

ASSEMBLY BILL NO. 552—COMMITTEE ON COMMERCE AND LABOR

MARCH 29, 2005

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works.
(BDR 28-1059)

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 the provisions governing the determination of the prevailing wages by the Labor Commissioner; providing that the prevailing wages in effect at the time of opening bids for a contract for a public work to be the prevailing wages for the duration of the public work project; revising the provisions governing the maintenance of records relating to employees of contractors and subcontractors engaged 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:

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

1. The public body awarding a 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 class of workmen recognized in the construction industry as being a distinct craft or type of work.

2. To establish a prevailing wage in each county, including Carson City, the Labor Commissioner shall survey annually:

(a) Contractors who have performed nonresidential construction in the county on any project with a total cost of \$100,000 or more; and



1 (b) *Recognized national labor organizations that represent*
2 *workmen in the construction industry.*

3 3. *The Labor Commissioner shall consider the following*
4 *information in determining prevailing wages:*

5 (a) *Statements showing rates of wages paid on public and*
6 *private nonresidential construction projects, where the statements*
7 *are signed by contractors or recognized national labor*
8 *organizations or representatives thereof, and contain:*

9 (1) *The names and addresses of the contractors;*

10 (2) *The location, approximate costs and dates of*
11 *construction of each nonresidential construction project of the*
12 *contractors during the period of the survey;*

13 (3) *The number of hours each recognized class of workmen*
14 *employed by the contractors worked on each nonresidential*
15 *construction project during the period of the survey; and*

16 (4) *The respective rates of wages paid to each recognized*
17 *class of workmen described in subparagraph (3) for working on*
18 *each nonresidential construction project during the period of the*
19 *survey.*

20 (b) *Signed collective bargaining agreements that are on file*
21 *with the Labor Commissioner preceding the annual determination*
22 *of the prevailing wages.*

23 4. *Based on the information obtained from the surveys*
24 *conducted pursuant to subsection 2 and the information described*
25 *in subsection 3, the Labor Commissioner shall determine annually*
26 *the prevailing wage for each recognized class of workmen in each*
27 *county as follows:*

28 (a) *If the rate of wages is the same for the majority of the total*
29 *hours worked by a recognized class of workmen who are employed*
30 *in the county on nonresidential construction, that rate will be*
31 *determined to be the prevailing wage.*

32 (b) *If there is no such majority, the rate of wages paid for the*
33 *greater number of hours worked by the recognized class of*
34 *workmen who are employed in the county on nonresidential*
35 *construction.*

36 (c) *If nonresidential construction has not been performed*
37 *within a county during the period of the survey, the prevailing*
38 *wages for such a county must be the prevailing wages, as*
39 *determined by the Labor Commissioner, for the county with the*
40 *nearest county seat, by the shortest and most traveled route, in*
41 *which nonresidential construction has been performed.*

42 5. *If the Labor Commissioner determines that the prevailing*
43 *rate of wages for a recognized class of workmen is a wage that has*
44 *been collectively bargained, the Labor Commissioner shall:*



1 (a) *Recognize the classifications and job descriptions of*
2 *workmen and economic conditions covered under the collective*
3 *bargaining agreement.*

4 (b) *Adjust the prevailing wage for the recognized class of*
5 *workmen for each county to the rate of wages in effect under the*
6 *collective bargaining agreement on the effective date of the*
7 *determination.*

8 6. *As used in this section:*

9 (a) *“Economic conditions” means premium pay for:*

10 (1) *Subsistence, traveling to another zone or area or for*
11 *similar purposes;*

12 (2) *Shifts; and*

13 (3) *Overtime, weekends or holidays.*

14 (b) *“Nonresidential construction” means any type of*
15 *construction except for the construction of multifamily residences*
16 *that are less than four stories in height and single-family*
17 *residences.*

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

19 338.020 1. Every contract ~~[to which a public body of this~~
20 ~~State is a party.]~~ requiring the employment of skilled mechanics,
21 skilled workmen, semiskilled mechanics, semiskilled workmen or
22 unskilled labor in the performance of public work, must contain in
23 express terms the hourly and daily rate of wages to be paid each of
24 the classes of mechanics and workmen. The hourly and daily rate of
25 wages *to be paid to each such class* must:

26 (a) Not be less than the ~~[rate of such wages then]~~ prevailing
27 *wage* in the county in which the public work is located, ~~[which~~
28 ~~prevailing rate of wages must have been determined in the manner~~
29 ~~provided in NRS 338.030;]~~ *as determined by the Labor*
30 *Commissioner pursuant to section 1 of this act;* and

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

33 2. When public work is performed by day labor, the prevailing
34 wage for each class of mechanics and workmen so employed applies
35 and must be stated clearly to such mechanics and workmen when
36 employed.

37 3. Except as otherwise provided in subsection 4, a contractor or
38 subcontractor shall pay to a mechanic or workman employed by the
39 contractor or subcontractor on the public work not less than one and
40 one-half times the prevailing ~~[rate of wages]~~ *wage* applicable to the
41 class of the mechanic or workman whenever the mechanic or
42 workman works:

43 (a) More than 40 hours in any scheduled week of work; or



(b) More than 8 hours in any workday unless by mutual agreement the mechanic or workman works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

4. The provisions of subsection 3 do not apply to a mechanic or workman who is covered by a collective bargaining agreement that provides for the payment of wages at not less than one and one-half times the rate of wages set forth in the collective bargaining agreement for work in excess of:

(a) Forty hours in any scheduled week of work; or

(b) Eight hours in any workday unless the collective bargaining agreement provides that the mechanic or workman shall work a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

5. The prevailing wage and any wages paid for overtime pursuant to subsection 3 or 4 to each class of mechanics or workmen must be in accordance with the jurisdictional classes recognized in the locality where the work is performed.

6. *Except as otherwise provided in subsection 7, the prevailing wages in effect at the time of the opening of bids for a contract for a public work are the prevailing wages for each recognized class of workmen in the county in which the public work is to be performed for the duration of the project.*

7. *The Labor Commissioner shall increase the prevailing wage for a recognized class of workmen not more than 50 cents per year for each year in which the contract for the public work is in effect if:*

(a) *The wage for a recognized class of workmen has been collectively bargained; and*

(b) *An increase in the wage has been allocated for health and pension benefits pursuant to the collective bargaining agreement. Notice of such an increase must be provided to the Labor Commissioner 60 days before the effective date of the increase for the recognized class of workmen.*

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

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



1 days after the ~~{determination is issued:}~~ *Labor Commissioner*
2 *determines the prevailing wages pursuant to section 1 of this act:*

3 (a) A public body or person entitled under subsection ~~{5}~~ 4 to be
4 heard may submit an objection to the Labor Commissioner with
5 evidence to substantiate that a different wage prevails; ~~{and}~~ *or*

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

10 ~~{3}~~ 2. The Labor Commissioner shall hold a hearing in the
11 locality in which the work is to be executed if he:

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

13 (b) Receives ~~{an}~~ *any* objection or information pursuant to
14 subsection ~~{2}~~ 1.

15 ➔ The Labor Commissioner may hold only one hearing a year on
16 the prevailing wage of any ~~{craft or type of work}~~ *recognized class*
17 *of workmen* in any county.

18 ~~{4}~~ 3. Notice of the hearing must be advertised in a newspaper
19 nearest to the locality of the work once a week for 2 weeks before
20 the time of the hearing.

21 ~~{5}~~ 4. At the hearing, any public body, the crafts affiliated
22 with the state federation of labor or other recognized national labor
23 organizations, and the contractors of the locality or their
24 representatives must be heard. From the evidence presented, the
25 Labor Commissioner shall determine the prevailing wage.

26 ~~{6}~~ 5. The wages so determined must be filed by the Labor
27 Commissioner and must be available to any public body which
28 awards a contract for, *or otherwise undertakes*, any public work.

29 ~~{7}~~ 6. Nothing contained in NRS 338.020 to 338.090,
30 inclusive, *and section 1 of this act* may be construed to authorize
31 the fixing of any wage below any rate which may now or hereafter
32 be established as a minimum wage for any person employed upon
33 any public work, or employed by any officer or agent of any public
34 body.

35 7. *As used in this section, "representative" means an agent,*
36 *officer or employee of a contractor or recognized national labor*
37 *organization who has been authorized to act in such a capacity by*
38 *the contractor or labor organization.*

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

40 338.070 1. Any public body awarding a contract, *or*
41 *otherwise undertaking a public work*, shall:

42 (a) Investigate possible violations of the provisions of NRS
43 338.010 to 338.090, inclusive, committed in the course of the
44 execution of the contract, and determine whether a violation has



1 been committed and inform the Labor Commissioner of any such
2 violations; and

3 (b) When making payments to the contractor engaged on the
4 public work of money becoming due under the contract, withhold
5 and retain all sums forfeited pursuant to the provisions of NRS
6 338.010 to 338.090, inclusive.

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

10 3. Except as otherwise provided in subsection 6, it is lawful for
11 any contractor engaged on a public work to withhold from any
12 subcontractor engaged on the public work sufficient sums to cover
13 any penalties withheld from the contractor by the awarding public
14 body on account of the failure of the subcontractor to comply with
15 the terms of NRS 338.010 to 338.090, inclusive. If payment has
16 already been made to the subcontractor, the contractor may recover
17 from the subcontractor the amount of the penalty or forfeiture in a
18 suit at law.

19 4. A contractor engaged on a public work and each
20 subcontractor engaged on the public work shall keep or cause to be
21 kept an accurate record showing ~~[the name, the occupation and the]~~
22 ~~:~~

23 (a) *The name, street address, or mailing address, if different,*
24 *and occupation of each workman employed by the contractor and*
25 *subcontractor in connection with the public work;*

26 (b) *The actual per diem, wages and benefits paid to each*
27 *workman employed by the contractor and subcontractor in*
28 *connection with the public work* ~~[]~~ *; and*

29 (c) *A summary of the total number of hours worked per week*
30 *by each workman employed by the contractor and subcontractor*
31 *in connection with each public work and, if applicable, each*
32 *project other than a public work.*

33 5. The record maintained pursuant to subsection 4 must be
34 open at all reasonable hours to the inspection of the public body
35 awarding the contract. The contractor engaged on the public work or
36 subcontractor engaged on the public work shall ensure that a copy of
37 the record for each calendar month is received by the public body
38 awarding the contract no later than 15 days after the end of the
39 month. The copy must be open to public inspection as provided in
40 NRS 239.010. The record in the possession of the public body
41 awarding the contract may be discarded by the public body 2 years
42 after final payment is made by the public body for the public work.

43 6. A contractor engaged on a public work shall not withhold
44 from a subcontractor engaged on the public work the sums
45 necessary to cover any penalties provided pursuant to subsection 3



1 of NRS 338.060 that may be withheld from the contractor by the
2 public body awarding the contract because the public body did not
3 receive a copy of the record maintained by the subcontractor
4 pursuant to subsection 4 for a calendar month by the time specified
5 in subsection 5 if:

6 (a) The subcontractor provided to the contractor, for submission
7 to the public body by the contractor, a copy of the record not later
8 than the later of:

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

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

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

14 ➡ Nothing in this subsection prohibits a subcontractor from
15 submitting a copy of a record for a calendar month directly to the
16 public body by the time specified in subsection 5.

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

20 **Sec. 5.** This act becomes effective on January 1, 2006.



