

ASSEMBLY BILL NO. 275—ASSEMBLYMEN
SEGERBLOM; AND DALY

MARCH 15, 2011

Referred to Committee on Transportation

SUMMARY—Requires private contractors, under certain circumstances, to remove from freeways and highways devices for the temporary diversion of traffic. (BDR 35-555)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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 highways; requiring private contractors, under certain circumstances, to remove from freeways and highways devices for the temporary diversion of traffic; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 **Section 1** of this bill requires that each contract between the Department of
2 Transportation and a private contractor for the construction, reconstruction, repair,
3 improvement or maintenance of a freeway or highway contain a provision requiring
4 the private contractor to remove from the freeway or highway devices for the
5 temporary diversion of traffic (such as cones, barrels, bollards, pylons, portable
6 barricades and portable signs) within 1 hour after: (1) the commencement of any
7 extended period in which the work will not be conducted; or (2) the work on the
8 freeway or highway is complete. **Section 1** further sets forth that a private
9 contractor who violates such a contractual provision is subject to an administrative
10 fine in the amount of \$1,000 for the first offense, \$5,000 for the second offense and
11 \$10,000 for the third offense. **Section 1** also provides that, in addition to the
12 \$10,000 administrative fine, a third-time offender is thereby disqualified from
13 being awarded a contract by the Department and disqualified from being awarded a
14 contract by any entity for a public work.

15 Existing law contains various provisions that prohibit a contractor from bidding
16 on or being awarded a contract by the Department or a contract for a public work if
17 the contractor has been disqualified from being awarded a contract pursuant to
18 specified sections of Nevada law. (NRS 338.1375, 338.1377, 338.1691, 338.1692,
19 338.1721, 408.3884) **Sections 2 and 4-8** of this bill add a disqualification pursuant to
20 **section 1** to the list of sections that trigger such a prohibition.



* A B 2 7 5 *

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

1 **Section 1.** Chapter 408 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 1. *If the Department contracts with a private contractor for*
4 *the construction, reconstruction, repair, improvement or*
5 *maintenance of a freeway or highway that is open to traffic, the*
6 *contract must include a provision requiring the private contractor*
7 *to remove from the freeway or highway any device for the*
8 *temporary diversion of traffic that the private contractor has*
9 *placed thereon, within 1 hour after:*

10 (a) *The commencement of any extended period in which the*
11 *construction, reconstruction, repair, improvement or maintenance*
12 *will not be conducted; or*

13 (b) *The construction, reconstruction, repair, improvement or*
14 *maintenance is completed.*

15 2. *If a private contractor fails to comply with a provision*
16 *required to be included in a contract pursuant to subsection 1, the*
17 *Department shall impose an administrative fine against the private*
18 *contractor in the amount of:*

19 (a) *For the first violation, \$1,000;*

20 (b) *For the second violation, \$5,000; and*

21 (c) *For the third violation, \$10,000.*

22 ↪ *All fines collected by the Department pursuant to this*
23 *subsection must be deposited with the State Treasurer for credit to*
24 *the State Highway Fund.*

25 3. *In addition to any administrative fine imposed pursuant to*
26 *subsection 2, if a private contractor fails, for a third time, to*
27 *comply with a provision required to be included in a contract*
28 *pursuant to subsection 1, the private contractor is disqualified*
29 *from being awarded a contract:*

30 (a) *By the Department; and*

31 (b) *For any public work.*

32 4. *Any private contractor who is disqualified in accordance*
33 *with the provisions of subsection 3 may request, in writing, a*
34 *hearing before the Director and present good cause for the private*
35 *contractor's failure to comply with a provision required to be*
36 *included in a contract pursuant to subsection 1. Such a private*
37 *contractor may, within 30 days after the Director renders his or*
38 *her decision, appeal the decision of the Director to the Board.*



1 **5. The Director:**

2 (a) *Shall adopt regulations which define “extended period”*
3 *and “good cause” for the purposes of this section.*

4 (b) *May adopt such additional regulations as the Director*
5 *determines to be necessary or advisable to carry out the provisions*
6 *of this section.*

7 **6. As used in this section:**

8 (a) *“Device for the temporary diversion of traffic” means an*
9 *implement that is used to alter the flow, location, movement or*
10 *path of traffic on a freeway or highway during a period in which*
11 *the freeway or highway is being constructed, reconstructed,*
12 *repaired, improved or maintained. The term includes, without*
13 *limitation, cones, barrels, bollards, pylons, portable barricades and*
14 *portable signs. The term does not include concrete barriers and*
15 *other objects the size or weight of which prevents them from being*
16 *moved in an expeditious manner.*

17 (b) *“Public work” has the meaning ascribed to it in*
18 *NRS 338.010.*

19 **Sec. 2.** NRS 408.3884 is hereby amended to read as follows:

20 408.3884 To qualify to participate in the design and
21 construction of a project for the Department, a design-build team
22 must:

23 1. Except as otherwise provided in NRS 408.354, obtain a
24 performance bond and payment bond as the Department may
25 require;

26 2. Obtain insurance covering general liability and liability for
27 errors and omissions;

28 3. Not have been found liable for breach of contract with
29 respect to a previous project, other than a breach for legitimate
30 cause;

31 4. Not have been disqualified from being awarded a contract
32 pursuant to NRS 338.017, 338.13895, 338.1475, ~~or~~ 408.333 ~~or~~ *or*
33 *section 1 of this act;* and

34 5. Ensure that the members of the design-build team possess
35 the licenses and certificates required to carry out the functions of
36 their respective professions within this state.

37 **Sec. 3.** NRS 338.1373 is hereby amended to read as follows:

38 338.1373 1. A local government or its authorized
39 representative shall award a contract for a public work pursuant to
40 the provisions of:

41 (a) NRS 338.1377 to 338.139, inclusive;

42 (b) NRS 338.143 to 338.148, inclusive;

43 (c) NRS 338.169 to 338.1699, inclusive; or

44 (d) NRS 338.1711 to 338.1727, inclusive.



1 2. The provisions of NRS 338.1375 to 338.1382, inclusive,
2 338.1386, 338.13862, 338.13864, 338.139, 338.142, 338.169 to
3 338.1699, inclusive, and 338.1711 to 338.1727, inclusive, do not
4 apply with respect to contracts for the construction, reconstruction,
5 improvement and maintenance of highways that are awarded by the
6 Department of Transportation pursuant to NRS 408.313 to 408.433,
7 inclusive ~~§~~, *and section 1 of this act.*

8 **Sec. 4.** NRS 338.1375 is hereby amended to read as follows:

9 338.1375 1. The State Public Works Board shall not accept a
10 bid on a contract for a public work unless the contractor who
11 submits the bid has qualified pursuant to NRS 338.1379 to bid on
12 that contract.

13 2. The State Public Works Board shall by regulation adopt
14 criteria for the qualification of bidders on contracts for public works
15 of this State. The criteria adopted by the State Public Works Board
16 pursuant to this section must be used by the State Public Works
17 Board to determine the qualification of bidders on contracts for
18 public works of this State.

19 3. The criteria adopted by the State Public Works Board
20 pursuant to this section:

21 (a) Must be adopted in such a form that the determination of
22 whether an applicant is qualified to bid on a contract for a public
23 work does not require or allow the exercise of discretion by any one
24 person.

25 (b) May include only:

26 (1) The financial ability of the applicant to perform a
27 contract;

28 (2) The principal personnel of the applicant;

29 (3) Whether the applicant has breached any contracts with a
30 public body or person in this State or any other state;

31 (4) Whether the applicant has been disqualified from being
32 awarded a contract pursuant to NRS 338.017, 338.13845 , ~~§~~
33 338.13895 ~~§~~ *or section 1 of this act;*

34 (5) Whether the applicant has been disciplined or fined by
35 the State Contractors' Board or another state or federal agency for
36 conduct that relates to the ability of the applicant to perform the
37 public work;

38 (6) The performance history of the applicant concerning
39 other recent, similar contracts, if any, completed by the applicant;
40 and

41 (7) The truthfulness and completeness of the application.

42 **Sec. 5.** NRS 338.1377 is hereby amended to read as follows:

43 338.1377 Except as otherwise provided in NRS 338.1382, if a
44 governing body that sponsors or finances a public work elects to
45 award contracts for public works pursuant to the provisions of



1 NRS 338.1377 to 338.139, inclusive, the governing body shall adopt
2 the following criteria for determining whether a person who has
3 applied pursuant to NRS 338.1379 is qualified to bid on contracts
4 for public works of the local government:

5 1. Whether the applicant possesses a valid contractor's license
6 of a class corresponding to the work to be required by the local
7 government;

8 2. Whether the applicant has the ability to obtain the necessary
9 bonding for the work to be required by the local government;

10 3. Whether the applicant has successfully completed an
11 appropriate number of projects as determined by the local
12 government, but not to exceed five projects, during the 5 years
13 immediately preceding the date of application of similar size, scope
14 or type as the work to be required by the local government;

15 4. Whether the principal personnel employed by the applicant
16 have the necessary professional qualifications and experience for the
17 work to be required by the local government;

18 5. Whether the applicant has breached any contracts with a
19 public agency or person in this State or any other state during the 5
20 years immediately preceding the date of application;

21 6. Whether the applicant has been disqualified from being
22 awarded a contract pursuant to NRS 338.017 , ~~or~~ 338.13895 ~~or~~ **or**
23 ***section 1 of this act;***

24 7. Whether the applicant has been convicted of a violation for
25 discrimination in employment during the 2 years immediately
26 preceding the date of application;

27 8. Whether the applicant has the ability to obtain and maintain
28 insurance coverage for public liability and property damage within
29 limits sufficient to protect the applicant and all the subcontractors of
30 the applicant from claims for personal injury, accidental death and
31 damage to property that may arise in connection with the work to be
32 required by the local government;

33 9. Whether the applicant has established a safety program that
34 complies with the requirements of chapter 618 of NRS;

35 10. Whether the applicant has been disciplined or fined by the
36 State Contractors' Board or another state or federal agency for
37 conduct that relates to the ability of the applicant to perform the
38 work to be required by the local government;

39 11. Whether, during the 5 years immediately preceding the date
40 of application, the applicant has filed as a debtor under the
41 provisions of the United States Bankruptcy Code;

42 12. Whether the application of the applicant is truthful and
43 complete; and

44 13. Whether, during the 5 years immediately preceding the date
45 of application, the applicant has, as a result of causes within the



1 control of the applicant or a subcontractor or supplier of the
2 applicant, failed to perform any contract:

3 (a) In the manner specified by the contract and any change
4 orders initiated or approved by the person or governmental entity
5 that awarded the contract or its authorized representative;

6 (b) Within the time specified by the contract unless extended by
7 the person or governmental entity that awarded the contract or its
8 authorized representative; or

9 (c) For the amount of money specified in the contract or as
10 modified by any change orders initiated or approved by the person
11 or governmental entity that awarded the contract or its authorized
12 representative.

13 ➤ Evidence of the failures described in this subsection may include,
14 without limitation, the assessment of liquidated damages against the
15 applicant, the forfeiture of any bonds posted by the applicant, an
16 arbitration award granted against the applicant or a decision by a
17 court of law against the applicant.

18 **Sec. 6.** NRS 338.1691 is hereby amended to read as follows:

19 338.1691 To qualify to enter into contracts with a public body
20 for preconstruction services and to construct a public work, a
21 construction manager at risk must:

22 1. Not have been found liable for breach of contract with
23 respect to a previous project, other than a breach for legitimate
24 cause, during the 5 years immediately preceding the date of the
25 advertisement for statements of qualifications pursuant to
26 NRS 338.1692;

27 2. Not have been disqualified from being awarded a contract
28 pursuant to NRS 338.017, 338.13895, 338.1475, ~~408.333~~ **408.333** ~~or~~
29 **section 1 of this act;**

30 3. Be licensed as a contractor pursuant to chapter 624 of NRS;
31 and

32 4. If the project is for the design of a public work of the State,
33 be qualified to bid on a public work of the State pursuant to
34 NRS 338.1379.

35 **Sec. 7.** NRS 338.1692 is hereby amended to read as follows:

36 338.1692 1. A public body shall advertise for statements of
37 qualifications for a construction manager at risk in a newspaper
38 qualified pursuant to chapter 238 of NRS that is published in the
39 county where the public work will be performed. If no qualified
40 newspaper is published in the county where the public work will be
41 performed, the required advertisement must be published in some
42 qualified newspaper that is printed in the State of Nevada and has a
43 general circulation in the county.

44 2. A request for a statement of qualifications published
45 pursuant to subsection 1 must include, without limitation:



- 1 (a) A description of the public work;
- 2 (b) An estimate of the cost of construction;
- 3 (c) A description of the work that the public body expects a
4 construction manager at risk to perform;
- 5 (d) The dates on which it is anticipated that the separate phases
6 of the preconstruction and construction of the public work will
7 begin and end;
- 8 (e) The date by which statements of qualifications must be
9 submitted to the public body;
- 10 (f) If the project is a public work of the State, a statement setting
11 forth that the construction manager at risk must be qualified to bid
12 on a public work of the State pursuant to NRS 338.1379 before
13 submitting a statement of qualifications;
- 14 (g) The name, title, address and telephone number of a person
15 employed by the public body that an applicant may contact for
16 further information regarding the public work; and
- 17 (h) A list of the selection criteria and relative weight of the
18 selection criteria that will be used to evaluate statements of
19 qualifications.

20 3. A statement of qualifications must include, without
21 limitation:

- 22 (a) An explanation of the experience that the applicant has with
23 projects of similar size and scope;
- 24 (b) The contact information for references who have knowledge
25 of the background, character and technical competence of the
26 applicant;
- 27 (c) The applicant's preliminary proposal for managing the
28 preconstruction and construction of the public work;
- 29 (d) Evidence of the ability of the applicant to obtain the
30 necessary bonding for the work to be required by the public body;
- 31 (e) Evidence that the applicant has obtained or has the ability to
32 obtain such insurance as may be required by law; and
- 33 (f) A statement of whether the applicant has been:
 - 34 (1) Found liable for breach of contract with respect to a
35 previous project, other than a breach for legitimate cause; and
 - 36 (2) Disqualified from being awarded a contract pursuant to
37 NRS 338.017, 338.13895, 338.1475, ~~408.333~~ **or section 1 of**
38 **this act.**

39 **Sec. 8.** NRS 338.1721 is hereby amended to read as follows:

40 338.1721 To qualify to participate in a project for the design
41 and construction of a public work, a design-build team must:

- 42 1. Have the ability to obtain a performance bond and payment
43 bond as required pursuant to NRS 339.025;
- 44 2. Have the ability to obtain insurance covering general
45 liability and liability for errors and omissions;



- 1 3. Not have been found liable for breach of contract with
2 respect to a previous project, other than a breach for legitimate
3 cause, during the 5 years immediately preceding the date of the
4 advertisement for preliminary proposals;
5 4. Not have been disqualified from being awarded a contract
6 pursuant to NRS 338.017, 338.13895, 338.1475 , ~~or~~ 408.333 ~~;~~ *or*
7 *section 1 of this act;*
8 5. Ensure that the members of the design-build team possess
9 the licenses and certificates required to carry out the functions of
10 their respective professions within this State; and
11 6. If the project is for the design and construction of a public
12 work of the State, ensure that the prime contractor is qualified to bid
13 on a public work of the State pursuant to NRS 338.1379.
14 **Sec. 9.** This act becomes effective on July 1, 2011.

