

ASSEMBLY BILL NO. 409—ASSEMBLYMAN CLABORN

MARCH 24, 2005

Referred to Committee on Government Affairs

SUMMARY—Revises various provisions relating to public works.  
(BDR 28-988)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

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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; clarifying the applicability of certain provisions requiring the payment of a prevailing wage; requiring that certain classifications of workers be used in connection with the surveying of contractors to establish a prevailing wage; revising certain definitions; 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:

*The fact that a particular project or undertaking does not qualify as a public work pursuant to NRS 338.010 does not exempt a person, contractor or subcontractor from paying the prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive, if the person, contractor or subcontractor is required to pay such a prevailing wage pursuant to NRS 244.286, 244A.763, 268.568, 271.710, 271.800, 279.500, 318.140, 318.144, 332.390, 333A.120, 338.0115, 349.670, 349.956, 408.3886, 543.545 or other applicable law.*

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

338.010 As used in this chapter:

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



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

3. "Contractor" means:

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

(b) A design-build team.

4. "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.

5. "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.

6. "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 landscape architecture pursuant to chapter 623A of NRS or who is licensed as a professional engineer pursuant to chapter 625 of NRS.

7. "Design professional" means:

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

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

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

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

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

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

(a) Found to be a responsible and responsive contractor by a local government or its authorized representative which requests



1 bids for a public work in accordance with paragraph (b) of  
2 subsection 1 of NRS 338.1373; or

3 (b) Determined by a public body or its authorized representative  
4 which awarded a contract for a public work pursuant to NRS  
5 338.1375 to 338.139, inclusive, to be qualified to bid on that  
6 contract pursuant to NRS 338.1379 or 338.1382.

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

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

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

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

17 11. "Local government" means every political subdivision or  
18 other entity which has the right to levy or receive money from ad  
19 valorem or other taxes or any mandatory assessments, and includes,  
20 without limitation, counties, cities, towns, boards, school districts  
21 and other districts organized pursuant to chapters 244A, 309, 318,  
22 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,  
23 inclusive, and any agency or department of a county or city which  
24 prepares a budget separate from that of the parent political  
25 subdivision. The term includes a person who has been designated by  
26 a local government to serve as its authorized representative.

27 12. "Offense" means failing to:

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

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

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

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

34 13. "Prime contractor" means a contractor who:

35 (a) Contracts to construct an entire project;

36 (b) Coordinates all work performed on the entire project;

37 (c) Uses his own workforce to perform all or a part of the public  
38 work; and

39 (d) Contracts for the services of any subcontractor or  
40 independent contractor or is responsible for payment to any  
41 contracted subcontractors or independent contractors.

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



1 14. "Public body" means the State, county, city, town, school  
2 district or any public agency of this State or its political subdivisions  
3 sponsoring or financing a public work.

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

6 (a) A project financed in whole or in part from public money  
7 for:

8 (1) Public buildings;

9 (2) Jails and prisons;

10 (3) Public roads;

11 (4) Public highways;

12 (5) Public streets and alleys;

13 (6) Public utilities;

14 (7) Publicly owned water mains and sewers;

15 (8) Public parks and playgrounds;

16 (9) Public convention facilities which are financed at least in  
17 part with public money; and

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

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

23 16. "Specialty contractor" means a person who is licensed to  
24 conduct business as described in subsection 4 of NRS 624.215.

25 17. "Stand-alone underground utility project" means an  
26 underground utility project that is not integrated into a larger  
27 project, including, without limitation:

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

31 (b) A project for the construction or installation of a storm drain,  
32 including facilities appurtenant thereto,

33 ➤ that is not located at the site of a public work for the design and  
34 construction of which a public body is authorized to contract with a  
35 design-build team pursuant to subsection 2 of NRS 338.1711.

36 18. "Subcontract" means a written contract entered into  
37 between:

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

39 (b) A subcontractor and another subcontractor or supplier, for  
40 the provision of labor, materials, equipment or supplies for a  
41 construction project.

42 19. "Subcontractor" means a person who:

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



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

20. "Supplier" means a person who ~~provides~~ :

(a) *Provides* materials, equipment or supplies for a construction project ~~H~~ ; and

(b) *Does not perform any labor or work in connection with the construction project apart from delivering the materials, equipment or supplies to the site of the construction project or to another location designated for such delivery.*

21. "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. *As used in this paragraph, "bona fide fringe benefits" includes:*

(1) *Benefits provided to a workman pursuant to a collective bargaining agreement;*

(2) *Benefits provided to a workman under a plan established pursuant to the Labor-Management Relations Act, 1947, as amended; and*

(3) *Benefits provided by the employer of a workman to the workman for all hours during which and all jobs and projects on which the workman is employed by his employer without regard to whether the labor is performed on or in connection with a public work.*

22. "Workman" means a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman in the service of a contractor or subcontractor under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed.

(a) *The term includes a supplier to the extent that the supplier performs labor or work in connection with a construction project in excess of that required to deliver materials, equipment or supplies to the site of the construction project or to another location designated for such delivery.*

(b) The term does not include a design professional.

**Sec. 3.** 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:

(a) A public body or person entitled under subsection ~~HS~~ 6 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. *For the purpose of surveying contractors as required pursuant to subsection 2, the Labor Commissioner shall use the following classifications of workers and any other classifications as the Labor Commissioner may deem appropriate:*

(a) *Boilermaker;*

(b) *Bricklayer, including, without limitation, tile setter, terrazzo worker, marble mason, or tile, terrazzo or marble finisher;*

(c) *Carpenter, including, without limitation, millwright, piledriver (nonequipment) and drywall installer;*

(d) *Cement mason;*

(e) *Electrician, including, without limitation, alarm installer, electrician-communication technician, electrician-line (lineman, groundman or heavy equipment operator), electrician-neon sign and electrician-wireman;*

(f) *Elevator constructor;*

(g) *Fence erector;*

(h) *Floor coverer;*

(i) *Glazier;*

(j) *Highway striper;*

(k) *Ironworker;*

(l) *Laborer, including, without limitation, flagperson, hod carrier-brick mason tender, hod carrier-plasterer tender, traffic barrier erector and asbestos abater;*

(m) *Mechanical insulator;*

(n) *Operating engineer, including, without limitation, operating engineer-steel fabricator and erector, operating engineer-tunnel, and operating engineer-piledriver;*

(o) *Painter;*

(p) *Plasterer;*

(q) *Plumber or pipefitter, including, without limitation, refrigeration mechanic;*

(r) *Roofer;*



(s) *Sheet metal worker, including, without limitation, air balance technician;*

(t) *Sprinkler fitter;*

(u) *Surveyor (nonlicensed);*

(v) *Taper;*

(w) *Truck driver; and*

(x) *Well driller.*

4. 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 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-]~~ 5. 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-]~~ 6. 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-]~~ 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-]~~ 8. 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 public body.

**Sec. 4.** NRS 338.050 is hereby amended to read as follows:

338.050 For the purpose 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. 5.** NRS 338.450 is hereby amended to read as follows:

338.450 "Supplier" means a person who ~~[provides]~~ :

1. *Provides* materials, equipment or supplies for a public work ~~[ ]~~; and

2. *Does not perform any labor or work in connection with the public work apart from delivering the materials, equipment or*



- 1 *supplies to the site of the public work or to another location*
- 2 *designated for such delivery.*

