities to be included in the recommended program for capital improvements.

2. The selection of architects , ~~[and]~~ engineers and *professional consultants and* the designation of the sequence of negotiations for contracts for professional services in an amount of ~~[\$50,000]~~ *\$100,000* or more.

3. ~~[Approval of the solicitation of bids for the construction of any project in a program of capital improvements if the estimated cost of the project is \$500,000 or more.~~

~~—4. The final acceptance of work performed pursuant to a contract of \$1,000,000 or more.~~

~~—5.]~~ The termination of a contract of ~~[\$100,000]~~ *\$200,000* or more.

~~[6.]~~ **4.** Making the biennial recommendations for the operating budget.

~~[7.]~~ 5. The acceptance of money and the establishment of funds for projects that are not included in the program for capital improvements and have a budget of ~~[\$100,000]~~ \$200,000 or more.

~~[8.]~~ 6. Amending the scope or budget of a project if the amendment has a value of ~~[\$100,000]~~ \$200,000 or more.

~~[9.]~~ 7. The delegation of the authority of the Board to another state agency in accordance with NRS 341.119 for projects of ~~[\$100,000]~~ \$200,000 or more.

~~[10.—The adoption of criteria for determining responsible contractors as required by NRS 338.147, including establishing the qualifications of contractors and rating their performance on projects.]~~

Sec. 21. NAC 341.020 is hereby amended to read as follows:

341.020 1. The officers of the Board consist of a Chairman, Vice Chairman and Secretary.

2. *The term of office of the Chairman and the Vice Chairman is 2 years. The Secretary shall notify the Chairman and the Vice Chairman of the date on which their respective terms end at least 60 days before the end of such terms.*

3. *If a vacancy occurs in the office of:*

(a) Chairman, the Vice Chairman shall assume the duties of the Chairman for the unexpired term.

(b) Vice Chairman, the Board will, at its next meeting, elect from among its members a Vice Chairman to fill the vacancy for the unexpired term.

4. The Manager serves as Secretary of the Board.

~~[3.]~~ 5. The Chairman, or if he is unable to act, the Vice Chairman, may:

(a) Call meetings of the Board and preside at the meetings.

- (b) Appoint the members of the Board's committees.
- (c) Execute documents on behalf of the Board.
- (d) Represent the Board.

~~[4.]~~ **6.** The Secretary shall:

- (a) Schedule and arrange all meetings of the Board;
- (b) Post and mail copies of notices of the meetings;
- (c) Maintain:
 - (1) Written minutes of the meetings;
 - (2) Records of the policies and procedures of the Board; and
 - (3) Other official records of the Board; and
- (d) Provide such information to members of the Board as they may request or the Secretary considers to be appropriate.

Sec. 22. NAC 341.030 is hereby amended to read as follows:

341.030 1. In addition to the Manager and the Deputy Manager for Professional Services, each employee who is classified as an architect or an engineer must maintain a license to practice architecture or engineering in the State of Nevada.

2. The Manager may:

- (a) Administer the Board's programs.
- (b) Approve claims and partial payments.
- (c) Negotiate and execute contracts and other documents authorized by the Board.
- (d) Except as otherwise provided in NAC 341.105, approve change orders and endorsements to authorized contracts.

- (e) Select and commission professional or technical firms or other persons for checking plans, testing, surveying and providing necessary consulting or professional services.
- (f) ~~Establish criteria for soliciting bids and bidding and use~~ Use the criteria ~~established~~ *adopted* by the Board *pursuant to NRS 338.1375* to determine ~~responsible contractors.~~ *the qualification of bidders on contracts for public works of this State.*
- (g) Award a contract for ~~construction~~ *a public work of this State* to *responsive and* responsible contractors.
- (h) Administer the Board's employees, including hiring and firing, except that the Deputy Managers may be hired and fired only with the concurrence of the Board.
- (i) Perform such other functions as may be required for the efficient administration of the Board's programs or as directed by the Board.
- (j) Approve plans for projects of capital improvement.
- (k) Adopt A-E selection procedures, design standards, general provisions for contracts, contract forms and other standards that are needed to ensure the construction and maintenance of facilities at a reasonable cost.
- (l) Select architects, ~~and~~ engineers *and other professional consultants* for contracts for professional ~~design~~ services that are less than ~~[\$50,000.]~~ *\$100,000.*
- (m) Make recommendations to the Board for the selection of architects, ~~and~~ engineers *and other professional consultants* for contracts for professional ~~design~~ services that are ~~[\$50,000]~~ *\$100,000* or more.
- (n) Solicit bids for the construction of a project . ~~with an estimated value of less than \$500,000.]~~

- (o) Execute the forms necessary for the final acceptance of work that is completed for a project . ~~[with a value of less than \$1,000,000.]~~
- (p) Terminate for good cause a contract of less than ~~[\$100,000.]~~ **\$200,000.**
- (q) Accept money and establish funds for projects not previously included in the program for capital improvements which have a budget of less than ~~[\$100,000]~~ **\$200,000** and, with the concurrence of the Chairman, seek legislative approval for those projects, if necessary.
- (r) Amend the scope or budget of a project if the amendment has a value of less than ~~[\$100,000]~~ **\$200,000** and, with the concurrence of the Chairman, seek legislative approval for those amendments, if necessary.
- (s) Delegate the authority of the Board to other state agencies in accordance with NRS 341.119 for projects of less than ~~[\$100,000.]~~ **\$200,000.**
- (t) Review and render final decisions on a protest filed pursuant to NRS 338.142 and determine whether a person filing such a protest must post a bond or other security.*
- (u) Request that a contractor or consultant engage in mediation regardless of whether mediation is required pursuant to the contract with the contractor or consultant.*
3. The Manager may delegate his authority to take any action pursuant to subsection 2 to a Deputy Manager or the Chief of Design.
4. *The Manager shall not delegate his authority as the building official for all buildings and structures on property of the State or held in trust for any division of the State Government pursuant to paragraph (h) of subsection 5 of NRS 341.100.*
5. No employee may have any personal interest in any project under the jurisdiction of the Board or engage in any activity that is in conflict with policies and procedures of the Board.

Sec. 23. NAC 341.043 is hereby amended to read as follows:

341.043 1. Except as otherwise provided in this section, an insurer or surety providing the insurance or bond required by ~~the~~ *the Board for:*

(a) With respect to contracts of more than \$5,000,000, a contractor must have received a rating of “A-” or better and be classified in a financial category of “VII” or better as determined by A.M. Best Company of Oldwick, New Jersey ~~H~~, and be included on the list of approved sureties in Circular 570 of the Department of the Treasury.

(b) With respect to contracts of \$5,000,000 or less, a contractor must have received a rating of “A-” or better as determined by A.M. Best Company of Oldwick, New Jersey, and be included on the list of approved sureties in Circular 570 of the Department of the Treasury.

(c) A subcontractor must have received a rating of “A-” or better as determined by A.M. Best Company of Oldwick, New Jersey, and be included on the list of approved sureties in Circular 570 of the Department of the Treasury.

2. The requirements of subsection 1 do not apply to Lloyd’s of London.

3. The Manager may specify a lesser rating or financial category for an insurer or surety after giving consideration to the size and complexity of the project for which the insurance or bond is required.

Sec. 24. NAC 341.045 is hereby amended to read as follows:

341.045 *1.* The Board hereby adopts by reference the following publications ~~[as they exist on November 12, 1992,]~~ and establishes the standards contained therein as minimum standards for the design of state buildings, other than those excepted in NRS 341.141:

~~[1.—The Uniform]~~

(a) The 2003 International Building Code published by the International ~~[Conference of Building Officials.] Code Council with the following exceptions:~~

(1) *References to the International Plumbing Code are replaced with references to the Uniform Plumbing Code; and*

(2) *References to the International Electrical Code are replaced with references to the 2002 National Electrical Code.*

↪ This code may be obtained from the International ~~[Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601,]~~ *Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, Virginia 22041-3401, or at the Internet address <<http://www.iccsafe.org/>>, at a price of ~~[\$47.40]~~ \$65 for members and ~~[\$63.20]~~ \$86 for nonmembers.*

~~[2.]~~ (b) *The 2003 International Existing Building Code published by the International Code Council with the following exceptions:*

(1) *References to the International Plumbing Code are replaced with references to the Uniform Plumbing Code; and*

(2) *References to the International Electrical Code are replaced with references to the 2002 National Electrical Code.*

↪ *This code may be obtained from the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, Virginia 22041-3401, or at the Internet address <<http://www.iccsafe.org/>>, at a price of \$35 for members and \$46 for nonmembers.*

(c) *The 2003 International Residential Code published by the International Code Council with the following exceptions:*

(1) *References to the International Plumbing Code are replaced with references to the Uniform Plumbing Code; and*

(2) *References to the International Electrical Code are replaced with references to the 2002 National Electrical Code.*

↪ This code may be obtained from the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, Virginia 22041-3401, or at the Internet address <<http://www.iccsafe.org/>>, at a price of \$45 for members and \$60 for nonmembers.

(d) The 2002 National Electrical Code published by the National Fire Protection Association. This code may be obtained from the National Fire Protection Association, ~~[1 Battery March Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101,]~~ *11 Tracy Drive, Avon, Massachusetts 02322, or at the Internet address <<http://www.nfpa.org/>>*, at a price of ~~[\$29.25]~~ *\$67.50* for members and ~~[\$32.50]~~ *\$75* for nonmembers.

~~[3.]~~ (e) The 2003 Uniform Plumbing Code published by the International Association of Plumbing and Mechanical Officials. This code may be obtained from *the* International Association of Plumbing and Mechanical Officials, ~~[20001 Walnut Drive South, Walnut, California 91789-2825,]~~ *5001 East Philadelphia Street, Ontario, California 91761-2816, or at the Internet address <<http://www.iapmo.org/>>*, at a price of ~~[\$35.05]~~ *\$64* for members and ~~[\$45.50]~~ *\$89* for nonmembers.

~~[4.]~~ (f) The 2003 Uniform Mechanical Code published by the International ~~[Conference of Building Officials. The code may be obtained from International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601,]~~ *Association of Plumbing and Mechanical Officials. This code may be obtained from the International Association of Plumbing and Mechanical Officials, 5001 East Philadelphia Street, Ontario, California 91761-2816, or at the Internet address <<http://www.iapmo.org/>>*, at a price of ~~[\$29.90]~~ *\$64* for members and ~~[\$39.70]~~ *\$89* for nonmembers.

~~[5.]~~ (g) The *Heating, Ventilating and Air-Conditioning* ~~[Guide]~~ Handbooks published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers. ~~[This guide]~~ *These handbooks* may be obtained from *the* American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, N.E., Atlanta, Georgia 30329 ~~[.]~~, *or at the Internet address* ~~<~~<http://www.ashrae.org/>~~>~~. The price is ~~[\$114]~~ \$144 each for the 2003 ASHRAE Handbook - HVAC ~~[applications, refrigeration, fundamentals and equipment series.~~
~~—6.]~~ Applications, 2002 ASHRAE Handbook - Refrigeration, 2001 ASHRAE Handbook - Fundamentals and the 2000 HVAC Systems & Equipment Handbook.

(h) The *Illuminating Engineering Society* ~~[Standards for Illumination. These standards]~~ of North America, Design Guide Package. *This design guide* may be obtained from *the* Illuminating Engineering Society of North America, ~~[345 E. 47th]~~ 120 Wall Street, Floor 17, New York, New York ~~[10017.]~~ 10025-4001, *or at the Internet address* ~~<~~<http://www.iesna.org/>~~>~~, at a cost of ~~[\$140]~~ \$175 for members and ~~[\$350]~~ \$250 for nonmembers.

~~[7.— The Minimum Federal Guidelines and Requirements for Accessible Design published by the United States Architectural and Transportation Barriers Compliance Board. This publication may be obtained from the U.S. Architectural and Transportation Barriers Compliance Board, 330 C Street, S.W., Room 1010, Switzer Building, Washington, D.C. 20202, at a cost of \$2.~~

~~—8.]~~ (i) The *Americans with Disabilities Act* published by the United States Department of Justice. This publication may be obtained from the Office of Americans with Disabilities Act, Civil Rights Division, United States Department of Justice, Washington, D.C. 20530, free of charge.

~~{9.—The Uniform Building Code Standards published and issued by the International Conference of Building Officials. The standards may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601, at a price of \$70.10 for members and \$99.30 for nonmembers.~~

~~—10.—The}~~

(j) NFPA 101: Life Safety Code, [NFPA No. 101,] 2003 Edition, published by the National Fire Protection Association. The code may be obtained from the National Fire Protection Association, ~~[1 Battery March Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101,] 11 Tracy Drive, Avon, Massachusetts 02322, or at the Internet address <<http://www.nfpa.org/>>~~, at a price of ~~[\$29.25] \$55.80~~ for members and ~~[\$32.50] \$62~~ for nonmembers.

~~{11.—The State of Nevada regulations for the Conservation of Energy in New Building Construction adopted by the Nevada State Energy Office. The regulations may be obtained from the Nevada State Energy Office, 1050 E. William Street, Suite 435, Carson City, Nevada 89710, free of charge.}~~

(k) The 2003 International Energy Conservation Code published by the International Code Council. This code may be obtained from the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, Virginia 22041-3401, or at the Internet address <<http://www.iccsafe.org/>>, at a price of \$22 for members and \$29 for nonmembers.

(l) The “Guidelines for Evaluating Potential Surface Fault Rupture/Land Subsidence Hazards in Nevada” and the “Guidelines for Evaluating Liquefaction Hazards in Nevada” published by the Nevada Earthquake Safety Council. These guidelines may be obtained from the Nevada Earthquake Safety Council, c/o Nevada Bureau of Mines and Geology, University of Nevada, Reno, Mail Stop 178, Reno, Nevada 89557-0088, at a price of \$1 each.

2. In addition to the standards contained in the 2003 International Building Code adopted pursuant to subsection 1, all buildings and structures of the State and any parts thereof must be designed using the structural standards for seismic zones, basic wind speed, wind exposure, frost line and the live loads and snow loads for roofs adopted by the political subdivision in which the building or structure is being constructed. In the absence of such structural standards adopted by the political subdivision, the Manager may use structural standards that the Manager determines are appropriate for the geographic location at which the building or structure is being constructed.

Sec. 25. NAC 341.077 is hereby amended to read as follows:

341.077 1. All bids in excess of \$25,000 must be accompanied by a bond securing the bid and a certified check or cash in an amount which is at least 5 percent of the total of the base bid and all alternative bids. The bond must be in a form approved by the Attorney General.

2. A bidder must guarantee that the bid submitted will remain open for ~~at least~~ 35 calendar days after the date of the opening of the bids ~~and~~ *unless this period is extended by written agreement between the Manager and the contractor.*

3. A general contractor must list on the form for proposing bids the subcontractors whom he intends to engage for the project for those areas of work identified on the form used to list subcontractors. Subcontractors may not be subsequently substituted by the contractor without the approval of the Manager.

4. The Board will not consider a bid unless it meets all the following conditions:

- (a) The bid must be within the approved budget for the building project.
- (b) The bid must be in the best interests of the State of Nevada.
- (c) The bid must be submitted by a person who is licensed as a contractor in Nevada.

5. The performance bond required pursuant to NRS 339.025 must be in an amount equal to 100 percent of the contract amount.

6. The payment bond required pursuant to NRS 339.025 must be in an amount equal to 100 percent of the contract amount.

Sec. 26. NAC 341.084 is hereby amended to read as follows:

341.084 If the lowest bid contains an irregularity, the Manager ~~[shall]~~ *may* refer the bid to the Attorney General. ~~[The contract will not be awarded until the Attorney General approves the bid.]~~

Sec. 27. NAC 341.105 is hereby amended to read as follows:

341.105 1. Any change in the time, price or material set forth in a contract must be authorized in a written change order. The Board will approve a change order which reduces the price set forth in the contract by more than 10 percent.

2. A request by a contractor for an extension of time must be submitted in writing to the Manager within 7 calendar days after the first occurrence of the incident causing the delay. The Manager shall give a written acknowledgment of the receipt of such a request to the contractor.

3. ~~[H]~~ *Except as otherwise provided in this subsection, if* a change order which increases the price of a contract is the result of an error or omission in the plans or specifications, the architect or engineer who prepared the plans and specifications must pay the Board the estimated difference in cost between what the work would have cost in the absence of the error or omission and the actual cost. *If the Manager determines that an error or omission in the plans or specifications is minor, the Manager may waive such a payment.*

Sec. 28. NAC 341.113 is hereby amended to read as follows:

341.113 1. ~~Plans for the construction of a school building which is estimated to cost more than \$25,000 must be prepared by architects and engineers who are licensed to practice in Nevada.~~

~~2.]~~ The Board will not approve plans for a new school building *or any addition to or alteration of an existing school building which involves structural systems, or exiting, sanitary or fire protection facilities* unless the design complies with the requirements of:

- (a) The State Fire Marshal;
- (b) The State Board of Education; ~~and]~~
- (c) The building codes ~~and other ordinances of the appropriate local government.~~

~~3.]~~ *adopted by reference by the Board pursuant to NAC 341.045; and*

(d) All applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, et seq., and any regulations adopted pursuant thereto.

2. If standard plans are to be used ~~]~~ pursuant to NRS 385.125, the Board's approval is required:

- (a) For the work of adaptation to the applicable site; and
- (b) To ensure compliance with any provisions of the ~~local]~~ code which were revised after the

Board's initial approval of the standard plans.

Sec. 29. NAC 341.127 is hereby amended to read as follows:

341.127 1. The Manager shall:

(a) Notify all cities and counties of the requirement in NRS 444.420 for the Board to review any proposals for local adoption of the *Uniform Plumbing Code* or changes to that code. *Any such proposal must be submitted to the Board in writing.*

(b) Within 60 days after the Board's receipt of such a proposal, advise the local government in writing whether or not any proposed changes are warranted by geographic, topographic or climatic conditions.

2. If the Manager has advised any local government that any proposed changes are not warranted, the local government may ~~request a review of the matter by the Board at its next scheduled meeting after the local government received the Manager's written advice. The Manager shall notify the local government of its right to such a review and shall request it to give the Board written notice, within 30 days after it received the Manager's written advice, if it desires to have a review by the Board.~~

~~3. The Board's Secretary] file a written request for an appeal in the manner set forth in section 16 of this regulation.~~

3. *The Manager* shall send copies of all ~~such~~ proposals *received by the Board pursuant to subsection 1* and the Manager's response or, if applicable, the Board's recommendation to the Health Division of the Department of Human Resources.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R096-04**

The State Public Works Board adopted regulations assigned LCB File No. R096-04 which pertain to chapter 341 of the Nevada Administrative Code on August 24, 2004.

Notice date: 3/12/2004 & 3/19/2004

Hearing date: 4/6/2004, 4/27/2004, 5/5/2004, 6/22/2004, 7/28/2004, 8/24/2004

Date of adoption by agency: 8/24/2004

Filing date: 12/15/2004

INFORMATIONAL STATEMENT

_____Description of how comment from public and affected businesses was solicited.

Notices were posted in the following newspapers of general circulation on March 12 and March 19, 2004 (for items “a” through “k”): Reno Gazette Journal, Las Vegas Review Journal, and the Carson City Appeal. Notices were posted in the following newspapers of general circulation on March 19 and March 26, 2004 (for items “k” through “n”): Reno Gazette Journal, Las Vegas Review Journal, and the Carson City Appeal. Notices were also faxed to the following trade organizations: Nevada State AFL-CIO, Ironworkers 118, Southwest Regional Council of Carpenters, Laborers 169, David Kersh (Carpenters), Jim Roletti (Carpenters), Charlie Nahorniak (Carpenters), Sandra Maloney (Carpenters), Jaun Gonzales (Carpenters), Steve Muchicko (Regional Counsel of Carpenters), Cheryl Blomstrom (AGC), Jeanette Belz (AGC), Steve Holloway (AGC), Tom Skjellstad (ABC North), Warren Hardy (ABC South), Richard Legion, IBEW-NECA-LMCC, James Thompson, Bob Nard/Julie Nicoson (Southern Nevada Bldg. & Const. Trades Counsel), Ross Far (NECA), Mickey Miles (IBEW 357), Gary Pitts (IBEW 357). Notices were posted at Nevada State Public Library and Archives, Legislative Building, Blasdell Administrative Building, Court Clerk Office, State Public Works Board Offices, Grant Sawyer Building and on the State Public Works Board Website.

_____A statement indicating the number of persons who attended each meeting, testified at each meeting, and submitted written statements regarding the proposed regulation.

Meetings/Workshop	# SPWB in attendance	# public attendance	# persons who testified	# written statements
4-6-04 workshop	8	42	16	1
4-27-04	6	2	0	0
5-5-04 workshop	9	13	0	0
6-22-04 adoption delayed	7	22	5	2
7-28-04 adoption delayed	7	20	2	1
8-24-04 Adoption	20	8	2	1

_____ Summary of response from public and affected businesses.

April 6th workshop:

- Objections were made to adoption the 2003 International Mechanical Code primarily on the basis that because this code references up to eleven other books, it will require the cost of several additional books rather than containing all needed information for systems installation in one book, as the Uniform Mechanical Code does. Any changes to the code will require additional training for the trades. The trades are resistant to updating the codes at all due to familiarity with the old codes, and the costs of updating books and materials. However there were also those who testified in favor of the 2003 International Building Codes, but the Uniform Mechanical and Plumbing codes.
- With regard to surety issues, it was suggested to drop the financial size category rating from the requirements for surety companies to write bonds and to adopt the treasury listing.
- In regard to the proposed fee schedule it was suggested that when a project takes less time than the schedule shows, the fee would be able to be adjusted. UNR would like to use their own inspectors for their projects, but SPWB is the building official and has the responsibility and authority over inspections. Language was suggested to add flexibility to the schedule.

April 27th Board tele-conference meeting:

- No public comment.

May 5th workshop:

- No public comment.

June 22, 2004 Board video conference meeting:

- It was recommended that the Treasury Circular 570 be used for surety purposes. It was also recommended to retain AM Best private rating service and letter referencing of “A” or “A-“, but to drop the “VII” that is in the proposed regulation.

July 28, 2004 Board video conference meeting:

- It was suggested to use the Treasury Circular 570 which provides protection because it doesn’t list just by size (the roman numeral VI, VII, etc.), it sets a precise limit and is updated constantly.
- Risk Management will hire a consultant experienced with surety to determine how the proposed surety options affect the State of Nevada.

August 24, 2004 Board Meeting:

- It was noted by the attorney for the surety companies that they were in agreement with the draft presented at this meeting.

_____ Explanation of how interested persons may obtain a copy of summary.

Board meeting minutes from all regulation workshops including the testimony given are posted on the SPWB website: www.SPWB.state.nv.us.

_____ If regulation was adopted without change, summary of reasons for adopting without change.

The regulation was adopted with changes as a result of input from the Board, Risk Management, staff and the public.

_____ Estimated economic effect on public and businesses affected: adverse and beneficial, immediate and long-term.

The proposed regulations should benefit construction managers as they set forth a system of construction manager selection. The proposed regulations will also generally benefit the professional consulting industry in that they grant additional authority to the Manager to make consultant selections. The proposed regulations should also benefit the professional consulting industry in that they allow the Manager to waive certain minor errors and omission issues (i.e., design issues). The proposed regulations would benefit both subcontractors and prime contractors by deleting the requirement for subcontractors to have insurance with an AM Best size rating. In addition, both subcontractors and prime contractors may petition to allow that the subcontractor carry less than 100% performance and payment bonds. The regulations will benefit the construction industry by setting forth procedures for bid protests. The regulations will benefit the design and construction industry by creating an appeals board for decisions made by the Manager as the state building official. The regulations will benefit both the design and construction industry by adopting more updated building codes. The regulations will benefit the construction industry by setting forth a procedure to challenge stop work orders issued by the manager and to challenge fines issued by the Manager for working over stop work orders. The State Public Works Board does not see any negative impacts to small businesses based upon the regulations.

_____ Cost of enforcing the regulations.

The estimated cost will vary depending on the number of contractors seeking appeals of building official decisions and/or decisions relating to stop work orders issued by the Manager. At this juncture, the State Public Works Board believes that the estimated cost to the agency for enforcement will be minimal. With delegation to the Manager for an increased role in consultant selection, money may be saved. Increase legal fees could amount to \$15,000 per year, if numerous appeals are made regarding building official appeals and/or stop work issues.

_____ Explanation of any other regulations that this regulation duplicates or overlaps and why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, a statement of the name of the federal agency.

The proposed regulations do not include provisions, which are more stringent than federal, state, or local standards regulating the same activity.

_____ If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

The proposed regulations do not include provisions, which are more stringent than federal, state, or local standards regulating the same activity.

_____ **If the regulation provides a new fee or increases an existing fee, a statement indicating the total amount the agency expects to collect and the manner in which the money will be used.**

The proposed regulation does not provide a new fee and does not increase an existing fee.

_____ **If the Legislative Commission objected to rule based on lack of conformity with statutory authority and legislative intent.**

Rule revised and resubmitted on:

Decision not to review rule made on:

Comments:

_____ **Regulation adopted on:** August 24, 2004.

_____ **Statement, if any to interested persons explaining principal reasons for and against adopting regulation and reason(s) for overruling the consideration urged against its adoption. NRS 233B.064(2).**

_____ **Copy of regulation, Informational Statement, Form for Filing Administrative Regulations, and Notice of Adoption of Regulation sent to legislative counsel on:**

_____ **Filed with Secretary of State on:**

_____ **Copy bearing Secretary of State's seal filed with State Librarian on:**

_____ **Regulation effective on:**

_____ **Regulation expires on: (by its own terms or because it is a temporary or emergency regulation)**

_____ **Copy of adopted regulation sent to legislative counsel (temporary regulation) on:**

_____ **Regulation scheduled for review on:**