

Assembly Bill No. 410–Committee
on Government Affairs

CHAPTER.....

AN ACT relating to public works; revising qualifications for entering into a contract with a public body as a construction manager at risk; requiring certain contracts between a public body and a construction manager as agent to be awarded on the basis of competence and qualifications and not on the basis of competitive fees; removing the prospective expiration of provisions relating to construction managers at risk; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law prescribes qualifications that a construction manager at risk must satisfy to be eligible to enter into a contract with a public body. (NRS 338.1691) **Section 1** of this bill additionally requires that a construction manager at risk must not have entered into a contract with a public body to act as a construction manager as agent during the 4 years immediately preceding the date of the advertisement for proposals pursuant to which a contract is awarded in order to be eligible to enter into such a contract.

Existing law: (1) prohibits the State of Nevada or any of its political subdivisions from selecting a professional engineer, professional land surveyor or registered architect to perform certain services on a public work on the basis of competitive fees; and (2) instead requires that the selection of such persons be made on the basis of the competence and qualifications of the engineer, land surveyor or architect for the type of service to be performed. (NRS 625.530) Existing law authorizes a public body to employ a construction manager as agent to assist the public body in overseeing the construction of a public work. Existing law requires a construction manager as agent to: (1) be a licensed contractor; (2) hold a certificate of registration to practice architecture, interior design or residential design; or (3) be licensed as a professional engineer.

Existing law provides that a contract between a public body and a construction manager as agent is not required to be awarded by competitive bidding. (NRS 338.1718) **Section 2** of this bill bases the selection of a construction manager as agent upon the same criteria as the selection of a professional engineer, professional land surveyor or registered architect on a public work. Specifically, **section 2** requires the selection of a construction manager as agent to be made on the basis of the competence and qualifications of the construction manager as agent for the type of services to be performed and not on the basis of competitive fees. **Section 2** exempts from this requirement contracts between a public body and a construction manager as agent to perform services for a public work for which the estimated cost is \$100,000 or less.

Under existing law, public bodies are authorized to construct public works under certain circumstances through a method by which a construction manager at risk provides preconstruction services on the public work and, under certain circumstances, construction services on the public work with a guaranteed maximum price, a fixed price or a fixed price plus reimbursement for certain costs. (NRS 338.1685-338.16995) Existing law eliminates the authority for public bodies to enter into contracts with construction managers at risk effective June 30, 2021. (Chapter 487, Statutes of Nevada 2013, at page 2986, chapter 562, Statutes of



Nevada 2017, at page 4035) **Sections 3-5** of this bill remove the prospective expiration of this authority, thereby making the authorization to enter into contracts with construction managers at risk permanent.

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

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

Section 1. NRS 338.1691 is hereby amended to read as follows:

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

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

2. Not have been disqualified from being awarded a contract pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333;

3. *Not have entered into a contract with a public body to act as a construction manager as agent during the 4 years immediately preceding the date of the advertisement for proposals pursuant to NRS 338.1692;*

4. Be licensed as a contractor pursuant to chapter 624 of NRS; and

~~[4.]~~ 5. If the project is for the construction of a public work of the State, be qualified to bid on a public work of the State pursuant to NRS 338.1379.

Sec. 2. NRS 338.1718 is hereby amended to read as follows:

338.1718 1. A construction manager as agent:

(a) Must:

(1) Be a contractor licensed pursuant to chapter 624 of NRS;

(2) Hold a certificate of registration to practice architecture, interior design or residential design pursuant to chapter 623 of NRS; or

(3) Be licensed as a professional engineer pursuant to chapter 625 of NRS.

(b) May enter into a contract with a public body to assist in the planning, scheduling and management of the construction of a public work without assuming any responsibility for the cost, quality or timely completion of the construction of the public work. A construction manager as agent who enters into a contract with a public body pursuant to this section may not:



(1) Take part in the design or construction of the public work; or

(2) Act as an agent of the public body to select a subcontractor if the work to be performed by the subcontractor is part of a larger public work.

2. ~~[A]~~ *Except as otherwise provided in subsection 3, the selection of a construction manager as agent to perform services pursuant to subsection 1 must be made on the basis of the competence and qualifications of the construction manager as agent for the type of services to be performed and not on the basis of competitive fees. If, after selection of the construction manager as agent, an agreement upon a fair and reasonable fee cannot be reached with him or her, the public body may terminate negotiations and select another construction manager as agent. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a construction manager as agent pursuant to this subsection, the public body shall assign, without limitation, a relative weight of 5 percent to the possession of a certificate of eligibility to receive a preference when competing for public works. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection relating to a preference when competing for public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that public work.*

3. *The provisions of subsection 2 do not apply to a contract between a public body and a construction manager as agent ~~is not required~~ to ~~be awarded by competitive bidding.~~ perform services for a public work for which the estimated cost is \$100,000 or less.*

Sec. 3. Section 15 of chapter 487, Statutes of Nevada 2013, as amended by chapter 562, Statutes of Nevada 2017, at page 4035, is hereby amended to read as follows:

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

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

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



Sec. 4. Section 9 of chapter 123, Statutes of Nevada 2015, as amended by chapter 562, Statutes of Nevada 2017, at page 4035, is hereby amended to read as follows:

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

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

Sec. 5. Section 7 of chapter 562, Statutes of Nevada 2017, at page 4035, is hereby amended to read as follows:

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

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

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

Sec. 6. Sections 2.3, 2.5, 3.5, 4.5, 5.3, 5.5, 5.7, 6.5, 13.5, 14.1 and 14.7 of chapter 487, Statutes of Nevada 2013, at pages 2961, 2964, 2966, 2967, 2968, 2972, 2983, 2984 and 2986, respectively, are hereby repealed.

Sec. 7. This act becomes effective upon passage and approval.

