

SENATE BILL NO. 342—SENATOR O’CONNELL

MARCH 10, 1999

Referred to Committee on Government Affairs

SUMMARY—Prohibits public bodies from requiring contractor or subcontractor to agree to certain requirements as condition of bidding on, being awarded or working pursuant to contract for public work. (BDR 28-16)

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

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

AN ACT relating to public works projects; prohibiting a public body from requiring a contractor or subcontractor to agree to make certain contributions to a labor organization for the provision of benefits to workmen hired to work on a public work; prohibiting a public body from requiring a contractor or subcontractor to agree to limit the number of his employees he may hire to work on the public work; providing certain exceptions; providing a penalty; and providing other matters properly relating thereto.

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 thereto a
2 new section to read as follows:
3 ***1. Except as otherwise provided in subsections 2 and 3, a public body***
4 ***that awards a contract for a public work shall not, as a condition of***
5 ***bidding on the contract, being awarded the contract or being hired to***
6 ***work pursuant to the contract, require that a contractor or subcontractor***
7 ***agree to:***
8 ***(a) Make a monetary contribution to a labor organization for the***
9 ***provision of benefits for the workmen who work on the public work; or***
10 ***(b) Limit the number of employees of the contractor or subcontractor***
11 ***that he may hire to work on the public work.***
12 ***2. A public body that awards a contract for a public work may, as a***
13 ***condition of bidding on the contract, being awarded the contract or being***
14 ***hired to work pursuant to the contract, require a contractor or***
15 ***subcontractor who provides benefits:***

1 (a) *Directly to his workmen, pursuant to the terms of employment*
2 *established by the contractor or subcontractor; and*

3 (b) *That cost less to provide than the benefits provided by the local*
4 *labor organization to which his workmen would most likely belong if they*
5 *were to choose to become members of a labor organization,*
6 *to agree to pay directly to his workmen the difference between the cost of*
7 *the benefits that he provides to his workmen and the cost of the benefits*
8 *that the local labor organization provides to its members.*

9 3. *A public body that awards a contract for a public work may, as a*
10 *condition of bidding on the contract, being awarded the contract or being*
11 *hired to work pursuant to the contract, require a contractor or*
12 *subcontractor to agree that if, after the public work commences, it is*
13 *determined that more workmen or workmen of a different trade are*
14 *needed to complete the project than are currently employed by the*
15 *contractors and subcontractors currently engaged on the public work, the*
16 *contractor or subcontractor will hire only workmen who have been*
17 *referred to the contractor or subcontractor by a labor organization.*

18 4. *As used in this section, the term "benefits" means the benefits*
19 *described in paragraph (b) of subsection 6 of NRS 338.010.*

20 Sec. 2. NRS 338.015 is hereby amended to read as follows:

21 338.015 1. The labor commissioner shall enforce the provisions of
22 NRS 338.010 to 338.130, inclusive ~~H~~, *and section 1 of this act*. When
23 informed of violations thereof, the labor commissioner may hold hearings
24 on and assess fines for violations of those provisions and shall report those
25 violations to the district attorney of the county in which the violations
26 occurred.

27 2. The district attorney shall prosecute the violator in accordance with
28 law.

29 Sec. 3. NRS 338.090 is hereby amended to read as follows:

30 338.090 1. Any person, including the officers, agents or employees
31 of a public body, who violates any of the provisions of NRS 338.010 to
32 338.080, inclusive, *and section 1 of this act* is guilty of a misdemeanor.

33 2. The labor commissioner, in addition to any other penalty provided in
34 this chapter:

35 (a) Shall assess a person who, after a hearing, is found to have failed to
36 pay the prevailing wage required pursuant to NRS 338.020 to 338.090,
37 inclusive, an amount equal to the difference between the prevailing wages
38 required to be paid and the wages he actually paid; and

39 (b) May, in addition, impose an administrative fine not to exceed the
40 costs he incurred to investigate and prosecute the matter.

41 Sec. 4. NRS 341.161 is hereby amended to read as follows:

42 341.161 1. The board may, with the approval of the interim finance
43 committee when the legislature is not in regular or special session, or with

1 the approval of the legislature by concurrent resolution when the legislature
2 is in regular or special session, let to a contractor licensed under chapter
3 624 of NRS a contract for services which assist the architect in the design
4 of a project of capital improvement. The board shall , for that purpose ,
5 participate in the development of plans, outlines of specifications and
6 estimates of costs.

7 2. The board shall adopt regulations establishing procedures for:

8 (a) The determination of the qualifications of contractors to bid for
9 contracts for services described in subsection 1.

10 (b) The bidding and awarding of such contracts, subject to the
11 provisions of subsection 3 ~~§~~ and section 1 of this act.

12 (c) The awarding of construction contracts, subject to the provisions of
13 subsection 4 ~~§~~ and section 1 of this act, based on a final cost of the
14 project which the contractor guarantees will not be exceeded.

15 (d) The scheduling and controlling of projects.

16 3. Bids on contracts for services which assist the architect in the design
17 of a project of capital improvement must state separately the contractor's
18 cost for:

19 (a) Assisting the architect in the design of the project.

20 (b) Obtaining all bids for subcontracts.

21 (c) Administering the construction contract.

22 4. A contractor who is:

23 (a) Qualified under the regulations of the board to bid for a contract for
24 services described in subsection 1; and

25 (b) Awarded that contract,
26 is entitled to be awarded the construction contract for the project if his
27 work under the contract for services is satisfactory to the board and he
28 guarantees a final cost for the project which the board is willing to accept.

29 5. A person who furnishes services under a contract awarded pursuant
30 to subsection 1 is a contractor subject to all provisions pertaining to a
31 contractor in Title 28 of NRS.

32 **Sec. 5.** NRS 341.171 is hereby amended to read as follows:

33 341.171 1. The board may, with the approval of the interim finance
34 committee when the legislature is not in regular or special session, or with
35 the approval of the legislature by concurrent resolution when the legislature
36 is in regular or special session, let to a contractor licensed under chapter
37 624 of NRS a single contract for both the design and construction of a
38 project of capital improvement. The board shall , for ~~the~~ that purpose ,
39 prepare a comprehensive sketch plan and narrative of the scope of the work
40 involved in a project.

41 2. The board shall adopt regulations establishing procedures for:

1 (a) The determination of the qualifications of contractors to bid for
2 contracts for the design and construction of such projects. The board shall
3 consult with the American Institute of Architects and the Associated
4 General Contractors, or the successor of either if the named organization
5 ceases to exist, before adopting procedures under this paragraph.

6 (b) The board's approval of designs and architects employed in a
7 project.

8 (c) The bidding and awarding of contracts for the design and
9 construction of projects , *subject to the provisions of section 1 of this act,*
10 based on a final cost of the project which the contractor guarantees will not
11 be exceeded.

12 (d) The scheduling and controlling of projects.

13 **Sec. 6.** NRS 271.335 is hereby amended to read as follows:

14 271.335 1. No contract for doing construction work for acquiring or
15 improving the project contemplated may be made or awarded, nor may the
16 governing body incur any expense or liability in relation thereto, except for
17 maps, plats, diagrams, estimates, plans, specifications and notices, until
18 after the hearing upon the provisional order and notice thereof provided for
19 in NRS 271.305 have been given and had.

20 2. This section does not prevent the governing body from advertising
21 by publication for proposals for doing the work whenever the governing
22 body sees fit, but the contract may not be made or awarded before the time
23 stated in subsection 1.

24 3. Except as otherwise provided in NRS 271.800, in the case of
25 construction work done by independent contract for any project, or portion
26 thereof, in any improvement district, the municipality shall request
27 competitive bids, and proceed thereon, pursuant to the provisions of
28 chapter 338 of NRS.

29 4. The municipality may waive any irregularity in the form of any bid.

30 5. Any contract may be let on a lump sum or on a unit basis.

31 6. No contract may be entered into for such work unless the contractor
32 gives an undertaking with a sufficient surety or sureties approved by the
33 governing body and in an amount fixed by it for the faithful performance of
34 the contract and for payment of the contract.

35 7. Upon default in the performance of any contract, any designated
36 official, as directed by motion of the governing body, may advertise and
37 relet the remainder of the work without further ordinance or resolution and
38 deduct the cost from the original contract price and recover any excess cost
39 by suit on the original bond, or otherwise.

40 8. All contracts must provide among other things that the person
41 entering into the contract with the municipality will pay for all materials
42 furnished and labor and services rendered for the performance of the

1 contract, and that any person furnishing the materials or rendering the
2 services may maintain an action to recover for them against the obligor in
3 the undertaking as though the person was named therein.

4 9. A contract or agreement made in violation of the provisions of this
5 section is voidable, and no action may be maintained thereon by any party
6 thereto against the municipality.

7 10. To the extent the municipality makes any payment thereunder, such
8 a contract or agreement is valid, and any such payment may be included in
9 any cost defrayed by the levy of assessments, unless theretofore the
10 municipality elects to void the contract or agreement in its entirety and to
11 recover any such payment from the party to whom made.

12 11. The governing body, except as expressly limited in this section ~~§~~
13 *or as otherwise provided in section 1 of this act*, may, in the letting of
14 contracts, impose such conditions upon bidders with regard to bonds and
15 securities, and such guaranties of good and faithful performance and
16 completion of any work and the keeping of the work in repair, and
17 providing for any further matter or thing in connection therewith, as may be
18 considered by the governing body to be advantageous to the municipality
19 and to all interested.

20 **Sec. 7.** The amendatory provisions of this act do not apply to offenses
21 that were committed before October 1, 1999.