

ASSEMBLY BILL NO. 106—COMMITTEE
ON GOVERNMENT AFFAIRS

PREFILED JANUARY 31, 2015

Referred to Committee on Government Affairs

SUMMARY—Revises provisions related to public works.
(BDR 28-244)

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 contracts between a public body and a design professional; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides standard provisions that must be included in a public
2 works contract between a public body and a design professional. (NRS 338.155) A
3 design professional is defined in existing law as a professional engineer,
4 professional land surveyor, architect, interior designer, residential designer or
5 landscape architect, or a business entity that is engaged in the business of
6 professional engineering, land surveying, architecture or landscape architecture.
7 (NRS 338.010) This bill eliminates the requirement that a design professional who
8 is not a member of a design-build team defend the public body in any lawsuit
9 alleging negligence, errors or omissions, recklessness or intentional misconduct on
10 the part of the design professional or his or her employees or agents resulting from
11 his or her work on a project. In addition, this bill also provides that if the design
12 professional is held to be liable as a result of a lawsuit, the judge or jury shall order
13 the design professional to reimburse the public body for a proportionate share of the
14 attorney’s fees and costs the public body incurred in defending the action.

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

1 **Section 1.** NRS 338.155 is hereby amended to read as follows:
2 338.155 1. If a public body enters into a contract with a
3 design professional who is not a member of a design-build team, for



1 the provision of services in connection with a public work, the
2 contract:

3 (a) Must set forth:

4 (1) The specific period within which the public body must
5 pay the design professional.

6 (2) The specific period and manner in which the public body
7 may dispute a payment or portion thereof that the design
8 professional alleges is due.

9 (3) The terms of any penalty that will be imposed upon the
10 public body if the public body fails to pay the design professional
11 within the specific period set forth in the contract pursuant to
12 subparagraph (1).

13 (4) That the prevailing party in an action to enforce the
14 contract is entitled to reasonable attorney's fees and costs.

15 (b) May set forth the terms of any discount that the public body
16 will receive if the public body pays the design professional within
17 the specific period set forth in the contract pursuant to subparagraph
18 (1) of paragraph (a).

19 (c) May set forth the terms by which the design professional
20 agrees to name the public body, at the cost of the public body, as an
21 additional insured in an insurance policy held by the design
22 professional, if the policy allows such an addition.

23 (d) Must not require the design professional to defend,
24 indemnify or hold harmless the public body or the employees,
25 officers or agents of that public body from any liability, damage,
26 loss, claim, action or proceeding caused by the negligence, errors,
27 omissions, recklessness or intentional misconduct of the employees,
28 officers or agents of the public body.

29 (e) Except as otherwise provided in this paragraph, may require
30 the design professional to ~~defend,~~ indemnify and hold harmless the
31 public body, and the employees, officers and agents of the public
32 body from any liabilities, damages, losses, claims, actions or
33 proceedings, including, without limitation, reasonable attorneys'
34 fees and costs, to the extent that such liabilities, damages, losses,
35 claims, actions or proceedings are caused by the negligence, errors,
36 omissions, recklessness or intentional misconduct of the design
37 professional or the employees or agents of the design professional in
38 the performance of the contract. ~~If the insurer by which the design~~
39 ~~professional is insured against professional liability does not so]~~
40 *The design professional shall not be required to* defend the public
41 body and the employees, officers and agents of the public body .
42 ~~and]~~ *If* the design professional is adjudicated to be liable by a trier
43 of fact, the trier of fact shall award reasonable attorney's fees and
44 costs to be paid to the public body , *as reimbursement for the*
45 *attorney's fees and costs incurred by the public body in defending*



- 1 *the action*, by the design professional in an amount which is
2 proportionate to the liability of the design professional.
- 3 2. Any provision of a contract entered into by a public body
4 and a design professional who is not a member of a design-build
5 team that conflicts with the provisions of paragraph (d) or (e) of
6 subsection 1 is void.
- 7 3. As used in this section, “agents” means those persons who
8 are directly involved in and acting on behalf of the public body or
9 the design professional, as applicable, in furtherance of the contract
10 or the public work to which the contract pertains.
- 11 **Sec. 2.** This act becomes effective upon passage and approval.



