

ASSEMBLY BILL NO. 375—ASSEMBLYMAN HOGAN (BY REQUEST)

MARCH 23, 2005

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions relating to public works. (BDR 28-1118)

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; establishing an administrative procedure for the resolution of a complaint filed with the Labor Commissioner concerning the employer's designation of a workman as a member of a specific recognized class of workmen; requiring the Labor Commissioner to use the wage established pursuant to a collective bargaining agreement as the prevailing wage for a recognized class of workmen under certain circumstances; defining the terms "employed at the site of a public work" and "necessary in the execution of the contract for the public work" for the purposes of employment on a public work; 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. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A workman may file a complaint with the Labor Commissioner requesting that the Labor Commissioner review the employer's designation of the workman as a member of a specific recognized class of workmen. The Labor Commissioner may hold a hearing on the complaint.



1 2. *The Labor Commissioner shall review the employer's*
2 *designation of the workman. In conducting his review, the Labor*
3 *Commissioner shall consider:*

4 (a) *Any evidence of an intentionally erroneous designation of*
5 *the workman by the employer;*

6 (b) *The prevailing wage previously paid in the area for the*
7 *workman's duties;*

8 (c) *Any information provided by the workman concerning the*
9 *prevailing wage to be paid;*

10 (d) *Any information provided by the employer concerning the*
11 *prevailing wage to be paid;*

12 (e) *The available alternative means of dispute resolution,*
13 *including a grievance procedure authorized by a collective*
14 *bargaining agreement; and*

15 (f) *Any other information the Labor Commissioner may*
16 *require to conduct his review.*

17 3. *If the Labor Commissioner determines that the employer's*
18 *designation of the workman is erroneous, the Labor*
19 *Commissioner shall designate the workman as a member of the*
20 *appropriate recognized class of workmen.*

21 4. *The Labor Commissioner shall issue a written decision and*
22 *send a copy of the decision to the parties within 20 days after he*
23 *issues his decision. The decision of the Labor Commissioner is a*
24 *final decision for the purposes of judicial review.*

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

26 338.010 As used in this chapter:

27 1. "Authorized representative" means a person designated by a
28 governing body to be responsible for the development and award of
29 contracts for public works pursuant to this chapter.

30 2. "Contract" means a written contract entered into between a
31 contractor and a public body for the provision of labor, materials,
32 equipment or supplies for a public work.

33 3. "Contractor" means:

34 (a) A person who is licensed pursuant to the provisions of
35 chapter 624 of NRS or performs such work that he is not required to
36 be licensed pursuant to chapter 624 of NRS.

37 (b) A design-build team.

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

42 5. "Design-build contract" means a contract between a public
43 body and a design-build team in which the design-build team agrees
44 to design and construct a public work.

45 6. "Design-build team" means an entity that consists of:



1 (a) At least one person who is licensed as a general engineering
2 contractor or a general building contractor pursuant to chapter 624
3 of NRS; and

4 (b) For a public work that consists of:

5 (1) A building and its site, at least one person who holds a
6 certificate of registration to practice architecture pursuant to chapter
7 623 of NRS.

8 (2) Anything other than a building and its site, at least one
9 person who holds a certificate of registration to practice architecture
10 pursuant to chapter 623 of NRS or landscape architecture pursuant
11 to chapter 623A of NRS or who is licensed as a professional
12 engineer pursuant to chapter 625 of NRS.

13 7. "Design professional" means:

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

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

18 (c) A person who holds a certificate of registration to engage in
19 the practice of architecture, interior design or residential design
20 pursuant to chapter 623 of NRS;

21 (d) A person who holds a certificate of registration to engage in
22 the practice of landscape architecture pursuant to chapter 623A of
23 NRS; or

24 (e) A business entity that engages in the practice of professional
25 engineering, land surveying, architecture or landscape architecture.

26 8. "Eligible bidder" means a person who is:

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

31 (b) Determined by a public body or its authorized representative
32 which awarded a contract for a public work pursuant to NRS
33 338.1375 to 338.139, inclusive, to be qualified to bid on that
34 contract pursuant to NRS 338.1379 or 338.1382.

35 9. "General contractor" means a person who is licensed to
36 conduct business in one, or both, of the following branches of the
37 contracting business:

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

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

42 10. "Governing body" means the board, council, commission
43 or other body in which the general legislative and fiscal powers of a
44 local government are vested.



11. "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, 538, 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. The term includes a person who has been designated by a local government to serve as its authorized representative.

12. "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;
- (c) Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS; or
- (d) Comply with subsection 4 or 5 of NRS 338.070.

13. "Prime contractor" means a contractor who:

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

➤ The term includes, without limitation, a general contractor or a specialty contractor who is authorized to bid on a project pursuant to NRS 338.139 or 338.148.

14. "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.

15. "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;
- (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 money; and



1 (10) All other publicly owned works and property.

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

6 16. *“Recognized class of workmen” means a class of*
7 *workmen recognized by the Labor Commissioner as workmen who*
8 *are skilled in a distinct craft or type of work for purposes of*
9 *establishing prevailing rates of wages. The term includes a class of*
10 *workmen for which the Labor Commissioner has traditionally*
11 *established a prevailing rate of wages and any other class of*
12 *workmen the Labor Commissioner determines to be a distinct craft*
13 *or type of work.*

14 17. “Specialty contractor” means a person who is licensed to
15 conduct business as described in subsection 4 of NRS 624.215.

16 ~~17.~~ 18. “Stand-alone underground utility project” means an
17 underground utility project that is not integrated into a larger
18 project, including, without limitation:

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

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

27 ~~18.~~ 19. “Subcontract” means a written contract entered into
28 between:

29 (a) A contractor and a subcontractor or supplier; or

30 (b) A subcontractor and another subcontractor or supplier, for
31 the provision of labor, materials, equipment or supplies for a
32 construction project.

33 ~~19.~~ 20. “Subcontractor” means a person who:

34 (a) Is licensed pursuant to the provisions of chapter 624 of NRS
35 or performs such work that he is not required to be licensed pursuant
36 to chapter 624 of NRS; and

37 (b) Contracts with a contractor, another subcontractor or a
38 supplier to provide labor, materials or services for a construction
39 project.

40 ~~20.~~ 21. “Supplier” means a person who provides materials,
41 equipment or supplies for a construction project.

42 ~~21.~~ 22. “Wages” means:

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

44 (b) The amount of pension, health and welfare, vacation and
45 holiday pay, the cost of apprenticeship training or other similar



1 programs or other bona fide fringe benefits which are a benefit to
2 the workman.

3 ~~22.1~~ 23. "Workman" means a skilled mechanic, skilled
4 workman, semiskilled mechanic, semiskilled workman or unskilled
5 workman in the service of a contractor or subcontractor under any
6 appointment or contract of hire or apprenticeship, express or
7 implied, oral or written, whether lawfully or unlawfully employed.
8 The term does not include a design professional.

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

10 338.030 1. The public body awarding any contract for public
11 work, or otherwise undertaking any public work, shall ascertain
12 from the Labor Commissioner the prevailing wage in the county in
13 which the public work is to be performed for each craft or type of
14 work.

15 2. To establish a prevailing wage in each county, including
16 Carson City, the Labor Commissioner shall, annually, survey
17 contractors who have performed work in the county. Within 30 days
18 after the determination is issued:

19 (a) A public body or person entitled under subsection 5 to be
20 heard may submit an objection to the Labor Commissioner with
21 evidence to substantiate that a different wage prevails; and

22 (b) Any person may submit information to the Labor
23 Commissioner that would support a change in the prevailing wage
24 of a craft or type of work by 50 cents or more per hour in any
25 county.

26 3. The Labor Commissioner shall hold a hearing in the locality
27 in which the work is to be executed if he:

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

29 (b) Receives an objection or information pursuant to
30 subsection 2.

31 ➤ The Labor Commissioner may hold only one hearing a year on
32 the prevailing wage of any craft or type of work in any county.

33 4. 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. At the hearing, any public body, the crafts affiliated with the
37 State Federation of Labor or other recognized national labor
38 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. *If the Labor Commissioner determines that the prevailing*
42 *rate of wages for a recognized class of workmen is a wage that has*
43 *been established pursuant to a collective bargaining agreement,*
44 *the Labor Commissioner shall use that rate as the prevailing rate*
45 *of wages for the recognized class of workmen.*



7. 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]~~

8. *The provisions of NRS 338.020 to 338.090, inclusive, ~~[may be construed to]~~ and section 1 of this act do not* 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 public body.

Sec. 4. NRS 338.040 is hereby amended to read as follows:

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

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

(b) Necessary in the execution of the contract for the public 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.] As used in this section:~~

(a) *“Employed at the site of a public work” means the performance of work in the execution of a contract for a public work at or between the physical place where the work is performed or a significant portion of the public work is constructed, altered, repaired, assembled or installed. The term includes the performance of work at a job headquarters, a tool yard, batch plant, borrow pit, gravel pit or any other location which is established to execute the contract for the public work or which is dedicated primarily to executing the contract for the public work. The term does not include the performance of work at an established manufacturing facility where the continued existence of the operation is determined without regard to a specific public work and the manufacturer is exempt from the provisions of chapter 624 of NRS.*

(b) *“Necessary in the execution of the contract for the public work” means the performance of duties required to construct, alter or repair the public work and without which the public work could not be completed.*

Sec. 5. This act becomes effective on July 1, 2005.



