

SENATE BILL NO. 114—COMMITTEE ON GOVERNMENT AFFAIRS

FEBRUARY 13, 2003

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing manner of determining prevailing rate of wages to be paid on public works. (BDR 28-401)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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; revising provisions governing the manner of determining the prevailing rate of wages to be paid on public works; 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.** NRS 338.010 is hereby amended to read as follows:
2 338.010 As used in this chapter:
3 1. “Day labor” means all cases where public bodies, their
4 officers, agents or employees, hire, supervise and pay the wages
5 thereof directly to a workman or workmen employed by them on
6 public works by the day and not under a contract in writing.
7 2. “Design-build contract” means a contract between a public
8 body and a design-build team in which the design-build team agrees
9 to design and construct a public work.
10 3. “Design-build team” means an entity that consists of:
11 (a) At least one person who is licensed as a general engineering
12 contractor or a general building contractor pursuant to chapter 624
13 of NRS; and
14 (b) For a public work that consists of:
15 (1) A building and its site, at least one person who holds a
16 certificate of registration to practice architecture pursuant to chapter
17 623 of NRS.



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1 (2) Anything other than a building and its site, at least one
2 person who holds a certificate of registration to practice architecture
3 pursuant to chapter 623 of NRS or is licensed as a professional
4 engineer pursuant to chapter 625 of NRS.

5 4. "Design professional" means:

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

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

10 (c) A person who holds a certificate of registration to engage in
11 the practice of architecture 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 5. "Eligible bidder" means a person who is:

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

21 (b) Determined by a public body which awarded a contract for a
22 public work pursuant to NRS 338.1375 to 338.139, inclusive, to be
23 qualified to bid on that contract pursuant to NRS 338.1379 or
24 was exempt from meeting such qualifications pursuant to
25 NRS 338.1383.

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

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

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

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

42 8. "Offense" means failing to:

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

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



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- 1 (c) Provide and secure compensation for employees required
2 pursuant to chapters 616A to 617, inclusive, of NRS; or
3 (d) Comply with subsection 4 or 5 of NRS 338.070.
- 4 9. "Prime contractor" means a person who:
5 (a) Contracts to construct an entire project;
6 (b) Coordinates all work performed on the entire project;
7 (c) Uses his own workforce to perform all or a part of the
8 construction, repair or reconstruction of the project; and
9 (d) Contracts for the services of any subcontractor or
10 independent contractor or is responsible for payment to any
11 contracted subcontractors or independent contractors.
- 12 The term includes, without limitation, a general contractor or a
13 specialty contractor who is authorized to bid on a project pursuant to
14 NRS 338.139 or 338.148.
- 15 10. "Public body" means the State, county, city, town, school
16 district or any public agency of this state or its political subdivisions
17 sponsoring or financing a public work.
- 18 11. "Public work" means any project for the new construction,
19 repair or reconstruction of:
20 (a) A project financed in whole or in part from public money
21 for:
22 (1) Public buildings;
23 (2) Jails and prisons;
24 (3) Public roads;
25 (4) Public highways;
26 (5) Public streets and alleys;
27 (6) Public utilities which are financed in whole or in part by
28 public money;
29 (7) Publicly owned water mains and sewers;
30 (8) Public parks and playgrounds;
31 (9) Public convention facilities which are financed at least in
32 part with public funds; and
33 (10) All other publicly owned works and property whose cost
34 as a whole exceeds \$20,000. Each separate unit that is a part of a
35 project is included in the cost of the project to determine whether a
36 project meets that threshold.
- 37 (b) A building for the University and Community College
38 System of Nevada of which 25 percent or more of the costs of the
39 building as a whole are paid from money appropriated by this state
40 or from federal money.
- 41 12. *"Recognized class of workmen" means a class of*
42 *workmen recognized by the Labor Commissioner as being a*
43 *distinct craft or performing a distinct type of work for the purpose*
44 *of establishing prevailing rates of wages.*



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

3 ~~{13.}~~ **14.** “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 ~~{14.}~~ **15.** “Wages” means:

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

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

20 ~~{15.}~~ **16.** “Workman” means a skilled mechanic, skilled
21 workman, semiskilled mechanic, semiskilled workman or unskilled
22 workman. The term does not include a design professional.

23 **Sec. 2.** NRS 338.020 is hereby amended to read as follows:

24 338.020 1. Every contract to which a public body of this state
25 is a party, requiring the employment of ~~{skilled mechanics, skilled~~
26 ~~workmen, semiskilled mechanics, semiskilled workmen or unskilled~~
27 ~~labor}~~ **workmen** in the performance of public work, must contain in
28 express terms the hourly and daily rate of wages to be paid **to** each
29 of the **recognized** classes of ~~{mechanics and}~~ workmen. The hourly
30 and daily rate of wages must:

31 (a) Not be less than the rate of such wages then prevailing in the
32 county in which the public work is located, which prevailing rate of
33 wages must have been determined in the manner provided in NRS
34 338.030; and

35 (b) Be posted on the site of the public work in a place generally
36 visible to the workmen.

37 2. When public work is performed by day labor, the prevailing
38 wage for each **recognized** class of ~~{mechanics and}~~ workmen so
39 employed applies and must be stated clearly to such ~~{mechanics~~
40 ~~and}~~ workmen when employed.

41 3. The prevailing wage ~~{so}~~ paid to each class of ~~{mechanics~~
42 ~~or}~~ workmen must be in accordance with the ~~{jurisdictional classes}~~
43 recognized **classes of workmen** in the locality where the work is
44 performed.



1 4. Nothing in this section prevents an employer who is
2 signatory to a collective bargaining agreement from assigning such
3 work in accordance with established practice.

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

5 338.030 1. The public body awarding any contract for public
6 work, or otherwise undertaking any public work, shall ascertain
7 from the Labor Commissioner the prevailing wage in the county in
8 which the public work is to be performed for each ~~craft or type of~~
9 ~~work.~~ *recognized class of workman that will be employed on the*
10 *public work.*

11 2. To ~~establish~~ *assist in establishing* a prevailing wage in
12 each county, including Carson City, the Labor Commissioner shall,
13 annually, survey contractors who have performed work in the
14 county.

15 3. *Based on the information from the survey and the*
16 *information set forth in subsection 4, the Labor Commissioner*
17 *shall, annually, determine the prevailing rate of wages to be paid*
18 *to each recognized class of workmen in each county, including,*
19 *without limitation, Carson City, and must be determined to be the*
20 *average rate of wages paid per hour, based on the number of*
21 *hours worked per rate, to a recognized class of workmen who are*
22 *employed in the county.*

23 4. *In addition to the information from the survey conducted*
24 *pursuant to this section, the types of information that the Labor*
25 *Commissioner shall consider in making determinations of*
26 *prevailing rates of wages include, without limitation:*

27 (a) *Statements showing rates of wages paid on public and*
28 *private projects, where the statements are signed by the*
29 *contractors or their representatives and contain:*

30 (1) *The names and addresses of the contractors and*
31 *subcontractors;*

32 (2) *The locations, approximate costs, dates of construction*
33 *and types of projects;*

34 (3) *The number of hours each recognized class of workmen*
35 *is employed on each project; and*

36 (4) *The respective rates of wages paid to each recognized*
37 *class of workmen employed on each project.*

38 (b) *Signed collective bargaining agreements that are on file*
39 *with the Labor Commissioner each year preceding the annual*
40 *determination of the prevailing rates of wages.*

41 (c) *Rates of wages determined by officials of the Federal*
42 *Government for public construction and other information*
43 *furnished by state and federal agencies, including data collected*
44 *by any state agency regarding salaries and wages.*



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1 *The Labor Commissioner may exclude from consideration any*
2 *information submitted to him that is untimely filed, duplicative,*
3 *incomplete or determined by the Labor Commissioner to be*
4 *unverifiable.*

5 5. *If the Labor Commissioner determines that the prevailing*
6 *rate of wages for a recognized class of workmen is a wage which*
7 *has been collectively bargained, the Labor Commissioner may*
8 *consider wage and benefit adjustments and classifications of*
9 *workmen established in the collective bargaining agreement and*
10 *may adjust the prevailing rate of wages for the recognized class of*
11 *workmen in accordance with wage and benefit adjustments and*
12 *classifications of workmen in the collective bargaining agreement.*

13 6. Within 30 days after the ~~{determination is issued:}~~ *Labor*
14 *Commissioner determines the prevailing rates of wages in each*
15 *county:*

16 (a) A public body or person entitled under subsection ~~{5}~~ 9 to be
17 heard may submit an objection to the Labor Commissioner with
18 evidence to substantiate that a different wage *for a recognized class*
19 *of workmen* prevails; and

20 (b) Any person may submit information to the Labor
21 Commissioner that would support a change in the prevailing wage
22 ~~{of a craft or type of work}~~ *for a recognized class of workmen* by
23 50 cents or more per hour in any county.

24 ~~{3-}~~ 7. The Labor Commissioner shall hold a hearing in the
25 locality in which the work is to be executed if he:

26 (a) Is in doubt as to the prevailing wage ~~{-}~~ *for a recognized*
27 *class of workmen;* or

28 (b) Receives an objection or information pursuant to
29 subsection ~~{2-}~~ 6.

30 The Labor Commissioner may hold only one hearing a year on the
31 prevailing wage ~~{of any craft or type of work}~~ *for a recognized*
32 *class of workmen* in any county.

33 ~~{4-}~~ 8. Notice of the hearing must be advertised in a newspaper
34 nearest to the locality of the work once a week for 2 weeks before
35 the time of the hearing.

36 ~~{5-}~~ 9. At the hearing, any public body, the crafts affiliated
37 with the state federation of labor or other recognized national
38 labor organizations, and the contractors of the locality or their
39 representatives must be heard. From the evidence presented, the
40 Labor Commissioner shall determine the prevailing wage.

41 ~~{6-}~~ The wages so determined must be ~~{filed by}~~ *maintained*
42 *on file at the Office of* the Labor Commissioner and must be
43 available to any public body which awards a contract for any public
44 work.



1 ~~[7]~~ 10. Nothing contained in NRS 338.020 to 338.090,
2 inclusive, may be construed to authorize the fixing of any wage
3 below any rate which may now or hereafter be established as a
4 minimum wage for any person employed upon any public work, or
5 employed by any officer or agent of any political subdivision of the
6 State of Nevada.

7 11. As used in this section, "representative" means:

8 (a) An agent, officer or employee of a contractor or
9 subcontractor who has been authorized to act in such a capacity
10 by the contractor or subcontractor; or

11 (b) Any other person empowered by a written agreement with
12 the contractor or subcontractor that authorizes the person to act
13 on behalf of the contractor or subcontractor in submitting the
14 information required pursuant to paragraph (a) of subsection 4.

15 Sec. 4. The administrative regulations adopted by the Labor
16 Commissioner which are codified as NAC 338.010 and 338.020 are
17 hereby declared void. In preparing the supplements to the Nevada
18 Administrative Code on or after July 1, 2003, the Legislative
19 Counsel shall remove those regulations.

20 Sec. 5. This act becomes effective on July 1, 2003.

