

ASSEMBLY BILL NO. 406—ASSEMBLYMEN DALY, BENITEZ-THOMPSON, BROOKS, CARRILLO, BILBRAY-AXELROD; FRIERSON, JOINER, MCCURDY II AND MONROE-MORENO

MARCH 20, 2017

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to certain construction. (BDR 28-781)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact. 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 construction; revising provisions relating to the payment of prevailing wages and bidding on public works; revising provisions governing the construction of a public work by a construction manager at risk; revising provisions relating to agreements with labor organizations concerning contracts with a public body for a public work or with an awardee of certain grants, tax abatements, tax credits or tax exemptions from a public body; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires that a bidder or bid on various types of public works be
2 “responsive.” (NRS 338.010, 338.13844, 338.1385, 338.13862, 338.1389, 338.143,
3 338.1444, 338.147, 338.1475) **Section 2** of this bill specifies that the term means
4 the bid received from the bidder: (1) meets the requirements of the applicable
5 provisions of law and (2) complies with the mandatory provisions of the
6 advertisement or solicitation for bids.

7 Under existing law, with certain exceptions, the prevailing wage in a county for
8 each craft or type of work, as determined by the Labor Commissioner, is required
9 to be paid on a project in the county involving new construction, repair or
10 reconstruction that is financed in whole or in part with public money and for which
11 the estimated cost is \$250,000 or more. (NRS 338.010, 338.020-338.080) **Section 4**
12 of this bill decreases the minimum threshold for the applicability of the prevailing
13 wage requirements from \$250,000 to \$100,000.

14 To determine the prevailing wages in each county under existing law, the Labor
15 Commissioner is required to annually survey contractors who have performed work
16 in the county. If, based on the survey, the rate of wages is the same for more than
17 50 percent of the total hours worked by a specific craft or type of work on similar



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18 construction, the Labor Commissioner is required to determine that rate as the
19 prevailing wage. If no such rate can be determined, existing law provides that the
20 prevailing wage for a craft or type of work is the average rate of wages per hour.
21 (NRS 338.030) **Section 3** of this bill removes these requirements with which the
22 Labor Commissioner must comply in determining the prevailing rate of wages.

23 School districts and the Nevada System of Higher Education are required under
24 existing law to pay on their public works and certain other construction projects 90
25 percent of the prevailing wage rates that are otherwise required to be paid by other
26 public bodies. (NRS 338.030) **Section 3** of this bill eliminates this exception and
27 therefore requires school districts and the Nevada System of Higher Education to
28 pay the same prevailing wage rates on their public works and other construction
29 projects as other public bodies are required to pay.

30 During the 78th Regular Session, the exemption from the laws governing
31 public works, including the prevailing wage requirements, was removed for a
32 building of the Nevada System of Higher Education for which less than 25 percent
33 of the costs was paid from money appropriated by this State or from federal money.
34 (Section 2 of chapter 410, Statutes of Nevada 2015, p. 2375) **Section 36** of this bill
35 eliminates requirements in existing law for the payment of prevailing wages on
36 construction work of the Nevada System of Higher Education even if the
37 construction work does not qualify as a public work that are duplicative as a result
38 of the removal of the exemption.

39 Under existing law, charter schools are exempt from the requirement in existing
40 law to pay prevailing wages rates on their public works and certain other
41 construction projects. (NRS 338.080) **Section 4** of this bill eliminates this
42 exemption and therefore requires charter schools to pay prevailing wage rates on
43 their public works and other construction projects.

44 Existing law makes the prevailing wage requirements applicable to certain
45 construction projects that are not a "public work" as defined in existing law. (NRS
46 244A.058, 244A.763, 268.568, 271.710, 271.800, 278C.240, 279.500, 318.140,
47 318.144, 332.390, 333A.120, 349.670, 349.956, 388A.635, 408.3886, 543.545,
48 701B.265, 701B.625) **Sections 15-33** of this bill clarify that those prevailing wage
49 requirements apply in the same manner as if the applicable public body had
50 undertaken the project or awarded the contract.

51 **Section 8** of the federal National Labor Relations Act prohibits certain
52 agreements between an employer and a labor union whereby the employer agrees to
53 cease or refrain from handling, using, selling, transporting or otherwise dealing in
54 the products of an employer. Agreements in the construction industry relating to the
55 contracting or subcontracting of work to be done at a construction site are exempt
56 from this prohibition. (29 U.S.C. § 158(e)) **Section 7** of this bill provides that the
57 general terms of a subcontract include any provision relating to the contracting or
58 subcontracting of work for an employer in the construction industry that is not
59 prohibited by **section 8**.

60 Under existing law, public bodies are authorized to construct public works
61 under certain circumstances through a method by which a construction manager at
62 risk provides preconstruction services on the public work and, in some cases,
63 construction services on the public work. (NRS 338.1685-338.16995) Under
64 existing law, the proposal of an applicant for a contract as a construction manager
65 at risk is required to include the resume of any employee of the applicant who will
66 be managing the preconstruction and construction of the public work. (NRS
67 338.1692) With certain exceptions, **section 10** of this bill prohibits an applicant
68 from substituting such an employee. **Section 10** also, with an exception, increases
69 from 25 percent to 50 percent the amount of the estimated cost of construction that
70 the applicant is required to state in the proposal that the applicant will perform if
71 the public work predominantly involves horizontal construction.



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72 Under existing law, the public body is required to appoint a panel to initially
73 rank the proposals submitted by all applicants for a contract as a construction
74 manager at risk and a second panel to interview and rank applicants whom the
75 public body selected from the rankings of the first panel. The second panel is
76 authorized to require the applicants to submit a preliminary proposed amount of
77 compensation for managing the preconstruction and construction of the public
78 work. (NRS 338.1693) **Section 11** of this bill: (1) makes submission of
79 the preliminary proposed amount of compensation mandatory; (2) specifies the
80 contents of that amount; and (3) requires applicants to also submit a list of the
81 personnel of the applicant who will provide services on the public work.

82 The amount of a contract with a construction manager at risk for the
83 construction of a public work is authorized under existing law to be for: (1) the cost
84 of the work, plus a fee, with a guaranteed maximum price; (2) a fixed price; or (3) a
85 fixed price plus reimbursement for certain costs and expenses. (NRS 338.1696)
86 **Section 12** of this bill eliminates two pricing methods so that the guaranteed
87 maximum price is the only authorized pricing method for a contract with a
88 construction manager at risk. **Section 12** specifies that the guaranteed maximum
89 price includes the cost of the work and the fee and related costs and requires the
90 construction manager at risk to list the names of the subcontractors selected by the
91 construction manager at risk to provide labor, materials or equipment which are
92 estimated by the construction manager at risk to exceed 1 percent of the estimated
93 cost of the public work.

94 **Section 1** of this bill authorizes certain persons and entities to file a complaint
95 with the Labor Commissioner regarding a violation of certain requirements in
96 existing law governing the construction method of a construction manager at risk.
97 **Section 1** requires the Labor Commissioner to investigate and issue a determination
98 regarding such a complaint. **Section 1** prohibits a public body that is found to have
99 violated such a requirement from entering into a contract with a construction
100 manager at risk for 2 years after a final determination of the violation. If such a
101 violation is found, **section 1** deems any contract that the public body enters into
102 with a construction manager at risk during the 2-year period terminated by the
103 public body without cause and requires the public body to transmit a copy of
104 the decision regarding the violation to the building official having jurisdiction over
105 the project to issue a stop order on the project.

106 Existing law eliminates the authority for public bodies to enter into contracts
107 with construction managers at risk, effective July 1, 2017, and, until that expiration
108 date, requires public bodies to submit an annual report to the Legislature
109 concerning their projects with construction managers at risk. (Sections 14.5 and 15
110 of chapter 487, Statutes of Nevada 2013, pp. 2985-86; **section 9** of chapter 123,
111 Statutes of Nevada 2015, p. 457) **Sections 34 and 35** of this bill postpone the
112 prospective expiration of this authority until June 30, 2021, and **section 33.5** of this
113 bill requires the inclusion of additional information in the annual reports.

114 Existing law prohibits a public body, in any solicitation, contract or other
115 document related to a contract for a public work from: (1) requiring or prohibiting a
116 bidder or contractor from entering into or adhering to any agreement with one or
117 more labor organizations in regard to the public work; or (2) discriminating against
118 a bidder or contractor for entering or not entering into, or adhering or refusing to
119 adhere to, any agreement with one or more labor organizations in regard to the
120 public work. Existing law further prohibits a public body, with certain exceptions,
121 from awarding a grant, tax abatement, tax credit or tax exemption that is
122 conditioned upon a requirement that the awardee include in a contract for a project
123 that is the subject of the grant, tax abatement, tax credit or tax exemption a term
124 that: (1) requires or prohibits a bidder or contractor from entering into or adhering
125 to any agreement with one or more labor organizations in regard to the project; or
126 (2) discriminates against a bidder or contractor for entering or not entering into, or



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127 adhering or refusing to adhere to, any agreement with one or more labor
128 organizations in regard to the project. (NRS 338.1405) **Section 36** of this bill
129 eliminates this prohibition.

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

1 **Section 1.** Chapter 338 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 1. *Any public body, craft affiliated with the State Federation*
4 *of Labor or other recognized national labor organizations,*
5 *contractor or any representative thereof who becomes aware of a*
6 *violation of subsection 2 of NRS 338.169, NRS 338.1692,*
7 *subsection 3 of NRS 338.1696 or subsection 10 of NRS 338.16995*
8 *by a public body may file a complaint with the Labor*
9 *Commissioner. Upon receipt of such a complaint, the Labor*
10 *Commissioner shall provide to the public body named in the*
11 *complaint a copy of the complaint and written notification that the*
12 *public body may file an answer to the complaint with the Labor*
13 *Commissioner not later than 15 days after receipt of the*
14 *notification. If the public body files an answer, the public body*
15 *shall serve a copy of the answer on the complainant and every*
16 *other party to the proceeding.*

17 2. *The Labor Commissioner shall investigate each complaint*
18 *received pursuant to subsection 1. After such an investigation, the*
19 *Labor Commissioner shall issue, in writing, a determination*
20 *regarding whether a violation occurred and serve a copy on every*
21 *party to the proceeding. The determination must contain notice*
22 *that a party aggrieved by the determination may file a written*
23 *objection with the Labor Commissioner within 15 days after the*
24 *date of service of the determination and that an objection must be*
25 *accompanied by a short statement of the grounds for the objection*
26 *and evidence substantiating the objection.*

27 3. *If a party who has been served a copy of the determination*
28 *issued by the Labor Commissioner pursuant to subsection 2 files a*
29 *written objection with the Labor Commissioner within 15 days*
30 *after the date of service of the determination, the Labor*
31 *Commissioner shall hold a hearing on the matter. Any such*
32 *hearing must be conducted pursuant to NRS 607.207 and any*
33 *regulations adopted pursuant thereto. A decision issued by the*
34 *Labor Commissioner after such a hearing is deemed to be the*
35 *final order of the Labor Commissioner on the matter.*

36 4. *If a public body is found to be in violation of subsection 2*
37 *of NRS 338.169, NRS 338.1692, subsection 3 of NRS 338.1696 or*
38 *subsection 10 of NRS 338.16995, the public body shall not enter*



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1 *into a contract with a construction manager at risk pursuant to*
2 *this section and NRS 338.1685 to 338.16995, inclusive, for the*
3 *construction of a public work for 2 years after a final*
4 *determination regarding the violation has been made. If such a*
5 *violation is found:*

6 (a) *Any contract that a public body enters into with a*
7 *construction manager at risk during the 2-year period shall be*
8 *deemed terminated by the public body without cause, effective on*
9 *the date of the issuance of a stop work order pursuant to*
10 *paragraph (b).*

11 (b) *The public body shall transmit a copy of the decision*
12 *regarding the violation to the building official having jurisdiction*
13 *over any project for which the public body enters into a contract*
14 *with a construction manager at risk during the 2-year period and*
15 *the building official shall issue a stop work order on the project.*

16 **Sec. 2.** NRS 338.010 is hereby amended to read as follows:

17 338.010 As used in this chapter:

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

22 2. "Contract" means a written contract entered into between a
23 contractor and a public body for the provision of labor, materials,
24 equipment or supplies for a public work.

25 3. "Contractor" means:

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

28 (b) A design-build team.

29 4. "Day labor" means all cases where public bodies, their
30 officers, agents or employees, hire, supervise and pay the wages
31 thereof directly to a worker or workers employed by them on public
32 works by the day and not under a contract in writing.

33 5. "Design-build contract" means a contract between a public
34 body and a design-build team in which the design-build team agrees
35 to design and construct a public work.

36 6. "Design-build team" means an entity that consists of:

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

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

41 (1) A building and its site, at least one person who holds a
42 certificate of registration to practice architecture pursuant to chapter
43 623 of NRS.

44 (2) Anything other than a building and its site, at least one
45 person who holds a certificate of registration to practice architecture



1 pursuant to chapter 623 of NRS or landscape architecture pursuant
2 to chapter 623A of NRS or who is licensed as a professional
3 engineer pursuant to chapter 625 of NRS.

4 7. "Design professional" means:

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

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

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

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

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

17 8. "Division" means the State Public Works Division of the
18 Department of Administration.

19 9. "Eligible bidder" means a person who is:

20 (a) Found to be a responsible ~~land responsive~~ contractor by a
21 local government or its authorized representative which requests
22 bids for a public work in accordance with paragraph (b) of
23 subsection 1 of NRS 338.1373; or

24 (b) Determined by a public body or its authorized representative
25 which awarded a contract for a public work pursuant to NRS
26 338.1375 to 338.139, inclusive, to be qualified to bid on that
27 contract pursuant to NRS 338.1379 or 338.1382.

28 10. "General contractor" means a person who is licensed to
29 conduct business in one, or both, of the following branches of the
30 contracting business:

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

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

35 11. "Governing body" means the board, council, commission
36 or other body in which the general legislative and fiscal powers of a
37 local government are vested.

38 12. "Local government" means every political subdivision or
39 other entity which has the right to levy or receive money from ad
40 valorem or other taxes or any mandatory assessments, and includes,
41 without limitation, counties, cities, towns, boards, school districts
42 and other districts organized pursuant to chapters 244A, 309, 318,
43 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,
44 inclusive, and any agency or department of a county or city which
45 prepares a budget separate from that of the parent political



1 subdivision. The term includes a person who has been designated by
2 the governing body of a local government to serve as its authorized
3 representative.

4 13. "Offense" means failing to:

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

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

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

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

11 14. "Prime contractor" means a contractor who:

12 (a) Contracts to construct an entire project;

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

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

16 (d) Contracts for the services of any subcontractor or
17 independent contractor or is responsible for payment to any
18 contracted subcontractors or independent contractors.

19 ➔ The term includes, without limitation, a general contractor or a
20 specialty contractor who is authorized to bid on a project pursuant to
21 NRS 338.139 or 338.148.

22 15. "Public body" means the State, county, city, town, school
23 district or any public agency of this State or its political subdivisions
24 sponsoring or financing a public work.

25 16. "Public work" means any project for the new construction,
26 repair or reconstruction of a project financed in whole or in part
27 from public money for:

28 (a) Public buildings;

29 (b) Jails and prisons;

30 (c) Public roads;

31 (d) Public highways;

32 (e) Public streets and alleys;

33 (f) Public utilities;

34 (g) Publicly owned water mains and sewers;

35 (h) Public parks and playgrounds;

36 (i) Public convention facilities which are financed at least in part
37 with public money; and

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

39 17. ***"Responsive," as used in the context of a bid or bidder,***
40 ***means the bid received from the bidder:***

41 ***(a) Meets the requirements of the applicable provisions of law;***
42 ***and***

43 ***(b) Complies with the mandatory provisions of the***
44 ***advertisement or solicitation for bids.***



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

3 ~~18-1~~ **19.** “Stand-alone underground utility project” means an
4 underground utility project that is not integrated into a larger
5 project, including, without limitation:

6 (a) An underground sewer line or an underground pipeline for
7 the conveyance of water, including facilities appurtenant thereto;
8 and

9 (b) A project for the construction or installation of a storm drain,
10 including facilities appurtenant thereto,

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

14 ~~19-1~~ **20.** “Subcontract” means a written contract entered into
15 between:

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

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

18 ➔ for the provision of labor, materials, equipment or supplies for a
19 construction project.

20 ~~20-1~~ **21.** “Subcontractor” means a person who:

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

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

27 ~~21-1~~ **22.** “Supplier” means a person who provides materials,
28 equipment or supplies for a construction project.

29 ~~22-1~~ **23.** “Wages” means:

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

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

35 ~~23-1~~ **24.** “Worker” means a skilled mechanic, skilled worker,
36 semiskilled mechanic, semiskilled worker or unskilled worker in the
37 service of a contractor or subcontractor under any appointment or
38 contract of hire or apprenticeship, express or implied, oral or
39 written, whether lawfully or unlawfully employed. The term does
40 not include a design professional.

41 **Sec. 3.** NRS 338.030 is hereby amended to read as follows:

42 338.030 1. The public body awarding any contract for public
43 work, or otherwise undertaking any public work, shall ascertain
44 from the Labor Commissioner the prevailing wage in the county in



1 which the public work is to be performed for each craft or type of
2 work.

3 2. The prevailing wage in each county, including Carson City,
4 must be ~~established as follows:~~

5 ~~—(a) The~~ **determined by the** Labor Commissioner . **To determine**
6 **the prevailing wage in each county, the Labor Commissioner** shall,
7 annually, survey contractors who have performed work in the
8 county.

9 ~~[(b) Based on the survey conducted pursuant to paragraph (a),~~
10 ~~where the rate of wages is the same for more than 50 percent of the~~
11 ~~total hours worked by each craft or type of work in that county on~~
12 ~~construction similar to the proposed construction, that rate will be~~
13 ~~determined as the prevailing wage.~~

14 ~~—(c) Where no such rate can be determined, the prevailing wage~~
15 ~~for a craft or type of work will be determined as the average rate of~~
16 ~~wages paid per hour based on the number of hours worked per rate,~~
17 ~~to that craft or type of work.~~

18 ~~—(d) The Labor Commissioner shall determine the prevailing~~
19 ~~wage to be 90 percent of the rate determined pursuant to paragraphs~~
20 ~~(a), (b) and (c) for:~~

21 ~~—(1) Any contract for a public work or any other construction,~~
22 ~~alteration, repair, remodeling or reconstruction of an improvement~~
23 ~~or property to which a school district or the Nevada System of~~
24 ~~Higher Education is a party; and~~

25 ~~—(2) A public work of, or constructed by, a school district or~~
26 ~~the Nevada System of Higher Education, or any other construction,~~
27 ~~alteration, repair, remodeling or reconstruction of an improvement~~
28 ~~or property of or constructed by a school district or the Nevada~~
29 ~~System of Higher Education.]~~

30 3. Within 30 days after the determination is issued:

31 (a) A public body or person entitled under subsection 6 to be
32 heard may submit an objection to the Labor Commissioner with
33 evidence to substantiate that a different wage prevails; and

34 (b) Any person may submit information to the Labor
35 Commissioner that would support a change in the prevailing wage
36 of a craft or type of work by 50 cents or more per hour in any
37 county.

38 4. The Labor Commissioner shall hold a hearing in the locality
39 in which the work is to be executed if the Labor Commissioner:

40 (a) Is in doubt as to the prevailing wage; or

41 (b) Receives an objection or information pursuant to
42 subsection 3.

43 ➔ The Labor Commissioner may hold only one hearing a year on
44 the prevailing wage of any craft or type of work in any county.



1 5. Notice of the hearing must be advertised in a newspaper
2 nearest to the locality of the work once a week for 2 weeks before
3 the time of the hearing.

4 6. At the hearing, any public body, the crafts affiliated with the
5 State Federation of Labor or other recognized national labor
6 organizations, and the contractors of the locality or their
7 representatives must be heard. From the evidence presented, the
8 Labor Commissioner shall determine the prevailing wage.

9 7. The wages so determined must be filed by the Labor
10 Commissioner and must be available to any public body which
11 awards a contract for any public work.

12 8. Nothing contained in NRS 338.020 to 338.090, inclusive,
13 may be construed to authorize the fixing of any wage below any rate
14 which may now or hereafter be established as a minimum wage for
15 any person employed upon any public work, or employed by any
16 officer or agent of any public body.

17 **Sec. 4.** NRS 338.080 is hereby amended to read as follows:

18 338.080 None of the provisions of NRS 338.020 to 338.090,
19 inclusive, apply to:

20 1. Any work, construction, alteration, repair or other
21 employment performed, undertaken or carried out, by or for any
22 railroad company or any person operating the same, whether such
23 work, construction, alteration or repair is incident to or in
24 conjunction with a contract to which a public body is a party, or
25 otherwise.

26 2. Apprentices recorded under the provisions of chapter 610 of
27 NRS.

28 3. Any contract for a public work whose cost is less than
29 ~~[\$250,000.]~~ **\$100,000.** A unit of the project must not be separated
30 from the total project, even if that unit is to be completed at a later
31 time, in order to lower the cost of the project below ~~[\$250,000.]~~

32 ~~—4.— Any contract for a public work or any other construction,
33 alteration, repair, remodeling or reconstruction of an improvement
34 or property to which a charter school is a party, notwithstanding any
35 other provision of law.~~

36 ~~—5.— A public work of, or constructed by, a charter school, or any
37 other construction, alteration, repair, remodeling or reconstruction
38 of an improvement or property of or constructed by a charter school,
39 notwithstanding any other provision of law.]~~ **\$100,000.**

40 **Sec. 5.** (Deleted by amendment.)

41 **Sec. 6.** NRS 338.1385 is hereby amended to read as follows:

42 338.1385 1. Except as otherwise provided in subsection 9,
43 this State, or a governing body or its authorized representative that
44 awards a contract for a public work in accordance with paragraph
45 (a) of subsection 1 of NRS 338.1373 shall not:



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

9 (b) Commence a public work for which the estimated cost is
10 \$100,000 or less unless it complies with the provisions of NRS
11 338.1386, 338.13862 and 338.13864 and, with respect to the State,
12 NRS 338.1384 to 338.13847, inclusive.

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

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

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

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

27 5. Except as otherwise provided in subsection 6 and NRS
28 338.1389, a public body or its authorized representative shall award
29 a contract to the lowest responsive and responsible bidder.

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

33 (a) The bidder is not a qualified bidder pursuant to NRS
34 338.1379 or 338.1382;

35 (b) The bidder is not responsive or responsible;

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

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

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

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

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



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

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

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

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

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

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

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

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

26 9. This section does not apply to:

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

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

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

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

37 (e) The design and construction of a public work for which a
38 public body contracts with a design-build team pursuant to NRS
39 338.1711 to 338.1727, inclusive;

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

43 (g) The preconstruction or construction of a public work for
44 which a public body enters into a contract with a construction



1 manager at risk pursuant to NRS 338.1685 to 338.16995, inclusive
2 **H**, and section 1 of this act.

3 **Sec. 7.** NRS 338.141 is hereby amended to read as follows:

4 338.141 1. Except as otherwise provided in NRS 338.1727,
5 each bid submitted to a public body for any public work to which
6 paragraph (a) of subsection 1 of NRS 338.1385, paragraph (a) of
7 subsection 1 of NRS 338.143 or NRS 408.327 applies, must
8 include:

9 (a) If the public body provides a list of the labor or portions of
10 the public work which are estimated by the public body to exceed 3
11 percent of the estimated cost of the public work, the name of each
12 first tier subcontractor who will provide such labor or portion of the
13 work on the public work which is estimated to exceed 3 percent of
14 the estimated cost of the public work; or

15 (b) If the public body does not provide a list of the labor or
16 portions of the public work which are estimated by the public body
17 to exceed 3 percent of the estimated cost of the public work, the
18 name of each first tier subcontractor who will provide labor or a
19 portion of the work on the public work to the prime contractor for
20 which the first tier subcontractor will be paid an amount exceeding 5
21 percent of the prime contractor's total bid. If the bid is submitted
22 pursuant to this paragraph, within 2 hours after the completion of
23 the opening of the bids, the contractors who submitted the three
24 lowest bids must submit a list containing:

25 (1) The name of each first tier subcontractor who will
26 provide labor or a portion of the work on the public work to the
27 prime contractor for which the first tier subcontractor will be paid an
28 amount exceeding \$250,000.

29 (2) If any one of the contractors who submitted one of the
30 three lowest bids will employ a first tier subcontractor who will
31 provide labor or a portion of the work on the public work to the
32 prime contractor for which the first tier subcontractor will not be
33 paid an amount exceeding \$250,000, the name of each first tier
34 subcontractor who will provide labor or a portion of the work on the
35 public work to the prime contractor for which the first tier
36 subcontractor will be paid 1 percent of the prime contractor's total
37 bid or \$50,000, whichever is greater.

38 (3) For each first tier subcontractor whose name is listed
39 pursuant to subparagraph (1) or (2), the number of the license issued
40 to the first tier subcontractor pursuant to chapter 624 of NRS.

41 2. The lists required by subsection 1 must include a description
42 of the labor or portion of the work which each first tier
43 subcontractor named in the list will provide to the prime contractor.

44 3. A prime contractor shall include his or her name on a list
45 required by paragraph (a) or (b) of subsection 1. If the prime



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1 contractor will perform any work which is more than 1 percent of
2 the prime contractor's total bid and which is not being performed by
3 a subcontractor listed pursuant to paragraph (a) or (b) of subsection
4 1, the prime contractor shall also include on the list:

5 (a) A description of the labor or portion of the work that the
6 prime contractor will perform; or

7 (b) A statement that the prime contractor will perform all work
8 other than that being performed by a subcontractor listed pursuant to
9 paragraph (a) or (b) of subsection 1.

10 4. Except as otherwise provided in this subsection, if a
11 contractor:

12 (a) Fails to submit the list within the required time; or

13 (b) Submits a list that includes the name of a subcontractor who,
14 at the time of the submission of the list, is on disqualified status with
15 the Division pursuant to NRS 338.1376,

16 ➔ the contractor's bid shall be deemed not responsive. A
17 contractor's bid shall not be deemed not responsive on the grounds
18 that the contractor submitted a list that includes the name of a
19 subcontractor who, at the time of the submission of the list, is on
20 disqualified status with the Division pursuant to NRS 338.1376 if
21 the contractor, before the award of the contract, provides an
22 acceptable replacement subcontractor in the manner set forth in
23 subsection 1 or 2 of NRS 338.13895.

24 5. A prime contractor shall not substitute a subcontractor for
25 any subcontractor who is named in the bid, unless:

26 (a) The public body or its authorized representative objects to
27 the subcontractor, requests in writing a change in the subcontractor
28 and pays any increase in costs resulting from the change.

29 (b) The substitution is approved by the public body or its
30 authorized representative. The substitution must be approved if the
31 public body or its authorized representative determines that:

32 (1) The named subcontractor, after having a reasonable
33 opportunity, fails or refuses to execute a written contract with the
34 contractor which was offered to the named subcontractor with the
35 same general terms that all other subcontractors on the project were
36 offered;

37 (2) The named subcontractor files for bankruptcy or becomes
38 insolvent;

39 (3) The named subcontractor fails or refuses to perform his
40 or her subcontract within a reasonable time or is unable to furnish a
41 performance bond and payment bond pursuant to NRS 339.025; or

42 (4) The named subcontractor is not properly licensed to
43 provide that labor or portion of the work.



1 (c) If the public body awarding the contract is a governing body,
2 the public body or its authorized representative, in awarding the
3 contract pursuant to NRS 338.1375 to 338.139, inclusive:

4 (1) Applies such criteria set forth in NRS 338.1377 as are
5 appropriate for subcontractors and determines that the subcontractor
6 does not meet that criteria; and

7 (2) Requests in writing a substitution of the subcontractor.

8 6. If a prime contractor substitutes a subcontractor for any
9 subcontractor who is named in the bid without complying with the
10 provisions of subsection 5, the prime contractor shall forfeit, as a
11 penalty to the public body that awarded the contract, an amount
12 equal to 1 percent of the total amount of the contract.

13 7. If a prime contractor, after the submission of the bid,
14 substitutes a subcontractor to perform the work indicated pursuant to
15 subsection 3 that the prime contractor would perform, the prime
16 contractor shall forfeit as a penalty to the public body that awarded
17 the contract, the lesser of, and excluding any amount of the contract
18 that is attributable to change orders:

19 (a) An amount equal to 2.5 percent of the total amount of the
20 contract; or

21 (b) An amount equal to 35 percent of the estimate by the
22 engineer of the cost of the work the prime contractor indicated
23 pursuant to subsection 3 that he or she would perform on the public
24 work.

25 8. As used in this section:

26 (a) "First tier subcontractor" means a subcontractor who
27 contracts directly with a prime contractor to provide labor, materials
28 or services for a construction project.

29 (b) "General terms" ~~means~~ :

30 (1) *Means* the terms and conditions of a contract that set the
31 basic requirements for a public work and apply without regard to the
32 particular trade or specialty of a subcontractor. ~~but does~~

33 (2) *Includes, without limitation, a provision relating to the*
34 *contracting or subcontracting of work for an employer in the*
35 *construction industry that is not prohibited by 29 U.S.C. § 158(e).*

36 (3) *Does* not include any provision that controls or relates to
37 the specific portion of the public work that will be completed by a
38 subcontractor, including, without limitation, the materials to be used
39 by the subcontractor or other details of the work to be performed by
40 the subcontractor.

41 **Sec. 8.** NRS 338.143 is hereby amended to read as follows:

42 338.143 1. Except as otherwise provided in subsection 8, a
43 local government or its authorized representative that awards a
44 contract for a public work in accordance with paragraph (b) of
45 subsection 1 of NRS 338.1373 shall not:



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

10 (b) Commence a public work for which the estimated cost is
11 \$100,000 or less unless it complies with the provisions of NRS
12 338.1442, 338.1444 or 338.1446.

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

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

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

24 4. Except as otherwise provided in subsection 5 and NRS
25 338.147, the local government or its authorized representative shall
26 award a contract to the lowest responsive and responsible bidder.

27 5. Any bids received in response to an advertisement for bids
28 may be rejected if the local government or its authorized
29 representative responsible for awarding the contract determines that:

30 (a) The bidder is not responsive or responsible;

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

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

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

37 (a) The local government publishes a notice stating that no bids
38 were received and that the contract may be let without further
39 bidding;

40 (b) The local government considers any bid submitted in
41 response to the notice published pursuant to paragraph (a);

42 (c) The local government lets the contract not less than 7 days
43 after publishing a notice pursuant to paragraph (a); and

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



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

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

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

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

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

20 (e) An estimate of the amount of money the local government
21 expects to save by rejecting the bids and performing the public work
22 itself.

23 8. This section does not apply to:

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

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

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

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

34 (e) The design and construction of a public work for which a
35 public body contracts with a design-build team pursuant to NRS
36 338.1711 to 338.1727, inclusive;

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

40 (g) The preconstruction or construction of a public work for
41 which a public body enters into a contract with a construction
42 manager at risk pursuant to NRS 338.1685 to 338.16995, inclusive

43 **††, and section 1 of this act.**



1 **Sec. 9.** NRS 338.1685 is hereby amended to read as follows:
2 338.1685 The Legislature hereby declares that the provisions
3 of NRS 338.1685 to 338.16995, inclusive, *and section 1 of this act*
4 relating to contracts involving construction managers at risk, are
5 intended:

6 1. To promote public confidence and trust in the contracting
7 and bidding procedures for public works established therein;

8 2. For the benefit of the public, to promote the philosophy of
9 obtaining the best possible value as compared to low-bid
10 contracting; and

11 3. To better equip public bodies to address public works that
12 present unique and complex construction challenges.

13 **Sec. 10.** NRS 338.1692 is hereby amended to read as follows:

14 338.1692 1. A public body or its authorized representative
15 shall advertise for proposals for a construction manager at risk in a
16 newspaper qualified pursuant to chapter 238 of NRS that is
17 published in the county where the public work will be performed. If
18 no qualified newspaper is published in the county where the public
19 work will be performed, the required advertisement must be
20 published in some qualified newspaper that is printed in the State of
21 Nevada and has a general circulation in the county.

22 2. A request for proposals published pursuant to subsection 1
23 must include, without limitation:

24 (a) A description of the public work;

25 (b) An estimate of the cost of construction;

26 (c) A description of the work that the public body expects a
27 construction manager at risk to perform;

28 (d) The dates on which it is anticipated that the separate phases
29 of the preconstruction and construction of the public work will
30 begin and end;

31 (e) The date by which proposals must be submitted to the public
32 body;

33 (f) If the project is a public work of the State, a statement setting
34 forth that the construction manager at risk must be qualified to bid
35 on a public work of the State pursuant to NRS 338.1379 before
36 submitting a proposal;

37 (g) The name, title, address and telephone number of a person
38 employed by the public body that an applicant may contact for
39 further information regarding the public work;

40 (h) A list of the selection criteria and relative weight of the
41 selection criteria that will be used to rank proposals pursuant to
42 subsection 2 of NRS 338.1693;

43 (i) A list of the selection criteria and relative weight of the
44 selection criteria that will be used to rank applicants pursuant to
45 subsection ~~7~~ 8 of NRS 338.1693; and



1 (j) A notice that the proposed form of the contract to assist in the
2 preconstruction of the public work or to construct the public work,
3 including, without limitation, the terms and general conditions of the
4 contract, is available from the public body.

5 3. A proposal must include, without limitation:

6 (a) An explanation of the experience that the applicant has with
7 projects of similar size and scope in both the public and private
8 sectors by any delivery method, ~~{whether or not that method was the~~
9 ~~use of a construction manager at risk, and}~~ including, without
10 limitation, *design-bid-build*, design-build, design-assist, negotiated
11 work, *construction manager at risk* or value-engineered work, and
12 an explanation of the experience that the applicant has in such
13 projects in Nevada. ~~{}~~

14 (b) The contact information for references who have knowledge
15 of the background, character and technical competence of the
16 applicant. ~~{}~~

17 (c) Evidence of the ability of the applicant to obtain the
18 necessary bonding for the work to be required by the public
19 body. ~~{}~~

20 (d) Evidence that the applicant has obtained or has the ability to
21 obtain such insurance as may be required by law. ~~{}~~

22 (e) A statement of whether the applicant has been:

23 (1) Found liable for breach of contract with respect to a
24 previous project, other than a breach for legitimate cause, during the
25 5 years immediately preceding the date of the advertisement for
26 proposals; and

27 (2) Disqualified from being awarded a contract pursuant to
28 NRS 338.017, 338.13895, 338.1475 or 408.333. ~~{}~~

29 (f) The professional qualifications and experience of the
30 applicant, including, without limitation, the resume of any employee
31 of the applicant who will be managing the preconstruction and
32 construction of the public work. ~~{}~~

33 (g) The safety programs established and the safety records
34 accumulated by the applicant. ~~{}~~

35 (h) Evidence that the applicant is licensed as a contractor
36 pursuant to chapter 624 of NRS. ~~{}~~

37 (i) The proposed plan of the applicant to manage the
38 preconstruction and construction of the public work which sets forth
39 in detail the ability of the applicant to provide preconstruction
40 services and to construct the public work and which includes, if the
41 public work involves predominantly horizontal construction, a
42 statement that, *except as otherwise provided in this paragraph*, the
43 applicant will perform construction work equal in value to at least
44 ~~{25}~~ 50 percent of the estimated cost of construction. ~~{; and}~~ *The*
45 *public body may allow an applicant to perform at least 25 percent*



1 *but less than 50 percent of the estimated cost of construction if the*
2 *applicant agrees to comply with standard specifications or*
3 *procedures for construction of public works adopted by the public*
4 *body.*

5 (j) If the project is for the design of a public work of the State,
6 evidence that the applicant is qualified to bid on a public work of the
7 State pursuant to NRS 338.1379.

8 4. The public body or its authorized representative shall make
9 available to the public the name of each applicant who submits a
10 proposal pursuant to this section.

11 *5. An applicant shall not substitute a different employee for*
12 *any employee whose resume was submitted pursuant to paragraph*
13 *(f) of subsection 3 unless:*

14 *(a) The employee whose resume was submitted is no longer*
15 *employed by the applicant or is unavailable because of medical*
16 *reasons; or*

17 *(b) The public body requests or agrees to the substitution.*

18 **Sec. 11.** NRS 338.1693 is hereby amended to read as follows:

19 338.1693 1. The public body or its authorized representative
20 shall appoint a panel consisting of at least three but not more than
21 seven members, a majority of whom must have experience in the
22 construction industry, to rank the proposals submitted to the public
23 body by evaluating the proposals as required pursuant to subsections
24 2 and 3.

25 2. The panel appointed pursuant to subsection 1 shall rank the
26 proposals by:

27 (a) Verifying that each applicant satisfies the requirements of
28 NRS 338.1691; and

29 (b) Evaluating and assigning a score to each of the proposals
30 received by the public body based on the factors and relative weight
31 assigned to each factor that the public body specified in the request
32 for proposals.

33 3. When ranking the proposals, the panel appointed pursuant to
34 subsection 1 shall assign a relative weight of 5 percent to the
35 applicant's possession of a certificate of eligibility to receive a
36 preference in bidding on public works if the applicant submits a
37 signed affidavit that meets the requirements of subsection 1 of NRS
38 338.0117. If any federal statute or regulation precludes the granting
39 of federal assistance or reduces the amount of that assistance for a
40 particular public work because of the provisions of this subsection,
41 those provisions of this subsection do not apply insofar as their
42 application would preclude or reduce federal assistance for that
43 work.

44 4. After the panel appointed pursuant to subsection 1 ranks the
45 proposals, the public body or its authorized representative shall,



1 except as otherwise provided in subsection ~~18.1~~ 9, select at least the
2 two but not more than the five applicants whose proposals received
3 the highest scores for interviews.

4 5. The public body or its authorized representative may appoint
5 a separate panel to interview and rank the applicants selected
6 pursuant to subsection 4. If a separate panel is appointed pursuant to
7 this subsection, the panel must consist of at least three but not more
8 than seven members, a majority of whom must have experience in
9 the construction industry.

10 6. During the interview process, the panel conducting the
11 interview ~~may~~ shall require the applicants to submit ~~it~~ :

12 (a) A preliminary proposed amount of compensation for
13 managing the preconstruction and construction of the public work,
14 but in no event shall the proposed amount of compensation exceed
15 20 percent of the scoring for the selection of the most qualified
16 applicant. *The preliminary proposed amount of compensation
17 must include, without limitation:*

18 (1) *The proposed fee for the preconstruction services on the
19 public work;*

20 (2) *The proposed fee for managing the construction
21 services on the public work;*

22 (3) *The cost of travel and per diem for persons on the list
23 submitted pursuant to paragraph (b); and*

24 (4) *The additional costs for bonding and insurance related
25 to the preconstruction and construction services, including,
26 without limitation, costs for general liability and course of
27 construction insurance.*

28 (b) *A list of the name, title and total cost of compensation of
29 and the anticipated number of hours of work to be performed by
30 each person who will be employed or retained by the applicant to
31 provide the preconstruction services or manage the construction
32 services, or both, on the public work. As used in this paragraph,
33 "total cost of compensation" means wages, benefits and any other
34 costs associated with employment or retention, including, without
35 limitation, the cost of workers' compensation, unemployment
36 insurance and applicable taxes.*

37 7. All presentations made at any interview conducted pursuant
38 to ~~this subsection or~~ subsection 5 or 6 may be made only by key
39 personnel employed by the applicant, as determined by the
40 applicant, and the employees of the applicant who will be directly
41 responsible for managing the preconstruction and construction of
42 the public work.

43 ~~7.1~~ 8. After conducting such interviews, the panel that
44 conducted the interviews shall rank the applicants by using a
45 ranking process that is separate from the process used to rank the



1 applicants pursuant to subsection 2 and is based only on information
2 submitted during the interview process. The score to be given for
3 the proposed amount of compensation, if any, must be calculated by
4 dividing the lowest of all the proposed amounts of compensation by
5 the applicant's proposed amount of compensation multiplied by the
6 total possible points available to each applicant. When ranking the
7 applicants, the panel that conducted the interviews shall assign a
8 relative weight of 5 percent to the applicant's possession of a
9 certificate of eligibility to receive a preference in bidding on public
10 works if the applicant submits a signed affidavit that meets the
11 requirements of subsection 1 of NRS 338.0117. If any federal
12 statute or regulation precludes the granting of federal assistance or
13 reduces the amount of that assistance for a particular public work
14 because of the provisions of this subsection, those provisions of this
15 subsection do not apply insofar as their application would preclude
16 or reduce federal assistance for that work.

17 ~~18.1~~ 9. If the public body did not receive at least two proposals,
18 the public body may not contract with a construction manager at
19 risk.

20 ~~19.1~~ 10. Upon receipt of the final rankings of the applicants
21 from the panel that conducted the interviews, the public body or its
22 authorized representative shall enter into negotiations with the most
23 qualified applicant determined pursuant to the provisions of this
24 section for a contract for preconstruction services, unless the public
25 body required the submission of a proposed amount of
26 compensation, in which case the proposed amount of compensation
27 submitted by the applicant must be the amount offered for the
28 contract. If the public body or its authorized representative is unable
29 to negotiate a contract with the most qualified applicant for an
30 amount of compensation that the public body or its authorized
31 representative and the most qualified applicant determine to be fair
32 and reasonable, the public body or its authorized representative shall
33 terminate negotiations with that applicant. The public body or its
34 authorized representative may then undertake negotiations with the
35 next most qualified applicant in sequence until an agreement is
36 reached and, if the negotiation is undertaken by an authorized
37 representative of the public body, approved by the public body or
38 until a determination is made by the public body to reject all
39 applicants.

40 ~~10.1~~ 11. The public body or its authorized representative
41 shall:

42 (a) Make available to all applicants and the public the following
43 information, as determined by the panel appointed pursuant to
44 subsection 1 and the panel that conducted the interviews, as
45 applicable:



1 (1) The final rankings of the applicants;
2 (2) The score assigned to each proposal received by the
3 public body; and

4 (3) For each proposal received by the public body, the score
5 assigned to each factor that the public body specified in the request
6 for proposals ; and

7 (b) Provide, upon request, an explanation to any unsuccessful
8 applicant of the reasons why the applicant was unsuccessful.

9 **Sec. 12.** NRS 338.1696 is hereby amended to read as follows:

10 338.1696 1. If a public body enters into a contract with a
11 construction manager at risk for preconstruction services pursuant to
12 NRS 338.1693, after the public body has finalized the design for the
13 public work, or any portion thereof sufficient to determine the
14 provable cost of that portion, the public body shall enter into
15 negotiations with the construction manager at risk for a contract to
16 construct the public work or the portion thereof for the public body
17 for †:

18 ~~—(a) The cost of the work, plus a fee, with† a guaranteed~~
19 ~~maximum price †;~~

20 ~~—(b) A fixed price; or~~

21 ~~—(c) A fixed price plus reimbursement for overhead and other~~
22 ~~costs and expenses related to the construction of the public work or~~
23 ~~portion thereof.†, which must include, without limitation:~~

24 *(a) The fee and other related costs submitted for managing the*
25 *construction services pursuant to subsection 6 of NRS 338.1693;*
26 *and*

27 *(b) The cost of the work, including, without limitation, the cost*
28 *of labor, materials and equipment. The construction manager at*
29 *risk shall submit a list of each subcontractor selected to provide*
30 *labor, materials or equipment on the public work pursuant to NRS*
31 *338.16991 and 338.16995 the cost of which is estimated by the*
32 *construction manager at risk to exceed 1 percent of the estimated*
33 *cost of the public work.*

34 2. If the public body is unable to negotiate a satisfactory
35 contract with the construction manager at risk to construct the public
36 work or portion thereof, the public body shall terminate negotiations
37 with that applicant and:

38 (a) May award the contract for the public work:

39 (1) If the public body is not a local government, pursuant to
40 the provisions of NRS 338.1377 to 338.139, inclusive.

41 (2) If the public body is a local government, pursuant to the
42 provisions of NRS 338.1377 to 338.139, inclusive, or 338.143 to
43 338.148, inclusive; and



1 (b) Shall accept a bid to construct the public work from the
2 construction manager at risk with whom the public body entered
3 into a contract for preconstruction services.

4 3. ~~Before entering into a contract with the public body to~~
5 ~~construct a public work or a portion thereof pursuant to subsection~~
6 ~~4, the construction manager at risk shall:~~

7 ~~—(a) Provide the public body with a list of the labor or portions of~~
8 ~~the work which are estimated by the construction manager at risk to~~
9 ~~exceed 1 percent of the estimated cost of the public work; and~~

10 ~~—(b) Select each subcontractor who is to provide labor or a~~
11 ~~portion of the work which is estimated by the construction manager~~
12 ~~at risk to exceed 1 percent of the estimated cost of the public work~~
13 ~~in accordance with NRS 338.16991 and 338.16995 and provide the~~
14 ~~names of each selected subcontractor to the public body.~~

15 ~~4.1~~ Except as otherwise provided in subsection 13 of NRS
16 338.16995, a public body shall not interfere with the right of the
17 construction manager at risk to select the subcontractor whom the
18 construction manager at risk determines to have submitted the best
19 proposal pursuant to NRS 338.16995.

20 **Sec. 13.** (Deleted by amendment.)

21 **Sec. 14.** NRS 338.16995 is hereby amended to read as
22 follows:

23 338.16995 1. If a public body enters into a contract with a
24 construction manager at risk for the construction of a public work
25 pursuant to NRS 338.1696, the construction manager at risk may
26 enter into a subcontract for the provision of labor, materials and
27 equipment necessary for the construction of the public work only as
28 provided in this section.

29 2. The provisions of this section apply only to a subcontract for
30 which the estimated value is at least 1 percent of the total cost of the
31 public work or \$50,000, whichever is greater.

32 3. After the design and schedule for the construction of the
33 public work is sufficiently detailed and complete to allow a
34 subcontractor to submit a meaningful and responsive proposal, and
35 not later than 21 days before the date by which a proposal for the
36 provision of labor, materials or equipment by a subcontractor must
37 be submitted, the construction manager at risk shall notify in writing
38 each subcontractor who was determined pursuant to NRS 338.16991
39 to be qualified to submit such a proposal of a request for such
40 proposals. A copy of the notice required pursuant to this subsection
41 must be provided to the public body.

42 4. The notice required pursuant to subsection 3 must include,
43 without limitation:



- 1 (a) A description of the design for the public work and a
2 statement indicating where a copy of the documents relating to that
3 design may be obtained;
- 4 (b) A description of the type and scope of labor, equipment and
5 materials for which subcontractor proposals are being sought;
- 6 (c) The dates on which it is anticipated that construction of the
7 public work will begin and end;
- 8 (d) If a preproposal meeting regarding the scope of the work to
9 be performed by the subcontractor is to be held, the date, time and
10 place at which the preproposal meeting will be held;
- 11 (e) The date and time by which proposals must be received, and
12 to whom they must be submitted;
- 13 (f) The date, time and place at which proposals will be opened
14 for evaluation;
- 15 (g) A description of the bonding and insurance requirements for
16 subcontractors;
- 17 (h) Any other information reasonably necessary for a
18 subcontractor to submit a responsive proposal; and
- 19 (i) A statement in substantially the following form:

20
21 Notice: For a proposal for a subcontract on the public work to
22 be considered:

- 23 1. The subcontractor must be licensed pursuant to
24 chapter 624 of NRS;
- 25 2. The proposal must be timely received;
- 26 3. If a preproposal meeting regarding the scope of the
27 work to be performed by the subcontractor is held, the
28 subcontractor must attend the preproposal meeting; and
- 29 4. The subcontractor may not modify the proposal after
30 the date and time the proposal is received.
- 31
- 32 5. A subcontractor may not modify a proposal after the date
33 and time the proposal is received.
- 34 6. To be considered responsive, a proposal must:
 - 35 (a) Be timely received by the construction manager at risk; and
 - 36 (b) Substantially and materially conform to the details and
37 requirements included in the proposal instructions and for the
38 finalized bid package for the public work, including, without
39 limitation, details and requirements affecting price and performance.
- 40 7. The opening of the proposals must be attended by an
41 authorized representative of the public body. The public body may
42 require the architect or engineer responsible for the design of the
43 public work to attend the opening of the proposals. The opening of
44 the proposals is not otherwise open to the public.



1 8. At the time the proposals are opened, the construction
2 manager at risk shall compile and provide to the public body or its
3 authorized representative a list that includes, without limitation, the
4 name and contact information of each subcontractor who submits a
5 timely proposal.

6 9. Not more than 10 working days after opening the proposals
7 and before the construction manager at risk submits a guaranteed
8 maximum price ~~[, a fixed price or a fixed price plus reimbursement]~~
9 pursuant to NRS 338.1696, the construction manager at risk shall:

10 (a) Evaluate the proposals and determine which proposals are
11 responsive.

12 (b) Select the subcontractor who submits the proposal that the
13 construction manager at risk determines is the best proposal. Subject
14 to the provisions of subparagraphs (1), (2) and (3), if only one
15 subcontractor submits a proposal, the construction manager at risk
16 may select that subcontractor. The subcontractor must be selected
17 from among those:

18 (1) Who attended the preproposal meeting regarding the
19 scope of the work to be performed by the subcontractor, if such a
20 preproposal meeting was held;

21 (2) Who submitted a responsive proposal; and

22 (3) Whose names are included on the list compiled and
23 provided to the public body or its authorized representative pursuant
24 to subsection 8.

25 (c) Inform the public body or its authorized representative which
26 subcontractor has been selected.

27 10. The public body or its authorized representative shall
28 ensure that the evaluation of proposals and selection of
29 subcontractors are done pursuant to the provisions of this section
30 and regulations adopted by the State Public Works Board.

31 11. A subcontractor selected pursuant to subsection 9 need not
32 be selected by the construction manager at risk solely on the basis of
33 lowest price.

34 12. Except as otherwise provided in subsections 13 and 15, the
35 construction manager at risk shall enter into a subcontract with a
36 subcontractor selected pursuant to subsection 9 to provide the labor,
37 materials or equipment described in the request for proposals.

38 13. A construction manager at risk shall not substitute a
39 subcontractor for any subcontractor selected pursuant to subsection
40 9 unless:

41 (a) The public body or its authorized representative objects to
42 the subcontractor, requests in writing a change in the subcontractor
43 and pays any increase in costs resulting from the change; or

44 (b) The substitution is approved by the public body after the
45 selected subcontractor:



- 1 (1) Files for bankruptcy or becomes insolvent;
2 (2) After having a reasonable opportunity, fails or refuses to
3 execute a written contract with the construction manager at risk
4 which was offered to the selected subcontractor with the same
5 general terms that all other subcontractors on the project were
6 offered;
7 (3) Fails or refuses to perform the subcontract within a
8 reasonable time;
9 (4) Is unable to furnish a performance bond and payment
10 bond pursuant to NRS 339.025, if required for the public work; or
11 (5) Is not properly licensed to provide that labor or portion of
12 the work.

13 14. If a construction manager at risk substitutes a subcontractor
14 for any subcontractor selected pursuant to subsection 9 without
15 complying with the provisions of subsection 13, the construction
16 manager at risk shall forfeit, as a penalty to the public body, an
17 amount equal to 1 percent of the total amount of the contract.

18 15. If a construction manager at risk does not select a
19 subcontractor pursuant to subsection 9 to perform a portion of work
20 on a public work, the construction manager at risk shall notify the
21 public body that the construction manager at risk intends to perform
22 that portion of work. If, after providing such notification, the
23 construction manager at risk substitutes a subcontractor to perform
24 the work, the construction manager at risk shall forfeit, as a penalty
25 to the public body, the lesser of, and excluding any amount of the
26 contract that is attributable to change orders:

27 (a) An amount equal to 2.5 percent of the total amount of the
28 contract; or

29 (b) An amount equal to 35 percent of the estimate by the
30 engineer of the cost of the work the construction manager at risk
31 selected himself or herself to perform on the public work.

32 16. The construction manager at risk shall make available to
33 the public the name of each subcontractor who submits a proposal.

34 17. If a public work is being constructed in phases, and a
35 construction manager at risk selects a subcontractor pursuant to
36 subsection 9 for the provision of labor, materials or equipment for
37 any phase of that construction, the construction manager at risk may
38 select that subcontractor for the provision of labor, materials or
39 equipment for any other phase of the construction without following
40 the requirements of subsections 3 to 11, inclusive.

41 18. As used in this section, "general terms" has the meaning
42 ascribed to it in NRS 338.141.



1 **Sec. 15.** NRS 244A.058 is hereby amended to read as follows:
2 244A.058 1. A board that has adopted an ordinance imposing
3 a fee pursuant to NRS 244A.810 may, on behalf of the county and in
4 its name:

5 (a) Acquire, lease, improve, equip, operate and maintain within
6 the county a minor league baseball stadium project.

7 (b) Subject to the provisions of chapter 350 of NRS, issue
8 revenue bonds of the county to acquire, lease, improve or equip, or
9 any combination thereof, within the county a minor league baseball
10 stadium project.

11 2. Bonds issued pursuant to this section must be payable from
12 the proceeds of the fee imposed by the county pursuant to NRS
13 244A.810 and may be additionally secured by and payable from the
14 gross or net revenues of the minor league baseball stadium project,
15 including, without limitation, amounts received from any minor
16 league baseball team pursuant to a contract with that team, fees,
17 rates and charges for the use of the stadium by a minor league
18 baseball team or any other uses of the stadium, and related uses,
19 including, without limitation, parking and concessions, surcharges
20 on tickets in an amount approved by the board, grants, whether
21 conditional or unconditional, made for the payment of debt service
22 or otherwise for the purposes of the minor league baseball stadium
23 project, and any and all other sources of revenue attributable to the
24 minor league baseball stadium project as provided by the board in
25 the ordinance authorizing the issuance of bonds or any instrument
26 supplemental or appertaining thereto.

27 3. The provisions of chapters 332, 338 and 339 of NRS do not
28 apply to a contract entered into by a county and a private developer
29 pursuant to which the private developer constructs a minor league
30 baseball stadium project, except that the contract must include a
31 provision stating that the requirements of NRS ~~338.010~~ **338.013**
32 to 338.090, inclusive, apply to any construction work to be
33 performed under the contract. *The board, the private developer and*
34 *any contractor and subcontractor on the minor league baseball*
35 *stadium project shall comply with the provisions of NRS 338.013*
36 *to 338.090, inclusive, in the same manner as if the board had*
37 *undertaken the minor league baseball stadium project or had*
38 *awarded the contract.*

39 **Sec. 16.** NRS 244A.763 is hereby amended to read as follows:
40 244A.763 1. NRS 244A.669 to 244A.763, inclusive, without
41 reference to other statutes of this State, constitute full authority for
42 the exercise of powers granted in those sections, including, but not
43 limited to, the authorization and issuance of bonds.

44 2. No other act or law with regard to the authorization or
45 issuance of bonds that provides for an election, requires an approval,



1 or in any way impedes or restricts the carrying out of the acts
2 authorized in NRS 244A.669 to 244A.763, inclusive, to be done,
3 applies to any proceedings taken or acts done pursuant to those
4 sections, except for laws to which reference is expressly made in
5 those sections or by necessary implication of those sections.

6 3. The provisions of no other law, either general or local,
7 except as provided in NRS 244A.669 to 244A.763, inclusive, apply
8 to the doing of the things authorized in those sections to be done,
9 and no board, agency, bureau, commission or official not designated
10 in those sections has any authority or jurisdiction over the doing of
11 any of the acts authorized in those sections to be done, except:

12 (a) As otherwise provided in those sections.

13 (b) That a project for the generation and transmission of
14 electricity is subject to review and approval by the state regulatory
15 agencies which have jurisdiction of the matters involved, including,
16 without limitation, the Public Utilities Commission of Nevada, the
17 State Environmental Commission and the State Department of
18 Conservation and Natural Resources.

19 4. No notice, consent or approval by any public body or officer
20 thereof may be required as a prerequisite to the sale or issuance of
21 any bonds, the making of any contract or lease, or the exercise of
22 any other power under NRS 244A.669 to 244A.763, inclusive,
23 except as provided in those sections.

24 5. A project is not subject to any requirements relating to
25 public buildings, structures, ground works or improvements
26 imposed by the statutes of this State or any other similar
27 requirements which may be lawfully waived by this section, and any
28 requirement of competitive bidding or other restriction imposed on
29 the procedure for award of contracts for such purpose or the lease,
30 sale or other disposition of property of the counties is not applicable
31 to any action taken pursuant to NRS 244A.669 to 244A.763,
32 inclusive, except that the provisions of NRS ~~338.010~~ **338.013** to
33 338.090, inclusive, apply to any contract for new construction,
34 repair or reconstruction for which tentative approval for financing is
35 granted on or after January 1, 1992, by the county for work to be
36 done in a project. *The board of county commissioners, the lessee,*
37 *purchaser or obligor or designee thereof, any contractor who is*
38 *awarded a contract or entered into an agreement to perform the*
39 *construction, repair or reconstruction and any subcontractor who*
40 *performs any portion of the construction, repair or reconstruction*
41 *shall comply with the provisions of NRS 338.013 to 338.090,*
42 *inclusive, in the same manner as if the board of county*
43 *commissioners had undertaken the project or had awarded the*
44 *contract.*



* A B 4 0 6 R 1 *

1 6. Any bank or trust company located within or without this
2 State may be appointed and act as a trustee with respect to bonds
3 issued and projects financed pursuant to NRS 244A.669 to
4 244A.763, inclusive, without the necessity of associating with any
5 other person or entity as cofiduciary except that such association is
6 not prohibited.

7 7. The powers conferred by NRS 244A.669 to 244A.763,
8 inclusive, are in addition and supplemental to, and not in
9 substitution for, and the limitations imposed by those sections do
10 not affect the powers conferred by any other law.

11 8. No part of NRS 244A.669 to 244A.763, inclusive, repeals or
12 affects any other law or part thereof, except to the extent that those
13 sections are inconsistent with any other law, it being intended that
14 those sections provide a separate method of accomplishing its
15 objectives, and not an exclusive one.

16 **Sec. 17.** NRS 268.568 is hereby amended to read as follows:

17 268.568 1. NRS 268.512 to 268.568, inclusive, without
18 reference to other statutes of the State, constitute full authority for
19 the exercise of powers granted in those sections, including, but not
20 limited to, the authorization and issuance of bonds.

21 2. No other act or law with regard to the authorization or
22 issuance of bonds that provides for an election, requires an approval,
23 or in any way impedes or restricts the carrying out of the acts
24 authorized in NRS 268.512 to 268.568, inclusive, to be done,
25 including, without limitation, the charter of any city, applies to any
26 proceedings taken or acts done pursuant to those sections, except for
27 laws to which reference is expressly made in those sections.

28 3. The provisions of no other law, either general or local,
29 except as provided in NRS 268.512 to 268.568, inclusive, apply to
30 the doing of the things authorized in NRS 268.512 to 268.568,
31 inclusive, to be done, and no board, agency, bureau, commission or
32 official not designated in those sections has any authority or
33 jurisdiction over the doing of any of the acts authorized in those
34 sections to be done, except as otherwise provided in those sections.

35 4. No notice, consent or approval by any public body or officer
36 thereof may be required as a prerequisite to the sale or issuance of
37 any bonds, the making of any contract or lease, or the exercise of
38 any other power under NRS 268.512 to 268.568, inclusive, except
39 as provided in those sections.

40 5. A project is not subject to any requirements relating to
41 public buildings, structures, ground works or improvements
42 imposed by the statutes of this state or any other similar
43 requirements which may be lawfully waived by this section, and any
44 requirement of competitive bidding or other restriction imposed on
45 the procedure for award of contracts for such purpose or the lease,



1 sale or other disposition of property of the cities is not applicable to
2 any action taken pursuant to NRS 268.512 to 268.568, inclusive,
3 except that the provisions of NRS ~~338.010~~ **338.013** to 338.090,
4 inclusive, apply to any contract for new construction, repair or
5 reconstruction for which tentative approval for financing is granted
6 on or after January 1, 1992, by the city for work to be done in a
7 project. *The governing body, the lessee, purchaser or obligor*
8 *or designee thereof, any contractor who is awarded a contract or*
9 *enters into an agreement to perform the construction, repair or*
10 *reconstruction in a project and any subcontractor who performs*
11 *any portion of the construction, repair or reconstruction in a*
12 *project shall comply with the provisions of NRS 338.013 to*
13 *338.090, inclusive, in the same manner as if the governing body*
14 *had undertaken the project or had awarded the contract.*

15 6. Notwithstanding the provisions of NRS 662.245 or any other
16 specific statute to the contrary, any bank or trust company located
17 within or without this state may be appointed and act as a trustee
18 with respect to bonds issued and projects financed pursuant to NRS
19 268.512 to 268.568, inclusive, without meeting the qualifications set
20 forth in NRS 662.245.

21 7. The powers conferred by NRS 268.512 to 268.568,
22 inclusive, are in addition and supplemental to, and not in
23 substitution for, and the limitations imposed by those sections do
24 not affect the powers conferred by, any other law.

25 8. No part of NRS 268.512 to 268.568, inclusive, repeals or
26 affects any other law or part thereof, except to the extent that those
27 sections are inconsistent with any other law, it being intended that
28 those sections provide a separate method of accomplishing its
29 objectives, and not an exclusive one.

30 **Sec. 18.** NRS 271.710 is hereby amended to read as follows:

31 271.710 1. A governing body may adopt an ordinance
32 pursuant to NRS 271.325 creating a district and ordering a project to
33 be acquired or improved and may contract with a person to construct
34 or improve a project, issue bonds or otherwise finance the cost of
35 the project and levy assessments, without complying with the
36 provisions of NRS 271.305 to 271.320, inclusive, 271.330 to
37 271.345, inclusive, 271.380 and 271.385 and, except as otherwise
38 provided in this section, the provisions of any law requiring public
39 bidding or otherwise imposing requirements on any public contract,
40 project, works or improvements, including, without limitation,
41 chapters 332, 338 and 339 of NRS, if the governing body has
42 entered into a written agreement with the owners of all of the
43 assessable property within the district which states that:



1 (a) The governing body agrees to enter into a contract for the
2 acquisition, construction or improvement of the project or projects
3 in the district which includes:

4 (1) A provision stating that the requirements of NRS
5 ~~338.010~~ **338.013** to 338.090, inclusive, apply to any construction
6 work to be performed under the contract; and

7 (2) The price, stated as a lump sum or as unit prices, which
8 the governing body agrees to pay for the project if the project meets
9 all requirements and specifications in the contract.

10 (b) The owners of the assessable property agree that if the rate
11 of interest on any assessment levied for the district is determined
12 from time to time as provided in NRS 271.487, the owners will
13 provide written notice to the governing body in a timely manner
14 when a parcel of the assessable property in the district is sold to a
15 person who intends to occupy a dwelling unit on the parcel as his or
16 her residence.

17 (c) The owners of the assessable property agree that the
18 governing body may create the district, levy the assessments and for
19 all other purposes relating to the district proceed pursuant to the
20 provisions of this section.

21 2. If an ordinance is adopted and the agreement entered into
22 pursuant to subsection 1 so states:

23 (a) The governing body may amend the ordinance creating the
24 district, change the assessment roll and redistribute the assessments
25 required by NRS 271.390 in the same manner in which these actions
26 were originally taken to add additional property to the district. The
27 assessments may be redistributed between the assessable property
28 originally in the district and the additional assessable property if:

29 (1) The owners of additional assessable property also consent
30 in writing to inclusion of their property in the district and to the
31 amount of the assessment against their property; and

32 (2) The redistribution of the assessments is not prohibited by
33 any covenants made for the benefit of the owners of any bonds or
34 interim warrants issued for the district.

35 (b) The governing body may amend the ordinance creating the
36 district, change the assessment roll and redistribute the assessments
37 required by NRS 271.390 in the same manner in which these actions
38 were originally taken to remove assessable property from the
39 district. The assessments may be redistributed among the assessable
40 property remaining in the district if:

41 (1) The owners of the remaining assessable property consent
42 in writing to the amount of the revised assessment on their property;
43 and



1 (2) The redistribution of the assessments is not prohibited by
2 any covenants made for the benefit of the owners of any bonds or
3 interim warrants issued for the district.

4 (c) The governing body may adopt any ordinance pertaining to
5 the district including the ordinance creating the district required by
6 NRS 271.325, the ordinance authorizing interim warrants required
7 by NRS 271.355, the ordinance levying assessments required by
8 NRS 271.390, the ordinance authorizing bonds required by NRS
9 271.475 or any ordinance amending those ordinances after a single
10 reading and without holding a hearing thereon, as if an emergency
11 exists, upon an affirmative vote of not less than two-thirds of all
12 voting members of the governing body, excluding from any
13 computation any vacancy on the governing body and any members
14 thereon who may vote to break a tie vote, and provide that the
15 ordinances become effective at the time an emergency ordinance
16 would have become effective. The provisions of NRS 271.308 do
17 not apply to any such ordinance.

18 (d) The governing body may provide for a reserve fund, letter of
19 credit, surety bond or other collateral for payment of any interim
20 warrants or bonds issued for the district and include all or any
21 portion of the costs thereof in the amounts assessed against the
22 property in the district and in the amount of bonds issued for the
23 district. The governing body may provide for the disposition of
24 interest earned on the reserve fund and other bond proceeds, for
25 the disposition of unexpended bond proceeds after completion of the
26 project and for the disposition of the unexpended balance in the
27 reserve fund after payment in full of the bonds for the district.

28 3. If the governing body of a municipality forms a district
29 pursuant to the provisions of this section, the governing body:

30 (a) Is not required to adopt the resolutions required pursuant to
31 the provisions of NRS 271.280, 271.310, 271.360 and 271.390.

32 (b) Shall be deemed to have adopted the resolution required
33 pursuant to the provisions of NRS 271.325 if the plans and
34 specifications are sufficiently specific to allow a competent
35 contractor with the assistance of a competent engineer to estimate
36 the cost of constructing the project and to construct the project.

37 ***4. The governing body, the owners of the assessable property,***
38 ***any contractor who is awarded a contract or enters into an***
39 ***agreement to perform the construction work on a project pursuant***
40 ***to this section, and any subcontractor who performs any portion of***
41 ***the construction work on the project shall comply with the***
42 ***provisions of NRS 338.013 to 338.090, inclusive, in the same***
43 ***manner as if the governing body had undertaken the project or***
44 ***had awarded the contract.***



1 **Sec. 19.** NRS 271.800 is hereby amended to read as follows:

2 271.800 1. A governing body may, pursuant to NRS 271.275
3 or 271.710, establish a district to finance an underground conversion
4 project. Before the governing body may adopt an ordinance
5 pursuant to NRS 271.325 to establish such a district, each service
6 provider that owns the overhead service facilities to be converted to
7 underground facilities must submit its written approval of the
8 project to the governing body. The governing body shall not
9 establish a district to finance an underground conversion project
10 without receiving the written approval of each such service provider
11 pursuant to this subsection.

12 2. Before initiating the establishment of a district pursuant to
13 this section, the governing body must request in writing and receive
14 from each service provider that owns the overhead service facilities
15 to be converted in the proposed improvement district a written
16 estimate of the cost to convert those facilities to underground
17 facilities. The service provider shall provide its estimate of the cost
18 of the conversion to the governing body not later than 120 days after
19 the service provider receives the request from the governing body.

20 3. If a district already exists for the location for which the
21 underground conversion project is proposed, the governing body
22 may, pursuant to NRS 271.295, combine the underground
23 conversion project with other projects in that district.

24 4. An underground conversion project must be constructed by
25 one or more of the service providers that own the overhead service
26 facilities to be converted, pursuant to a written agreement between
27 the governing body and each service provider that will engage in the
28 construction. Such a project must be constructed in accordance with
29 the standard underground practices and procedures approved by the
30 Public Utilities Commission of Nevada.

31 5. The provisions of any law requiring public bidding or
32 otherwise imposing requirements on any public contract, project,
33 works or improvements, including, without limitation, the
34 provisions of chapters 332, 338 and 339 of NRS, do not apply to a
35 contract entered into by a municipality and a service provider
36 pursuant to this section, except that the contract must include a
37 provision stating that the requirements of NRS ~~338.010~~ **338.013**
38 to 338.090, inclusive, apply to any construction work to be
39 performed under the contract. *The governing body, the service
40 provider, any contractor who is awarded a contract or enters into
41 an agreement to perform the construction work on an
42 underground conversion project, and any subcontractor who
43 performs any portion of the construction work on an underground
44 conversion project shall comply with the provisions of NRS
45 338.013 to 338.090, inclusive, in the same manner as if the*



1 *governing body had undertaken the underground conversion*
2 *project or had awarded the contract.*

3 6. Construction on an underground conversion project
4 approved pursuant to this chapter may not commence until:

5 (a) An ordinance creating a district is adopted pursuant to
6 NRS 271.325;

7 (b) The time for filing an appeal pursuant to NRS 271.315 has
8 expired, or if such an appeal has been timely filed, a final,
9 nonappealable judgment upholding the validity of the ordinance has
10 been rendered;

11 (c) Arrangements for the financing of the construction have been
12 completed through the issuance of bonds or interim warrants; and

13 (d) The service provider has obtained all applicable permits,
14 easements and licenses necessary to convert the facilities.

15 **Sec. 20.** NRS 278C.240 is hereby amended to read as follows:

16 278C.240 The provisions of NRS ~~338.010~~ **338.013** to
17 338.090, inclusive, apply to any construction work to be performed
18 under any contract or other agreement related to an undertaking
19 ordered by a governing body pursuant to this chapter. *The*
20 *governing body, the developer, any contractor who is awarded the*
21 *contract or enters into the agreement to perform the construction*
22 *work and any subcontractor who performs any portion of the*
23 *construction work related to such an undertaking shall comply*
24 *with the provisions of NRS 338.013 to 338.090, inclusive, in the*
25 *same manner as if the governing body had undertaken the*
26 *undertaking or had awarded the contract.*

27 **Sec. 21.** NRS 279.500 is hereby amended to read as follows:

28 279.500 1. The provisions of NRS ~~338.010~~ **338.013** to
29 338.090, inclusive, apply to any contract for new construction,
30 repair or reconstruction which is awarded on or after October 1,
31 1991, by an agency for work to be done in a project.

32 2. If an agency:

33 (a) Provides property for development at less than the fair
34 market value of the property;

35 (b) Provides a loan to a small business pursuant to NRS 279.700
36 to 279.740, inclusive; or

37 (c) Provides financial incentives to a developer with a value of
38 more than \$100,000,

39 ↪ regardless of whether the project is publicly or privately owned,
40 the agency must provide in the loan agreement with the small
41 business or the agreement with the developer, as applicable, that the
42 development project is subject to the provisions of NRS ~~338.010~~
43 **338.013** to 338.090, inclusive, to the same extent as if the agency
44 had awarded the contract for the project. *The agency, the small*
45 *business or the developer, as applicable, any contractor who is*



1 *awarded the contract or enters into the agreement to perform the*
2 *project, and any subcontractor who performs any portion of the*
3 *project shall comply with the provisions of NRS 338.013 to*
4 *338.090, inclusive, in the same manner as if the agency had*
5 *undertaken the project or had awarded the contract.* This
6 subsection applies only to the project covered by the loan agreement
7 between the agency and the small business or the agreement
8 between the agency and the developer, as applicable. This
9 subsection does not apply to future development of the property
10 unless an additional loan, or additional financial incentives with a
11 value of more than \$100,000, are provided to the small business or
12 developer, as applicable.

13 **Sec. 22.** NRS 318.140 is hereby amended to read as follows:

14 318.140 In the case of a district created wholly or in part for
15 acquiring sanitary sewer improvements:

16 1. The board may:

17 (a) Construct, reconstruct, improve or extend the sanitary sewer
18 system or any part thereof, including, without limitation, mains,
19 laterals, wyes, tees, meters and collection, treatment and disposal
20 plants.

21 (b) Sell any product or by-product thereof and acquire the
22 appropriate outlets within or without the district and extend the
23 sewer lines of the district thereto.

24 (c) Enter into and perform, without any election, contracts or
25 agreements for a term not to exceed 50 years with any person or a
26 public agency, to provide the services, equipment or supplies
27 necessary or appropriate to conduct tests of the discharge of
28 pollutants into the state's water and to report the results of those
29 tests as required by chapter 445A of NRS or the regulations adopted
30 thereunder. For the purposes of this paragraph, "public agency" has
31 the meaning ascribed to it in NRS 277.100.

32 2. The provisions of chapters 332 and 339 of NRS do not apply
33 to a contract under which a private developer extends a sewer main
34 to his or her development or installs any appurtenances to that
35 extension. Except as otherwise provided in this subsection, the
36 provisions of chapter 338 of NRS do not apply to such a contract. If
37 the developer does not pay all of the initial construction costs of the
38 extension, the provisions of NRS 338.013 to 338.090, inclusive,
39 apply to the contract. *The board, the developer, any contractor who*
40 *is awarded a contract or enters into an agreement to perform the*
41 *extension or installation of appurtenances to the extension, and*
42 *any subcontractor who performs any portion of the extension or*
43 *installation of appurtenances to the extension shall comply with*
44 *the provisions of NRS 338.013 to 338.090, inclusive, in the same*



1 *manner as if the board had undertaken the extension or had*
2 *awarded the contract.*

3 **Sec. 23.** NRS 318.144 is hereby amended to read as follows:

4 318.144 1. The board may acquire, construct, reconstruct,
5 improve, extend or better a works, system or facilities for the
6 supply, storage and distribution of water for private and public
7 purposes.

8 2. The provisions of chapters 332 and 339 of NRS do not apply
9 to a contract under which a private developer constructs water
10 facilities for his or her development. Except as otherwise provided
11 in this subsection, the provisions of chapter 338 of NRS do not
12 apply to such a contract. If the developer does not pay all of the
13 initial construction costs of the facility, the provisions of NRS
14 338.013 to 338.090, inclusive, apply to the contract. *The board, the*
15 *developer, any contractor who is awarded a contract or enters into*
16 *an agreement to perform the construction of the facility, and any*
17 *subcontractor who performs any portion of the construction of the*
18 *facility shall comply with the provisions of NRS 338.013 to*
19 *338.090, inclusive, in the same manner as if the board had*
20 *undertaken the construction or had awarded the contract.*

21 **Sec. 24.** NRS 332.390 is hereby amended to read as follows:

22 332.390 1. If a performance contract entered into pursuant to
23 NRS 332.300 to 332.440, inclusive, requires the employment of
24 skilled mechanics, skilled workers, semiskilled mechanics,
25 semiskilled workers or unskilled labor to perform the performance
26 contract, the performance contract must include a provision relating
27 to the prevailing wage as required pursuant to NRS ~~338.020~~
28 *338.013* to 338.090, inclusive. *The local government, the qualified*
29 *service company, any contractor who is awarded a contract or*
30 *enters into an agreement to perform the work for the performance*
31 *contract, and any subcontractor who performs any portion of that*
32 *work shall comply with the provisions of NRS 338.013 to 338.090,*
33 *inclusive, in the same manner as if the local government had*
34 *undertaken the work or had awarded the contract.*

35 2. Before a qualified service company enters into a
36 performance contract pursuant to NRS 332.300 to 332.440,
37 inclusive, that exceeds \$100,000, the qualified service company
38 must furnish to the contracting body any bonds required pursuant to
39 NRS 339.025. The provisions of chapter 339 of NRS apply to any
40 performance contract described in this subsection.

41 **Sec. 25.** NRS 333A.120 is hereby amended to read as follows:

42 333A.120 If a performance contract entered into pursuant to
43 this chapter requires the employment of skilled mechanics, skilled
44 workers, semiskilled mechanics, semiskilled workers or unskilled
45 labor to perform the performance contract, the performance contract



1 must include a provision relating to the prevailing wage as required
2 pursuant to NRS ~~338.020~~ **338.013** to 338.090, inclusive. *The*
3 *using agency, the qualified service company, any contractor who*
4 *is awarded a contract or enters into an agreement to perform the*
5 *work for the performance contract, and any subcontractor who*
6 *performs any portion of that work shall comply with the provisions*
7 *of NRS 338.013 to 338.090, inclusive, in the same manner as if the*
8 *using agency had undertaken the work or had awarded the*
9 *contract.*

10 **Sec. 26.** NRS 349.670 is hereby amended to read as follows:

11 349.670 1. NRS 349.400 to 349.670, inclusive, without
12 reference to other statutes of the State, constitute full authority for
13 the exercise of powers granted in those sections, including but not
14 limited to the authorization and issuance of bonds.

15 2. No other act or law with regard to the authorization or
16 issuance of bonds that provides for an election, requires an approval,
17 or in any way impedes or restricts the carrying out of the acts
18 authorized in NRS 349.400 to 349.670, inclusive, to be done,
19 applies to any proceedings taken or acts done pursuant to those
20 sections, except for laws to which reference is expressly made in
21 those sections or by necessary implication of those sections.

22 3. The provisions of no other law, either general or local,
23 except as provided in NRS 349.400 to 349.670, inclusive, apply to
24 the doing of the things authorized in those sections to be done, and
25 no board, agency, bureau, commission or official not designated in
26 those sections has any authority or jurisdiction over the doing of any
27 of the acts authorized in those sections to be done, except as
28 otherwise provided in those sections.

29 4. A project is not subject to any requirements relating to
30 public buildings, structures, ground works or improvements
31 imposed by the statutes of this state or any other similar
32 requirements which may be lawfully waived by this section, and any
33 requirement of competitive bidding or other restriction imposed on
34 the procedure for award of contracts for such purpose or the lease,
35 sale or other disposition of property is not applicable to any action
36 taken pursuant to NRS 349.400 to 349.670, inclusive, except that
37 the provisions of NRS ~~338.010~~ **338.013** to 338.090, inclusive,
38 apply to any contract for new construction, repair or reconstruction
39 for which tentative approval for financing is granted on or after
40 January 1, 1992, by the Director for work to be done in a project.
41 *The Director, the lessee, purchaser, obligor or other enterprise,*
42 *any contractor who is awarded a contract or enters into an*
43 *agreement to perform the construction, repair or reconstruction*
44 *for a project, and any subcontractor who performs any portion of*
45 *such construction, repair or reconstruction shall comply with the*



1 *provisions of NRS 338.013 to 338.090, inclusive, in the same*
2 *manner as if a public body had undertaken the project or had*
3 *awarded the contract.*

4 5. Any bank or trust company located within or without this
5 state may be appointed and act as a trustee with respect to bonds
6 issued and projects financed pursuant to NRS 349.400 to 349.670,
7 inclusive, without the necessity of associating with any other person
8 or entity as cofiduciary, but such an association is not prohibited.

9 6. The powers conferred by NRS 349.400 to 349.670,
10 inclusive, are in addition and supplemental to, and not in
11 substitution for, and the limitations imposed by those sections do
12 not affect the powers conferred by any other law.

13 7. No part of NRS 349.400 to 349.670, inclusive, repeals or
14 affects any other law or part thereof, except to the extent that those
15 sections are inconsistent with any other law, it being intended that
16 those sections provide a separate method of accomplishing its
17 objectives, and not an exclusive one.

18 8. The Director or a person designated by the Director may
19 take any actions and execute and deliver any instruments, contracts,
20 certificates and other documents, including the bonds, necessary or
21 appropriate for the sale and issuance of the bonds or accomplishing
22 the purposes of NRS 349.400 to 349.670, inclusive, without the
23 assistance or intervention of any other officer.

24 **Sec. 27.** NRS 349.956 is hereby amended to read as follows:

25 349.956 A water project is not subject to any requirements
26 relating to public buildings, structures, ground works or
27 improvements imposed by the statutes of this state or any other
28 similar requirements which may be lawfully waived by this section,
29 and any requirement of competitive bidding or other restriction
30 imposed on the procedure for award of contracts for such purpose or
31 the lease, sale or other disposition of property is not applicable to
32 any action taken pursuant to NRS 349.935 to 349.961, inclusive,
33 except that the provisions of NRS ~~338.010~~ **338.013** to 338.090,
34 inclusive, apply to any contract for new construction, repair or
35 reconstruction for which tentative approval for financing is granted
36 on or after January 1, 1992, by the Director or a municipality for
37 work to be done in a water project. *The Director or municipality,*
38 *the lessee, purchaser or other obligor, any contractor who is*
39 *awarded a contract or enters into an agreement to perform the*
40 *construction, repair or reconstruction for a water project, and any*
41 *subcontractor who performs any portion of such construction,*
42 *repair or reconstruction shall comply with the provisions of NRS*
43 *338.013 to 338.090, inclusive, in the same manner as if a public*
44 *body had undertaken the water project or had awarded the*
45 *contract.*



1 **Sec. 28.** NRS 388A.635 is hereby amended to read as follows:

2 388A.635 1. NRS 388A.550 to 388A.695, inclusive, without
3 reference to other statutes of this State, constitute full authority for
4 the exercise of powers granted in those sections, including, without
5 limitation, the authorization and issuance of bonds.

6 2. No other act or law with regard to the authorization or
7 issuance of bonds that provides for an election, requires an approval,
8 or in any way impedes or restricts the carrying out of the acts
9 authorized by NRS 388A.550 to 388A.695, inclusive, to be done,
10 applies to any proceedings taken or acts done pursuant to those
11 sections, except for laws to which reference is expressly made in
12 those sections or by necessary implication of those sections.

13 3. The provisions of no other law, either general or local,
14 except as provided in NRS 388A.550 to 388A.695, inclusive, apply
15 to the doing of the things authorized in those sections to be done,
16 and no board, agency, bureau, commission or official not designated
17 in those sections has any authority or jurisdiction over the doing of
18 any of the acts authorized in those sections to be done, except as
19 otherwise provided in those sections.

20 4. A project is not subject to any requirements relating to
21 public buildings, structures, ground works or improvements
22 imposed by the statutes of this State or any other similar
23 requirements which may be lawfully waived by this section, and any
24 requirement of competitive bidding or other restriction imposed on
25 the procedure for award of contracts for such purpose or the lease,
26 sale or other disposition of property is not applicable to any action
27 taken pursuant to NRS 388A.550 to 388A.695, inclusive **H**, *except*
28 *that the provisions of NRS 338.013 to 338.090, inclusive, apply to*
29 *any contract for new construction, repair or reconstruction for*
30 *which tentative approval for financing is granted on or after*
31 *July 1, 2017, by the Director of the Department of Business and*
32 *Industry. The Director, the lessee, purchaser or other obligor, any*
33 *contractor who is awarded a contract or enters into an agreement*
34 *to perform the construction, repair or reconstruction for the*
35 *project, and any subcontractor who performs any portion of such*
36 *construction, repair or reconstruction shall comply with the*
37 *provisions of NRS 338.013 to 338.090, inclusive, in the same*
38 *manner as if a public body had undertaken the project or had*
39 *awarded the contract.*

40 5. Any bank or trust company located within or without this
41 State may be appointed and act as a trustee with respect to bonds
42 issued and projects financed pursuant to NRS 388A.550 to
43 388A.695, inclusive, without the necessity of associating with any
44 other person or entity as cofiduciary, but such an association is not
45 prohibited.



1 6. The powers conferred by NRS 388A.550 to 388A.695,
2 inclusive, are in addition and supplemental to, and not in
3 substitution for, and the limitations imposed by those sections do
4 not affect, the powers conferred by any other law.

5 7. No part of NRS 388A.550 to 388A.695, inclusive, repeals or
6 affects any other law or part thereof, except to the extent that those
7 sections are inconsistent with any other law, it being intended that
8 those sections provide a separate method of accomplishing its
9 objectives, and not an exclusive one.

10 8. The Director of the Department of Business and Industry or
11 a person designated by the Director of the Department of Business
12 and Industry may take any actions and execute and deliver any
13 instruments, contracts, certificates and other documents, including
14 the bonds, necessary or appropriate for the sale and issuance of the
15 bonds or accomplishing the purposes of NRS 388A.550 to
16 388A.695, inclusive, without the assistance or intervention of any
17 other officer.

18 **Sec. 29.** NRS 408.3886 is hereby amended to read as follows:

19 408.3886 1. After selecting the finalists pursuant to NRS
20 408.3885, the Department shall provide to each finalist a request for
21 final proposals for the project. The request for final proposals must:

22 (a) Set forth the factors that the Department will use to select a
23 design-build team to design and construct the project, including the
24 relative weight to be assigned to each factor; and

25 (b) Set forth the date by which final proposals must be
26 submitted to the Department.

27 2. Except as otherwise provided in this subsection, in assigning
28 the relative weight to each factor for selecting a design-build team
29 pursuant to subsection 1, the Department shall assign, without
30 limitation, a relative weight of 5 percent to the design-build team's
31 possession of both a certificate of eligibility to receive a preference
32 in bidding on public works by the prime contractor on the design-
33 build team, if the design-build team submits a signed affidavit that
34 meets the requirements of subsection 1 of NRS 338.0117, and a
35 certificate of eligibility to receive a preference when competing for
36 public works by all persons who hold a certificate of registration to
37 practice architecture or a license as a professional engineer on the
38 design-build team, and a relative weight of at least 30 percent for the
39 proposed cost of design and construction of the project. If any
40 federal statute or regulation precludes the granting of federal
41 assistance or reduces the amount of that assistance for a particular
42 project because of the provisions of this subsection relating to a
43 preference in bidding on public works or a preference when
44 competing for public works, those provisions of this subsection do



1 not apply insofar as their application would preclude or reduce
2 federal assistance for that project.

3 3. A final proposal submitted by a design-build team pursuant
4 to this section must be prepared thoroughly, be responsive to the
5 criteria that the Department will use to select a design-build team to
6 design and construct the project described in subsection 1 and
7 comply with the provisions of NRS 338.141.

8 4. After receiving the final proposals for the project, the
9 Department shall:

10 (a) Select the most cost-effective and responsive final proposal,
11 using the criteria set forth pursuant to subsections 1 and 2;

12 (b) Reject all the final proposals; or

13 (c) Request best and final offers from all finalists in accordance
14 with subsection 5.

15 5. If the Department determines that no final proposal received
16 is cost-effective or responsive and the Department further
17 determines that requesting best and final offers pursuant to this
18 subsection will likely result in the submission of a satisfactory offer,
19 the Department may prepare and provide to each finalist a request
20 for best and final offers for the project. In conjunction with
21 preparing a request for best and final offers pursuant to this
22 subsection, the Department may alter the scope of the project, revise
23 the estimates of the costs of designing and constructing the project,
24 and revise the selection factors and relative weights described in
25 paragraph (a) of subsection 1. A request for best and final offers
26 prepared pursuant to this subsection must set forth the date by which
27 best and final offers must be submitted to the Department. After
28 receiving the best and final offers, the Department shall:

29 (a) Select the most cost-effective and responsive best and final
30 offer, using the criteria set forth in the request for best and final
31 offers; or

32 (b) Reject all the best and final offers.

33 6. If the Department selects a final proposal pursuant to
34 paragraph (a) of subsection 4 or selects a best and final offer
35 pursuant to paragraph (a) of subsection 5, the Department shall hold
36 a public meeting to:

37 (a) Review and ratify the selection.

38 (b) Partially reimburse the unsuccessful finalists if partial
39 reimbursement was provided for in the request for preliminary
40 proposals pursuant to paragraph (f) of subsection 3 of NRS
41 408.3883. The amount of reimbursement must not exceed, for each
42 unsuccessful finalist, 3 percent of the total amount to be paid to the
43 design-build team as set forth in the design-build contract.

44 (c) Make available to the public a summary setting forth the
45 factors used by the Department to select the successful design-build



1 team and the ranking of the design-build teams who submitted final
2 proposals and, if applicable, best and final offers. The Department
3 shall not release to a third party, or otherwise make public, financial
4 or proprietary information submitted by a design-build team.

5 7. A contract awarded pursuant to this section:

6 (a) Must comply with the provisions of NRS ~~338.020~~ **338.013**
7 to 338.090, inclusive; and

8 (b) Must specify:

9 (1) An amount that is the maximum amount that the
10 Department will pay for the performance of all the work required by
11 the contract, excluding any amount related to costs that may be
12 incurred as a result of unexpected conditions or occurrences as
13 authorized by the contract;

14 (2) An amount that is the maximum amount that the
15 Department will pay for the performance of the professional
16 services required by the contract; and

17 (3) A date by which performance of the work required by the
18 contract must be completed.

19 8. *The Department, the design-build team, any contractor
20 who is awarded a contract or enters into an agreement to perform
21 work on the project, and any subcontractor who performs work on
22 the project shall comply with the provisions of NRS 338.013 to
23 338.090, inclusive, in the same manner as if the Department had
24 undertaken the project or had awarded the contract.*

25 9. A design-build team to whom a contract is awarded pursuant
26 to this section shall:

27 (a) Assume overall responsibility for ensuring that the design
28 and construction of the project is completed in a satisfactory
29 manner; and

30 (b) Use the workforce of the prime contractor on the design-
31 build team to construct at least 15 percent of the project.

32 **Sec. 30.** NRS 543.545 is hereby amended to read as follows:

33 543.545 **1.** Except as otherwise provided in ~~subsection 3,~~
34 **this section,** the provisions of any law requiring public bidding or
35 otherwise imposing requirements on any public contract, project,
36 works or improvements, including, without limitation, the
37 provisions of chapters 332, 338 and 339 of NRS, do not apply to
38 any contract entered into by a flood control district for the
39 construction of a flood control facility pursuant to the master plan, if
40 a majority of the construction costs are paid by a private developer
41 and the written agreement:

42 ~~H-1~~ **(a)** Complies with the requirements of subsection 1 of
43 NRS 543.360;

44 ~~F-2~~ **(b)** Clearly sets forth the computation of the construction
45 costs, and includes the terms and conditions of the contract; and



1 ~~13-1~~ (c) Contains a provision stating that the requirements of
2 NRS ~~338.010~~ 338.013 to 338.090, inclusive, apply to any
3 construction work performed pursuant to the contract.

4 **2. The board, the developer, any contractor who is awarded a**
5 **contract or enters into an agreement to perform the construction**
6 **work, and any subcontractor who performs any portion of the**
7 **construction work shall comply with the provisions of NRS**
8 **338.013 to 338.090, inclusive, in the same manner as if the board**
9 **had undertaken the construction work or had awarded the**
10 **contract.**

11 **Sec. 31.** NRS 701B.265 is hereby amended to read as follows:

12 701B.265 1. The installation of a solar energy system on
13 property owned or occupied by a public body pursuant to NRS
14 701B.010 to 701B.290, inclusive, shall be deemed to be a public
15 work for the purposes of chapters 338 and 341 of NRS, regardless of
16 whether the installation of the solar energy system is financed in
17 whole or in part by public money. **The public body, the utility, any**
18 **contractor who is awarded a contract or entered into an agreement**
19 **to perform the installation and any subcontractor who performs**
20 **any portion of the installation shall comply with the provisions of**
21 **NRS 338.013 to 338.090, inclusive, in the same manner as if the**
22 **public body had undertaken the installation or had awarded the**
23 **contract.**

24 2. The amount of any incentive issued by a utility relating to
25 the installation of a solar energy system on property owned or
26 occupied by a public body may not be used to reduce the cost of the
27 project to an amount which would exempt the project from the
28 requirements of NRS ~~338.020~~ 338.013 to 338.090, inclusive.

29 3. As used in this section, "public body" means the State or a
30 county, city, town, school district or any public agency of this State
31 or its political subdivisions.

32 **Sec. 32.** NRS 701B.625 is hereby amended to read as follows:

33 701B.625 1. The installation of a wind energy system on
34 property owned or occupied by a public body pursuant to NRS
35 701B.400 to 701B.650, inclusive, shall be deemed to be a public
36 work for the purposes of chapters 338 and 341 of NRS, regardless of
37 whether the installation of the wind energy system is financed in
38 whole or in part by public money. **The public body, the utility, any**
39 **contractor who is awarded a contract or entered into an agreement**
40 **to perform the installation and any subcontractor who performs**
41 **any portion of the installation shall comply with the provisions of**
42 **NRS 338.013 to 338.090, inclusive, in the same manner as if the**
43 **public body had undertaken the installation or had awarded the**
44 **contract.**



1 2. The amount of any incentive issued by a utility relating to
2 the installation of a wind energy system on property owned or
3 occupied by a public body may not be used to reduce the cost of the
4 project to an amount which would exempt the project from the
5 requirements of NRS ~~338.020~~ 338.013 to 338.090, inclusive.

6 3. As used in this section, "public body" means the State or a
7 county, city, town, school district or any public agency of this State
8 or its political subdivisions.

9 **Sec. 33.** Section 9.5 of the Reno-Tahoe Airport Authority Act,
10 being chapter 474, Statutes of Nevada 1977, as last amended by
11 chapter 98, Statutes of Nevada 2013, at page 335, is hereby
12 amended to read as follows:

13 Sec. 9.5. 1. Except as otherwise determined by the
14 Board or provided in subsection 2, the provisions of any law
15 requiring public bidding or otherwise imposing requirements
16 on any public contract, project, acquisition, works or
17 improvements, including, without limitation, the provisions
18 of chapters 332, 338 and 339 of NRS, do not apply to any
19 contract entered into by the Board if the Board:

20 (a) Complies with the provisions of subsection 3; and

21 (b) Finances the contract, project, acquisition, works or
22 improvement by means of:

23 (1) Revenue bonds issued by the Authority; or

24 (2) An installment obligation of the Authority in a
25 transaction in which:

26 (I) The Authority acquires real or personal property
27 and another person acquires or retains a security interest in
28 that or other property; and

29 (II) The obligation by its terms is extinguished by
30 failure of the Board to appropriate money for the ensuing
31 fiscal year for payment of the amounts then due.

32 2. A contract entered into by the Board pursuant to this
33 section must:

34 (a) Contain a provision stating that the requirements of
35 NRS ~~338.010~~ 338.013 to 338.090, inclusive, apply to any
36 construction work performed pursuant to the contract; and

37 (b) If the contract is with a design professional who is not
38 a member of a design-build team, comply with the provisions
39 of NRS 338.155. As used in this paragraph, "design
40 professional" has the meaning ascribed to it in subsection 7 of
41 NRS 338.010.

42 3. For contracts entered into pursuant to this section that
43 are exempt from the provisions of chapters 332, 338 and 339
44 of NRS pursuant to subsection 1, the Board shall adopt
45 regulations pursuant to subsection ~~4~~ 5 which establish:



1 (a) One or more competitive procurement processes for
2 letting such a contract; and

3 (b) A method by which a bid on such a contract will be
4 adjusted to give a 5 percent preference to a contractor who
5 would qualify for a preference pursuant to NRS 338.147, if:

6 (1) The estimated cost of the contract exceeds
7 \$250,000; and

8 (2) Price is a factor in determining the successful bid
9 on the contract.

10 4. *The Board, any contractor who is awarded a*
11 *contract or enters into an agreement to perform the*
12 *construction work, and any subcontractor who performs*
13 *any portion of the construction work shall comply with*
14 *the provisions of NRS 338.013 to 338.090, inclusive, in the*
15 *same manner as if the Board had undertaken the*
16 *construction work or had awarded the contract.*

17 5. The Board:

18 (a) Shall, before adopting, amending or repealing a
19 permanent or temporary regulation pursuant to subsection 3,
20 give at least 30 days' notice of its intended action. The notice
21 must:

22 (1) Include:

23 (I) A statement of the need for and purpose of the
24 proposed regulation.

25 (II) Either the terms or substance of the proposed
26 regulation or a description of the subjects and issues involved.

27 (III) The estimated cost to the Board for
28 enforcement of the proposed regulation.

29 (IV) The time when, the place where and the
30 manner in which interested persons may present their views
31 regarding the proposed regulation.

32 (V) A statement indicating whether the regulation
33 establishes a new fee or increases an existing fee.

34 (2) State each address at which the text of the
35 proposed regulation may be inspected and copied.

36 (3) Be mailed to all persons who have requested in
37 writing that they be placed upon a mailing list, which must be
38 kept by the Authority for that purpose.

39 (b) May adopt, if it has adopted a temporary regulation
40 after notice and the opportunity for a hearing as provided in
41 this subsection, after providing a second notice and the
42 opportunity for a hearing, a permanent regulation.

43 (c) Shall, in addition to distributing the notice to each
44 recipient of the Board's regulations, solicit comment



1 generally from the public and from businesses to be affected
2 by the proposed regulation.

3 (d) Shall, before conducting a workshop pursuant to
4 paragraph (g), determine whether the proposed regulation is
5 likely to impose a direct and significant economic burden
6 upon a small business or directly restrict the formation,
7 operation or expansion of a small business. If the Board
8 determines that such an impact is likely to occur, the Board
9 shall:

10 (1) Insofar as practicable, consult with owners and
11 officers of small businesses that are likely to be affected by
12 the proposed regulation.

13 (2) Consider methods to reduce the impact of the
14 proposed regulation on small businesses.

15 (3) Prepare a small business impact statement and
16 make copies of the statement available to the public at the
17 workshop conducted pursuant to paragraph (g) and the public
18 hearing held pursuant to paragraph (h).

19 (e) Shall ensure that a small business impact statement
20 prepared pursuant to subparagraph (3) of paragraph (d) sets
21 forth the following information:

22 (1) A description of the manner in which comment
23 was solicited from affected small businesses, a summary of
24 their response and an explanation of the manner in which
25 other interested persons may obtain a copy of the summary.

26 (2) The estimated economic effect of the proposed
27 regulation on the small businesses which it is to regulate,
28 including, without limitation:

29 (I) Both adverse and beneficial effects; and

30 (II) Both direct and indirect effects.

31 (3) A description of the methods that the Board
32 considered to reduce the impact of the proposed regulation on
33 small businesses and a statement regarding whether the Board
34 actually used any of those methods.

35 (4) The estimated cost to the Board for enforcement of
36 the proposed regulation.

37 (5) If the proposed regulation provides a new fee or
38 increases an existing fee, the total annual amount the Board
39 expects to collect and the manner in which the money will be
40 used.

41 (f) Shall afford a reasonable opportunity for all interested
42 persons to submit data, views or arguments upon the
43 proposed regulation, orally or in writing.

44 (g) Shall, before holding a public hearing pursuant to
45 paragraph (h), conduct at least one workshop to solicit



1 comments from interested persons on the proposed
2 regulation. Not less than 15 days before the workshop, the
3 Board shall provide notice of the time and place set for the
4 workshop:

5 (1) In writing to each person who has requested to be
6 placed on a mailing list; and

7 (2) In any other manner reasonably calculated to
8 provide such notice to the general public and any business
9 that may be affected by a proposed regulation which
10 addresses the general topics to be considered at the workshop.

11 (h) Shall set a time and place for an oral public hearing,
12 but if no one appears who will be directly affected by the
13 proposed regulation and requests an oral hearing, the Board
14 may proceed immediately to act upon any written
15 submissions. The Board shall consider fully all written and
16 oral submissions respecting the proposed regulation.

17 (i) Shall keep, retain and make available for public
18 inspection written minutes of each public hearing held
19 pursuant to paragraph (h) in the manner provided in
20 subsections 1 and 2 of NRS 241.035. A copy of the minutes
21 must be made available to a member of the public upon
22 request at no charge pursuant to NRS 241.035.

23 (j) May record each public hearing held pursuant to
24 paragraph (h) and make those recordings available for public
25 inspection in the manner provided in subsection 4 of NRS
26 241.035. A copy of the audio recordings must be made
27 available to a member of the public upon request at no charge
28 pursuant to NRS 241.035.

29 (k) Shall ensure that a small business which is aggrieved
30 by a regulation adopted pursuant to this subsection may
31 object to all or a part of the regulation by filing a petition with
32 the Board within 90 days after the date on which the
33 regulation was adopted. Such petition may be based on the
34 following:

35 (1) The Board failed to prepare a small business
36 impact statement as required pursuant to subparagraph (3) of
37 paragraph (d); or

38 (2) The small business impact statement prepared by
39 the Board did not consider or significantly underestimated the
40 economic effect of the regulation on small businesses.

41 ➤ After receiving a petition pursuant to this paragraph, the
42 Board shall determine whether the petition has merit. If the
43 Board determines that the petition has merit, the Board may,
44 pursuant to this subsection, take action to amend the
45 regulation to which the small business objected.



1 ~~5.1~~ 6. The determinations made by the Board pursuant
2 to this section are conclusive unless it is shown that the Board
3 acted with fraud or a gross abuse of discretion.

4 **Sec. 33.5.** Section 14.5 of chapter 487, Statutes of Nevada
5 2013, at page 2985, is hereby amended to read as follows:

6 Sec. 14.5. 1. On or before January 1 of each year,
7 each public body that enters into a contract during the
8 immediately preceding year with a construction manager at
9 risk pursuant to NRS 338.169 to 338.16995, inclusive, for
10 preconstruction services for or to construct a public work
11 shall submit a report to the Director of the Legislative
12 Counsel Bureau for transmittal to the Legislature, or to the
13 Legislative Commission if the report is submitted during an
14 odd-numbered year.

15 2. The report required by subsection 1 must include, for
16 each public work for which the public body enters into a
17 contract with a construction manager at risk:

18 (a) A description of the public work;

19 (b) *The name of the applicants who submitted proposals*
20 *for the public work that were selected for interviews*
21 *pursuant to subsection 4 of NRS 338.1693;*

22 (c) The name of the *applicant who was selected as the*
23 *construction manager at risk* ~~;~~

24 ~~—(e) for the public work;~~

25 (d) *Whether the construction manager at risk*
26 *substituted a different employee of the construction*
27 *manager at risk for any employee whose resume was*
28 *submitted pursuant to paragraph (f) of subsection 3 of NRS*
29 *338.1692, and, if so, the reason for the substitution;*

30 (e) If the public work has not been completed at the time
31 the report is submitted, a report on the progress of the public
32 work; and

33 ~~(d)~~ (f) If the public work has been completed at the
34 time the report is submitted ~~;~~ ~~and~~ :

35 (1) *An explanation of whether ~~the public body is~~*
36 *satisfied with* the public work ~~and with~~ *was completed in*
37 *accordance with* the contractual arrangement with the
38 construction manager at risk ~~;~~ *, including, without*
39 *limitation, if the public work was completed on time; and*

40 (2) *A statement of the guaranteed maximum price for*
41 *the public work and the actual price at which the public*
42 *work was completed.*

43 3. As used in this section:



1 (a) "Public body" has the meaning ascribed to it in
2 subsection 16 of NRS 338.010, as amended by section 2 of
3 this act.

4 (b) "Public work" has the meaning ascribed to it in
5 subsection 17 of NRS 338.010, as amended by section 2 of
6 this act.

7 **Sec. 34.** Section 15 of chapter 487, Statutes of Nevada 2013,
8 at page 2986, is hereby amended to read as follows:

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

12 2. Section 1 of this act expires by limitation on June 30,
13 ~~2017.~~ **2021.**

14 3. Sections 2.3, 2.5, 3.5, 4.5, 5.3, 5.5, 5.7, 6.5, 13.5, 14.1
15 and 14.7 of this act become effective on July 1, ~~2017.~~ **2021.**

16 **Sec. 35.** Section 9 of chapter 123, Statutes of Nevada 2015, at
17 page 457, is hereby amended to read as follows:

18 Sec. 9. 1. This act becomes effective upon passage
19 and approval.

20 2. Sections 6 and 7.5 of this act expire by limitation on
21 June 30, ~~2017.~~ **2021.**

22 **Sec. 35.5.** The provisions of subsection 1 of NRS 218D.380
23 do not apply to any provision of this act which adds or revises a
24 requirement to submit a report to the Legislature.

25 **Sec. 36.** NRS 338.018, 338.075 and 338.1405 are hereby
26 repealed.

27 **Sec. 37.** 1. This section and sections 33.5, 34, 35 and 35.5 of
28 this act become effective upon passage and approval.

29 2. Sections 1 to 33, inclusive, and 36 of this act become
30 effective on July 1, 2017.

31 3. Sections 1 and 9 to 14, inclusive, of this act expire by
32 limitation on June 30, 2021.

33 4. Sections 31 and 32 of this act expire by limitation on
34 December 31, 2025.

TEXT OF REPEALED SECTIONS

338.018 Applicability to certain contracts for construction work of Nevada System of Higher Education. 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 \$250,000 even if the construction



work does not qualify as a public work, as defined in subsection 17 of NRS 338.010.

338.075 Applicability to certain contracts for construction work of Nevada System of Higher Education. 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 \$250,000 even if the construction work does not qualify as a public work, as defined in subsection 17 of NRS 338.010.

338.1405 Requirements regarding agreements with labor organizations prohibited; exceptions.

1. The Legislature hereby finds and declares that the provisions of this section prohibiting requirements for certain terms in contracts entered into by a public body for a public work or entered into by the awardee of a grant, tax abatement, tax credit or tax exemption from a public body are:

(a) Intended to provide:

(1) More economical, nondiscriminatory, neutral and efficient contracts for public works by public bodies in this State as market participants; and

(2) Fair and open competition in awarding contracts, grants, tax abatements, tax credits and tax exemptions.

(b) The best method for effectuating the intent of paragraph (a).

2. Except as otherwise provided in subsection 5 or 6, a public body, in any advertisement, solicitation, specification, contract or any other document related to a contract for a public work, shall not:

(a) Require or prohibit an eligible bidder, contractor or subcontractor from entering into or adhering to an agreement with one or more labor organizations in regard to the public work or any construction project integrated into the public work.

(b) Discriminate against an eligible bidder, contractor or subcontractor for becoming or remaining or refusing to become or remain a signatory to, or for adhering or refusing to adhere to, an agreement with one or more labor organizations in regard to the public work or any construction project integrated into the public work.

3. Except as otherwise provided in subsection 5 or 6, a public body shall not award a grant, tax abatement, tax credit or tax exemption that is conditioned upon a requirement that the awardee include a term described in paragraph (a) or (b) of subsection 2 in a contract for any construction, improvement, maintenance or renovation to real property that is the subject of the grant, tax abatement, tax credit or tax exemption.

4. The provisions of subsections 2 and 3 do not:



(a) Prohibit a public body from awarding a contract for a public work or a grant, tax abatement, tax credit or tax exemption to an owner who is not a public body, an eligible bidder, a contractor or a subcontractor who enters into, who is a party to or who adheres to an agreement with a labor organization if:

(1) Entering into, being or becoming a party to or adhering to an agreement with a labor organization is not a condition for awarding the contract, grant, tax abatement, tax credit or tax exemption; and

(2) The public body does not discriminate against an owner who is not a public body, an eligible bidder, a contractor or a subcontractor in the awarding of the contract, grant, tax abatement, tax credit or tax exemption based upon the status of entering into, being or becoming a party to or adhering to an agreement with a labor organization;

(b) Prohibit an eligible bidder, contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with one or more labor organizations in regard to a contract:

(1) With a public body for a public work; or

(2) Funded in whole or in part by a grant, tax abatement, tax credit or tax exemption from a public body;

(c) Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the Labor Management Relations Act of 1947, 29 U.S.C. §§ 151 et seq.;

(d) Interfere with labor relations of parties that are left unregulated by the Labor Management Relations Act of 1947, 29 U.S.C. §§ 151 et seq.; or

(e) Affect any provision of NRS 338.020 to 338.090, inclusive.

5. A public body may exempt a particular public work or a grant, tax abatement, tax credit or tax exemption from the provisions of subsection 2 if the public body makes a finding, after notice and a hearing, that a special circumstance requires such an exemption to avert an imminent threat to the public health or safety. A finding of a special circumstance pursuant to this subsection must not be based on the possibility or presence of a labor dispute concerning:

(a) The use of a contractor or subcontractor who is not a signatory to or does not adhere to an agreement with one or more labor organizations; or

(b) Employees on the public work who are not members of or affiliated with a labor organization.

6. A public body may exempt a particular public work or a grant, tax abatement, tax credit or tax exemption from the provisions of subsection 2 if the public body makes a finding, after notice and a hearing, that the public work or construction, improvement, maintenance or renovation to real property that is the subject of the



grant, tax abatement, tax credit or tax exemption, as applicable, is a part of critical infrastructure for:

- (a) An airport, including, without limitation, a runway, taxiway, air traffic control tower or project to improve airport security; or
- (b) A water system.

7. As used in this section, “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.



