

CHAPTER.....

AN ACT relating to public works; requiring the attorney general to prosecute persons who violate certain provisions relating to employment of workmen on a public work; increasing the period within which a person may not be awarded a contract for a public work after being assessed an administrative penalty for committing an offense; revising the provisions governing the determination of the prevailing wages in a county; revising the provisions establishing which workmen are employed on a public work and subject to the provisions governing prevailing wages; clarifying the duties of public bodies to investigate possible violations of certain provisions governing employment on a public work; requiring contractors and subcontractors to submit certain records concerning his workmen to a public body within a certain period; providing that a failure to maintain and provide such records within such period constitutes an offense which may subject the contractor or subcontractor to administrative penalties and civil liability; providing that a violation of certain regulations is a misdemeanor; changing monetary limits of certain penalties and fines; 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:

**Section 1.** NRS 338.010 is hereby amended to read as follows:

338.010 As used in this chapter:

1. “Day labor” means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a workman or workmen employed by them on public works by the day and not under a contract in writing.
2. “Design-build contract” means a contract between a public body and a design-build team in which the design-build team agrees to design and construct a public work.
3. “Design-build team” means an entity that consists of:
  - (a) At least one person who is licensed as a general engineering contractor or a general building contractor pursuant to chapter 624 of NRS; and
  - (b) For a public work that consists of:
    - (1) A building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS.
    - (2) Anything other than a building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS or is licensed as a professional engineer pursuant to chapter 625 of NRS.
4. “Design professional” means a person with a professional license or certificate issued pursuant to chapter 623, 623A or 625 of NRS.
5. “Eligible bidder” means a person who is:
  - (a) Found to be a responsible and responsive contractor by a local government which requests bids for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373; or
  - (b) Determined by a public body which awarded a contract for a public work pursuant to NRS 338.1375 to 338.1389, inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or was exempt from meeting such qualifications pursuant to NRS 338.1383.

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

7. "Offense" means failing to:

- (a) Pay the prevailing wage required pursuant to this chapter;
- (b) Pay the contributions for unemployment compensation required pursuant to chapter 612 of NRS; ~~to~~
- (c) Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS ~~to~~; *or*  
*(d) Comply with subsection 4 or 5 of NRS 338.070.*

8. "Prime contractor" means a person who:

- (a) Contracts to construct an entire project;
- (b) Coordinates all work performed on the entire project;
- (c) Uses his own work force to perform all or a part of the construction, repair or reconstruction of the project; and
- (d) Contracts for the services of any subcontractor or independent contractor or is responsible for payment to any contracted subcontractors or independent contractors.

9. "Public body" means the state, county, city, town, school district or any public agency of this state or its political subdivisions sponsoring or financing a public work.

10. "Public work" means any project for the new construction, repair or reconstruction of:

- (a) A project financed in whole or in part from public money for:
  - (1) Public buildings;
  - (2) Jails and prisons;
  - (3) Public roads;
  - (4) Public highways;
  - (5) Public streets and alleys;
  - (6) Public utilities which are financed in whole or in part by public money;
  - (7) Publicly owned water mains and sewers;
  - (8) Public parks and playgrounds;
  - (9) Public convention facilities which are financed at least in part with public funds; and
  - (10) All other publicly owned works and property whose cost as a whole exceeds \$20,000.

Each separate unit that is a part of a project is included in the cost of the project to determine whether a project meets that threshold.

(b) A building for the University and Community College System of Nevada of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by this state or from federal money.

11. "Specialty contractor" means a contractor whose operations as such are the performance of construction work requiring special skill and

whose principal contracting business involves the use of specialized building trades or crafts.

12. “Stand-alone underground utility project” means an underground utility project that is not integrated into a larger project, including, without limitation:

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

(b) A project for the construction or installation of a storm drain, including facilities appurtenant thereto, that is not located at the site of a public work for the design and construction of which a public body is authorized to contract with a design-build team pursuant to subsection 2 of NRS 338.1711.

13. “Wages” means:

(a) The basic hourly rate of pay; and

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

14. “Workman” means a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman. The term does not include a design professional.

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

338.010 As used in this chapter:

1. “Day labor” means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a workman or workmen employed by them on public works by the day and not under a contract in writing.

2. “Eligible bidder” means a person who is:

(a) Found to be a responsible and responsive contractor by a local government which requests bids for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373; or

(b) Determined by a public body which awarded a contract for a public work pursuant to NRS 338.1375 to 338.1389, inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or was exempt from meeting such qualifications pursuant to NRS 338.1383.

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

4. “Offense” means failing to:

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

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

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

*(d) Comply with subsection 4 or 5 of NRS 338.070.*

5. “Prime contractor” means a person who:

- (a) Contracts to complete an entire project;
- (b) Coordinates all work performed on the entire project;
- (c) Uses his own work force to perform all or a part of the construction, repair or reconstruction of the project; and
- (d) Contracts for the services of any subcontractor or independent contractor or is responsible for payment to any contracted subcontractors or independent contractors.

6. "Public body" means the state, county, city, town, school district or any public agency of this state or its political subdivisions sponsoring or financing a public work.

7. "Public work" means any project for the new construction, repair or reconstruction of:

- (a) A project financed in whole or in part from public money for:
  - (1) Public buildings;
  - (2) Jails and prisons;
  - (3) Public roads;
  - (4) Public highways;
  - (5) Public streets and alleys;
  - (6) Public utilities which are financed in whole or in part by public money;
  - (7) Publicly owned water mains and sewers;
  - (8) Public parks and playgrounds;
  - (9) Public convention facilities which are financed at least in part with public funds; and
  - (10) Any other publicly owned works and property whose cost as a whole exceeds \$20,000. Each separate unit that is a part of a project is included in the cost of the project to determine whether a project meets that threshold.

(b) A building for the University and Community College System of Nevada of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by this state or from federal money.

8. "Wages" means:

- (a) The basic hourly rate of pay; and
- (b) The amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training or other similar programs or other bona fide fringe benefits which are a benefit to the workman.

9. "Workman" means a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman. The term does not include a "design professional" as that term is defined in NRS 338.155.

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

338.015 1. The labor commissioner shall enforce the provisions of NRS 338.010 to 338.130, inclusive. When informed of ~~violations thereof,~~ **a violation of NRS 338.010 to 338.130, inclusive,** the labor commissioner may hold hearings on and assess ~~lines for violations,~~ **a fine of not more than \$5,000 for each violation** of those provisions and shall report ~~those~~ **all** violations to the ~~district attorney of the county in which the violations occurred,~~ **attorney general.**

2. *The labor commissioner may, by regulation, establish a sliding scale based on the severity of the violation to determine the amount of the fine to be assessed pursuant to subsection 1.*

3. The ~~{district}~~ attorney *general* shall prosecute the violator in accordance with law.

**Sec. 4.** NRS 338.017 is hereby amended to read as follows:

338.017 If any administrative penalty is imposed against a person for the commission of an offense, that person, and the corporate officers, if any, of that person, may not be awarded a contract for a public work:

1. For the first offense, for a period of ~~{2}~~ 3 years after the date of the imposition of the administrative penalty; and

2. For the second or subsequent offense for a period of ~~{3}~~ 5 years after the date of the imposition of the administrative penalty.

**Sec. 5.** NRS 338.030 is hereby amended to read as follows:

338.030 1. The public body awarding any contract for public work, or otherwise undertaking any public work, shall ascertain from the labor commissioner the prevailing wage in the county in which the public work is to be performed for each craft or type of work.

2. To establish a prevailing wage in each county, including Carson City, the labor commissioner shall, annually, survey contractors who have performed work in the county. Within 30 days after the determination is issued ~~{, any}~~ :

(a) A public body or ~~{any}~~ person entitled under subsection 5 to be heard may submit an objection to the labor commissioner with evidence to substantiate that a different wage prevails ~~{;}~~ and

(b) *Any person may submit information to the labor commissioner that would support a change in the prevailing wage of a craft or type of work by 50 cents or more per hour in any county.*

3. The labor commissioner shall hold a hearing in the locality in which the work is to be executed if he:

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

(b) ~~{Receives information from any person which would change the prevailing wage of a craft or a type of work by 50 cents or more per hour in any county; or~~

~~{(c)}~~ Receives an objection *or information* pursuant to subsection 2.

The labor commissioner may hold only one hearing a year on the prevailing wage of any craft or type of work in any county.

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

5. At the hearing, any public body, the crafts affiliated with the state federation of labor or other recognized national labor organizations , and the contractors of the locality or their representatives must be heard. From the evidence presented , the labor commissioner shall determine the prevailing wage.

6. The wages so determined must be filed by the labor commissioner, and must be available to any public body which awards a contract for any public work.

7. Nothing contained in NRS 338.020 to 338.090, inclusive, may be construed to authorize the fixing of any wage below any rate which may now or hereafter be established as a minimum wage for any person employed upon any public work, or employed by any officer or agent of any political subdivision of the State of Nevada.

**Sec. 6.** NRS 338.040 is hereby amended to read as follows:

338.040 ~~{Workmen employed by contractors or subcontractors or by public bodies at the site of}~~

*1. Except as otherwise provided by specific statute, workmen who are:*

*(a) Employed at the site of the public work ; and {necessary}*

*(b) Necessary in the execution of {any} the contract for the public {works} work,*  
are deemed to be employed on public works.

*2. The labor commissioner shall adopt regulations to define the circumstances under which a workman is:*

*(a) Employed at the site of a public work; and*

*(b) Necessary in the execution of the contract for the public work.*

**Sec. 7.** NRS 338.050 is hereby amended to read as follows:

338.050 For the purpose of NRS 338.010 to 338.090, inclusive, *except as otherwise provided by specific statute,* every workman ~~{employed by a contractor or subcontractor on}~~ *who performs work for a* public work covered by a contract therefor ~~{shall be}~~ *is* subject to all of the provisions of NRS 338.010 to 338.090, inclusive, regardless of any contractual relationship alleged to exist between ~~{the contractor and subcontractor and}~~ such workman ~~{}~~ *and his employer.*

**Sec. 8.** NRS 338.060 is hereby amended to read as follows:

338.060 1. A contractor engaged on public works shall forfeit, as a penalty to the public body in behalf of which the contract has been made and awarded to the contractor, not less than ~~{\$10}~~ *\$20* nor more than ~~{\$25}~~ *\$50* for each calendar day or portion thereof that each workman employed on the public work:

(a) Is paid less than the designated rate for any work done under the contract, by the contractor or any subcontractor under him.

(b) Is not reported to the ~~{Labor commissioner and the}~~ public body awarding the contract as required pursuant to NRS 338.070.  
The public body awarding the contract shall cause a stipulation to this effect to be inserted in the contract.

2. The labor commissioner shall, by regulation, establish a sliding scale based on the size of the contractor's business to determine the amount of the penalty to be imposed pursuant to subsection 1.

3. If a penalty is imposed pursuant to this section, the costs of the proceeding, including investigative costs and attorney's fees, may be recovered by the labor commissioner.

**Sec. 9.** NRS 338.070 is hereby amended to read as follows:

338.070 1. Any public body and its officers or agents awarding a contract shall:

(a) ~~{Take cognizance of complaints of}~~ *Investigate possible* violations of the provisions of NRS 338.010 to 338.090, inclusive, committed in the course of the execution of the contract ~~{}~~ *and determine whether a*

*violation has been committed and inform the labor commissioner of any such violations;* and

(b) When making payments to the contractor of money becoming due under the contract, withhold and retain all sums forfeited pursuant to the provisions of NRS 338.010 to 338.090, inclusive.

2. No sum may be withheld, retained or forfeited, except from the final payment, without a full investigation being made by the awarding body or its agents.

3. It is lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the failure of the subcontractor to comply with the terms of NRS 338.010 to 338.090, inclusive. If payment has already been made to the subcontractor, the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

4. The contractor and each subcontractor shall keep or cause to be kept an accurate record showing the name, the occupation and the actual per diem, wages and benefits paid to each workman employed by him in connection with the public work.

5. The record must be open at all reasonable hours to the inspection of the public body awarding the contract, and its officers and agents. ~~1A~~ *The contractor or subcontractor shall ensure that a* copy of the record for each calendar month ~~must be sent to the labor commissioner and~~ *is received by* the public body awarding the contract no later than ~~11 week~~ *10 days* after the end of the month. The copy must be open to public inspection as provided in NRS 239.010. The record in the possession of the public body awarding the contract may be discarded by the public body ~~11 year~~ *2 years* after final payment is made by the public body for the public work.

6. Any contractor or subcontractor, or agent or representative thereof, ~~doing~~ *performing work for a* public work who neglects to comply with the provisions of this section is guilty of a misdemeanor.

**Sec. 10.** NRS 338.090 is hereby amended to read as follows:

338.090 1. Any person, including the officers, agents or employees of a public body, who violates any of the provisions of NRS 338.010 to 338.080, inclusive, *or any regulation adopted pursuant thereto*, is guilty of a misdemeanor.

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

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

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

**Sec. 11.** The amendatory provisions of this act do not apply to offenses or violations that are committed before July 1, 2001.

**Sec. 12.** 1. This section and sections 3 to 11, inclusive, of this act become effective on July 1, 2001.

2. Section 1 of this act becomes effective on July 1, 2001, and expires by limitation on October 1, 2003.

3. Section 2 of this act becomes effective at 12:01 a.m. on October 1, 2003.