

ASSEMBLY BILL NO. 287—ASSEMBLYMAN OCEGUERA

MARCH 21, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Requires contractors and subcontractors to provide bona fide health care plan for certain employees employed on public work. (BDR 28-723)

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; requiring contractors and subcontractors to provide and maintain a bona fide health care plan for certain employees employed on a public works project; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires that contracts for public works to which a public body of this State is a party contain certain provisions expressly providing for the payment to mechanics and workmen of wages at least equal to the rate of wages then prevailing in the county in which the public work is located. (NRS 338.010-338.090) Existing law requires contractors and subcontractors to maintain records showing the per diem, wages and benefits paid to each workman who is employed by the contractor or subcontractor in connection with a public work, and provides for the imposition of civil and criminal penalties against contractors and subcontractors who fail to pay the required prevailing wage. (NRS 338.060, 338.070, 338.090)

This bill provides that every contract for a public work to which a public body of this State is a party must require a contractor or subcontractor who performs work under the contract to provide a bona fide health care plan for a workman whom the contractor or subcontractor employs in connection with the public work, if the workman is deemed to be employed on the public work. This bill requires that the necessary coverage under a bona fide health care plan must begin before work commences on the public work and continue during the period in which a covered workman is performing work under the contract for the public work. The Labor Commissioner of the State of Nevada is charged with adopting regulations establishing minimum standards for the coverage required to be provided under a bona fide health care plan.



This bill further provides that a contractor or subcontractor that fails to provide the required coverage is subject to civil and criminal penalties similar to those imposed for failure to pay to a workman the required prevailing wage.

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

Section 1. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Every contract for a public work to which a public body of this State is a party must require a contractor or subcontractor who performs work under the contract to:

(a) Provide coverage under a bona fide health care plan for each workman who:

(1) The contractor or subcontractor employs to perform work under the contract; and

(2) Is deemed to be employed on the public work pursuant to NRS 338.040; and

(b) Pay the entire cost of the premiums or contributions for the coverage required to be provided pursuant to paragraph (a).

2. The coverage required to be provided pursuant to paragraph (a) of subsection 1 must be established before the commencement of work on the applicable public work and must be maintained for the entire period during which a workman is performing work under the contract for the public work.

3. The Labor Commissioner shall, by regulation, establish the minimum standards for the coverage required to be provided under a bona fide health care plan pursuant to paragraph (a) of subsection 1.

Sec. 2. NRS 338.050 is hereby amended to read as follows:

338.050 For the ~~purpose~~ *purposes* of NRS 338.010 to 338.090, inclusive, *and section 1 of this act*, except as otherwise provided by specific statute, every workman who performs work for a public work covered by a contract therefor is subject to all of the provisions of NRS 338.010 to 338.090, inclusive, *and section 1 of this act*, regardless of any contractual relationship alleged to exist between such workman and his employer.

Sec. 3. NRS 338.060 is hereby amended to read as follows:

338.060 1. Except as otherwise provided in subsection ~~8~~ *9*, a contractor engaged on a public work shall forfeit, as a penalty to the public body on behalf of which the contract has been made and awarded to the contractor, not less than \$20 nor more than \$50 for each calendar day or portion thereof that each workman employed on the public work is paid less than the designated rate for any work



done under the contract, by the contractor or any subcontractor engaged on the public work.

2. *Except as otherwise provided in subsection 9, a contractor engaged on a public work shall forfeit, as a penalty to the public body on behalf of which the contract has been made and awarded to the contractor, not less than \$20 nor more than \$50 per workman for each calendar day or portion thereof during which coverage under a bona fide health care plan as required pursuant to section 1 of this act is not provided for that workman by the contractor or any subcontractor engaged on the public work.*

3. Except as otherwise provided in subsection ~~8.1~~ 9, a contractor engaged on a public work shall forfeit, as a penalty to the public body on behalf of which the contract has been made and awarded to the contractor, not less than \$20 nor more than \$50 for each calendar day or portion thereof for each workman employed on the public work for which the contractor or subcontractor willfully included inaccurate or incomplete information in the monthly record required to be submitted to the public body pursuant to subsection 5 of NRS 338.070.

~~3.1~~ 4. Except as otherwise provided in subsection ~~8.1~~ 9, a contractor engaged on a public work shall forfeit, as a penalty to the public body on behalf of which the contract has been made and awarded to the contractor, not less than \$20 nor more than \$50 for each calendar day or portion thereof that each workman employed on the public work is not reported to the public body awarding the contract by the contractor or any subcontractor engaged on the public work as required pursuant to subsection 5 of NRS 338.070, up to a maximum of:

(a) For the first failure to comply during the term of the contract for the public work, \$1,000; and

(b) For each subsequent failure to comply during the term of the contract for the public work, \$5,000.

~~4.1~~ 5. Except as otherwise provided in subsection ~~8.1~~ 9, if a violation of more than one provision of subsections 1 ~~1, 2 and 3~~ to 4, inclusive, involves the same workman, the contractor shall forfeit the penalty set forth in each subsection that was violated.

~~5.1~~ 6. A public body awarding a contract for a public work shall cause a stipulation setting forth the penalties specified in subsections 1 to ~~4.1~~ 5, inclusive, to be inserted in the contract.

~~6.1~~ 7. The Labor Commissioner shall, by regulation, establish a sliding scale based on the size of the business of a contractor engaged on a public work to determine the amount of the penalty to be imposed pursuant to subsections 1 ~~and 2.1~~, 2 and 3.



~~17-1~~ 8. 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 and the public body.

~~18-1~~ 9. The Labor Commissioner may, for good cause shown, waive or reduce any penalty imposed pursuant to this section.

Sec. 4. NRS 338.070 is hereby amended to read as follows:

338.070 1. Any public body awarding a contract shall:

(a) Investigate possible violations of the provisions of NRS 338.010 to 338.090, inclusive, *and section 1 of this act* 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 engaged on the public work 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 ~~H~~, *and section 1 of this act*.

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

3. Except as otherwise provided in subsection 6, it is lawful for any contractor engaged on a public work to withhold from any subcontractor engaged on the public work sufficient sums to cover any penalties withheld from the contractor by the awarding public body on account of the failure of the subcontractor to comply with the terms of NRS 338.010 to 338.090, inclusive ~~H~~, *and section 1 of this act*. If payment has already been made to the subcontractor, the contractor may recover from the subcontractor the amount of the penalty or forfeiture in a suit at law.

4. A contractor engaged on a public work and each subcontractor engaged on the public work shall keep or cause to be kept an accurate record showing the name, the occupation and the actual per diem, wages and benefits, *including, without limitation, the coverage required to be provided under a bona fide health care plan pursuant to section 1 of this act, that have been* paid to each workman employed by the contractor and subcontractor in connection with the public work.

5. The record maintained pursuant to subsection 4 must be open at all reasonable hours to the inspection of the public body awarding the contract. The contractor engaged on the public work or subcontractor engaged on the public work shall ensure that a copy of the record for each calendar month is received by the public body awarding the contract no later than 15 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



1 awarding the contract may be discarded by the public body 2 years
2 after final payment is made by the public body for the public work.

3 6. A contractor engaged on a public work shall not withhold
4 from a subcontractor engaged on the public work the sums
5 necessary to cover any penalties provided pursuant to subsection ~~3~~
6 4 of NRS 338.060 that may be withheld from the contractor by the
7 public body awarding the contract because the public body did not
8 receive a copy of the record maintained by the subcontractor
9 pursuant to subsection 4 for a calendar month by the time specified
10 in subsection 5 if:

11 (a) The subcontractor provided to the contractor, for submission
12 to the public body by the contractor, a copy of the record not later
13 than the later of:

14 (1) Ten days after the end of the month; or

15 (2) A date agreed upon by the contractor and subcontractor;

16 and

17 (b) The contractor failed to submit the copy of the record to the
18 public body by the time specified in subsection 5.

19 ~~Nothing in this subsection prohibits~~ This subsection does not
20 prohibit a subcontractor from submitting a copy of a record for a
21 calendar month directly to the public body by the time specified in
22 subsection 5.

23 7. Any contractor or subcontractor, or agent or representative
24 thereof, performing work for a public work who neglects to comply
25 with the provisions of this section is guilty of a misdemeanor.

26 **Sec. 5.** NRS 338.090 is hereby amended to read as follows:

27 338.090 1. Any person, including the officers, agents or
28 employees of a public body, who violates any provision of NRS
29 338.010 to 338.090, inclusive, *and section 1 of this act* or any
30 regulation adopted pursuant thereto, is guilty of a misdemeanor.

31 2. The Labor Commissioner, in addition to any other remedy or
32 penalty provided in this chapter:

33 (a) Shall assess a person who, after an opportunity for a hearing,
34 is found to have failed to pay the prevailing wage required pursuant
35 to NRS 338.020 to 338.090, inclusive, an amount equal to the
36 difference between the prevailing wages required to be paid and the
37 wages that the contractor or subcontractor actually paid; ~~and~~

38 (b) *Shall assess a person who, after an opportunity for a*
39 *hearing, is found to have failed to provide coverage under a bona*
40 *fide health care plan as required by section 1 of this act an*
41 *amount equal to the difference between:*

42 (1) *The entire cost of the premiums and contributions*
43 *necessary to provide coverage under the bona fide health care*
44 *plan; and*



1 ***(2) The amount, if any, that the contractor or subcontractor***
2 ***actually paid; and***

3 ***(c)*** May, in addition to any other administrative penalty, impose
4 an administrative penalty not to exceed the costs incurred by the
5 Labor Commissioner to investigate and prosecute the matter.

6 3. If the Labor Commissioner finds that a person has failed to
7 ~~pay~~ :

8 ***(a) Pay*** the prevailing wage required pursuant to NRS 338.020
9 to 338.090, inclusive ~~to~~ ; ***or***

10 ***(b) Provide coverage under a bona fide health care plan as***
11 ***required pursuant to section 1 of this act,***

12 ↪ the public body may, in addition to any other remedy or penalty
13 provided in this chapter, require the person to pay the actual costs
14 incurred by the public body to investigate the matter.



