

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.** The legislature hereby declares that the provisions of this
2 act:
3 1. Are intended to direct the state and its political subdivisions as
4 market participants and proprietors in the marketplace, not as regulators, to
5 ensure the timely and cost-efficient construction, repair or reconstruction of
6 public works.
7 2. Must not be construed as regulating in the areas of labor relations or
8 employee benefit plans.
9 **Sec. 2.** Chapter 338 of NRS is hereby amended by adding thereto a
10 new section to read as follows:
11 ***1. Except as otherwise provided in subsection 2, a public body that***
12 ***awards a contract for a public work shall not, as a condition of bidding***
13 ***on the contract, being awarded the contract or being hired to work***
14 ***pursuant to the contract, require that a contractor or subcontractor agree***
15 ***to:***

- 1 (a) *Make a monetary contribution to a labor organization for the*
2 *provision of benefits for the workmen who work on the public work; or*
3 (b) *Limit the number of employees of the contractor or subcontractor*
4 *that he may hire to work on the public work.*

5 2. *A public body that awards a contract for a public work may, as a*
6 *condition of bidding on the contract, being awarded the contract or being*
7 *hired to work pursuant to the contract, require a contractor or*
8 *subcontractor who provides benefits directly to his workmen pursuant to*
9 *the terms of employment established by the contractor or subcontractor*
10 *to agree that:*

11 (a) *He will allow his workmen, for the term of the public work, to elect*
12 *to receive the benefits provided by the local labor organization to which*
13 *his workmen would most likely belong if they were to choose to become*
14 *members of a labor organization, rather than the benefits he provides;*

15 (b) *If any of his workmen elect to receive the benefits provided by*
16 *such local labor organization, he will make a monetary contribution to*
17 *that labor organization for the provision of benefits for those workmen*
18 *for the term of the public work; and*

19 (c) *If any of his workmen reject the benefits provided by such local*
20 *labor organization and the benefits he provides cost less to provide than*
21 *the benefits provided by such local labor organization, he will pay*
22 *directly to those workmen the difference between the cost of the benefits*
23 *that he provides to his workmen and the cost of the benefits that such*
24 *local labor organization provides to its members.*

25 3. *As used in this section, the term "benefits" means the benefits*
26 *described in paragraph (b) of subsection 6 of NRS 338.010.*

27 **Sec. 3.** NRS 338.015 is hereby amended to read as follows:

28 338.015 1. The labor commissioner shall enforce the provisions of
29 NRS 338.010 to 338.130, inclusive ~~H~~, *and section 2 of this act.* When
30 informed of violations thereof, the labor commissioner may hold hearings
31 on and assess fines for violations of those provisions and shall report those
32 violations to the district attorney of the county in which the violations
33 occurred.

34 2. The district attorney shall prosecute the violator in accordance with
35 law.

36 **Sec. 4.** NRS 338.090 is hereby amended to read as follows:

37 338.090 1. Any person, including the officers, agents or employees
38 of a public body, who violates any of the provisions of NRS 338.010 to
39 338.080, inclusive, *and section 2 of this act* is guilty of a misdemeanor.

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

42 (a) Shall assess a person who, after a hearing, is found to have failed to
43 pay the prevailing wage required pursuant to NRS 338.020 to 338.090,

1 inclusive, an amount equal to the difference between the prevailing wages
2 required to be paid and the wages he actually paid; and

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

5 **Sec. 5.** NRS 341.161 is hereby amended to read as follows:

6 341.161 1. The board may, with the approval of the interim finance
7 committee when the legislature is not in regular or special session, or with
8 the approval of the legislature by concurrent resolution when the legislature
9 is in regular or special session, let to a contractor licensed under chapter
10 624 of NRS a contract for services which assist the architect in the design
11 of a project of capital improvement. The board shall, for that purpose,
12 participate in the development of plans, outlines of specifications and
13 estimates of costs.

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

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

17 (b) The bidding and awarding of such contracts, subject to the
18 provisions of subsection 3 ~~H~~ and section 2 of this act.

19 (c) The awarding of construction contracts, subject to the provisions of
20 subsection 4 ~~H~~ and section 2 of this act, based on a final cost of the
21 project which the contractor guarantees will not be exceeded.

22 (d) The scheduling and controlling of projects.

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

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

27 (b) Obtaining all bids for subcontracts.

28 (c) Administering the construction contract.

29 4. A contractor who is:

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

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

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

39 **Sec. 6.** NRS 341.171 is hereby amended to read as follows:

40 341.171 1. The board may, with the approval of the interim finance
41 committee when the legislature is not in regular or special session, or with
42 the approval of the legislature by concurrent resolution when the legislature
43 is in regular or special session, let to a contractor licensed under chapter

1 624 of NRS a single contract for both the design and construction of a
2 project of capital improvement. The board shall , for ~~the~~ *that* purpose ,
3 prepare a comprehensive sketch plan and narrative of the scope of the work
4 involved in a project.

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

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

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

13 (c) The bidding and awarding of contracts for the design and
14 construction of projects , *subject to the provisions of section 2 of this act*,
15 based on a final cost of the project which the contractor guarantees will not
16 be exceeded.

17 (d) The scheduling and controlling of projects.

18 **Sec. 7.** NRS 271.335 is hereby amended to read as follows:

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

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

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

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

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

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

40 7. Upon default in the performance of any contract, any designated
41 official, as directed by motion of the governing body, may advertise and
42 relet the remainder of the work without further ordinance or resolution and

1 deduct the cost from the original contract price and recover any excess cost
2 by suit on the original bond, or otherwise.

3 8. All contracts must provide among other things that the person
4 entering into the contract with the municipality will pay for all materials
5 furnished and labor and services rendered for the performance of the
6 contract, and that any person furnishing the materials or rendering the
7 services may maintain an action to recover for them against the obligor in
8 the undertaking as though the person was named therein.

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

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

17 11. The governing body, except as expressly limited in this section ~~§~~
18 *or as otherwise provided in section 2 of this act*, may, in the letting of
19 contracts, impose such conditions upon bidders with regard to bonds and
20 securities, and such guaranties of good and faithful performance and
21 completion of any work and the keeping of the work in repair, and
22 providing for any further matter or thing in connection therewith, as may be
23 considered by the governing body to be advantageous to the municipality
24 and to all interested.

25 **Sec. 8.** The amendatory provisions of this act do not apply to offenses
26 that were committed before October 1, 1999.