

ASSEMBLY BILL NO. 552—COMMITTEE ON COMMERCE AND LABOR

MARCH 29, 2005

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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.

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AN ACT relating to public works; clarifying the applicability of certain provisions requiring the payment of prevailing wages; revising the provisions governing the determination of the prevailing wages by the Labor Commissioner; providing that, with certain exceptions, the prevailing wages in effect at the time of opening bids for a contract for a public work are the prevailing wages for the duration of the contract; requiring a public body to report possible violations of certain laws by contractors or subcontractors to the Labor Commissioner; 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:

1     **Section 1.** Chapter 338 of NRS is hereby amended by adding  
2     thereto the provisions set forth as sections 2 and 3 of this act.

3     **Sec. 2.** *The fact that a particular project or undertaking does*  
4     *not qualify as a public work, as defined in NRS 338.010, does not*  
5     *exempt a person, including, without limitation, a contractor or*  
6     *subcontractor, or a governmental entity, from complying with the*  
7     *provisions of this section, NRS 338.010 to 338.090, inclusive, and*  
8     *section 3 of this act in the same manner as a public body is*



1 *required to comply with those provisions if the person or*  
2 *governmental entity is required to comply with the provisions of*  
3 *this section, NRS 338.010 to 338.090, inclusive, and section 3 of*  
4 *this act pursuant to NRS 244.286, 244A.763, 268.568, 271.710,*  
5 *271.800, 279.500, 318.140, 318.144, 332.390, 333A.120, 338.0115,*  
6 *349.670, 349.956, 408.3886, 543.545 or other applicable law.*

7 **Sec. 3. 1.** *The public body awarding a contract for a public*  
8 *work, or any person or governmental entity that is otherwise*  
9 *required to comply with the provisions of this section, NRS*  
10 *338.010 to 338.090, inclusive, and section 2 of this act, shall*  
11 *ascertain from the Labor Commissioner the prevailing wage in the*  
12 *county in which the public work, project or undertaking is to be*  
13 *performed for each class of workmen recognized in the*  
14 *construction industry as being a distinct craft or type of work.*

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

17 *(a) Contractors who have performed nonresidential*  
18 *construction in the county on any project with a total cost of*  
19 *\$100,000 or more; and*

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

22 **3.** *For the purpose of the survey required pursuant to*  
23 *subsection 2, the Labor Commissioner shall use the following*  
24 *classifications of workers:*

25 *(a) Boilermaker;*

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

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

31 *(d) Cement mason;*

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

36 *(f) Elevator constructor;*

37 *(g) Fence erector;*

38 *(h) Floor coverer;*

39 *(i) Glazier;*

40 *(j) Highway striper;*

41 *(k) Ironworker;*

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

45 *(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 consider the following information in determining prevailing wages:

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

(1) The names and addresses of the contractors;

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

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

(4) The respective rates of wages paid to each recognized class of workmen described in subparagraph (3) that worked on each nonresidential construction project during the period of the survey, but each recognized class of workmen who is covered under a collective bargaining agreement will be considered to be paid at the same rate of wages.

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

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

(a) If the rate of wages is the same for the majority of the total hours worked by a recognized class of workmen who are employed



1 *in the county on nonresidential construction, that rate will be*  
2 *determined to be the prevailing wage.*

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

7 *(c) If nonresidential construction has not been performed*  
8 *within a county during the period of the survey, the prevailing*  
9 *wages for such a county must be the prevailing wages, as*  
10 *determined by the Labor Commissioner, for the county with the*  
11 *nearest county seat, by the shortest and most traveled route, in*  
12 *which nonresidential construction has been performed.*

13 *6. If the Labor Commissioner determines that the prevailing*  
14 *rate of wages for a recognized class of workmen is a wage that has*  
15 *been collectively bargained, the Labor Commissioner shall:*

16 *(a) Recognize the classifications and job descriptions of*  
17 *workmen and economic conditions covered under the collective*  
18 *bargaining agreement.*

19 *(b) Adjust the prevailing wage for the recognized class of*  
20 *workmen for each county to the rate of wages in effect under the*  
21 *collective bargaining agreement on the effective date of the*  
22 *determination.*

23 *7. As used in this section:*

24 *(a) "Economic conditions" means premium pay for:*

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

27 *(2) Shifts; and*

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

29 *(b) "Nonresidential construction" means any type of*  
30 *construction except for the construction, landscaping or fencing*  
31 *of multifamily residences that are less than four stories in height*  
32 *and single-family residences.*

33 **Sec. 4.** NRS 338.015 is hereby amended to read as follows:

34 338.015 1. The Labor Commissioner shall enforce the  
35 provisions of NRS 338.010 to 338.130, inclusive ~~§~~, *and sections 2*  
36 *and 3 of this act.*

37 2. *If the Labor Commissioner receives notification of a*  
38 *possible violation from a public body pursuant to paragraph (b) of*  
39 *subsection 1 of NRS 338.070, the Labor Commissioner shall*  
40 *investigate and determine whether a violation has been committed*  
41 *within 60 days after receipt of such notification.*

42 3. In addition to any other remedy or penalty provided in this  
43 chapter, if any person violates any provision of NRS 338.010 to  
44 338.130, inclusive, *and sections 2 and 3 of this act*, or any  
45 regulation adopted pursuant thereto, the Labor Commissioner may



1 impose against the person an administrative penalty of not more  
2 than \$5,000 for each such violation.

3 ~~[3-]~~ 4. The Labor Commissioner may, by regulation, establish  
4 a sliding scale based on the severity of the violation to determine the  
5 amount of the administrative penalty to be imposed against the  
6 person pursuant to this section.

7 ~~[4-]~~ 5. The Labor Commissioner shall report the violation to  
8 the Attorney General, and the Attorney General shall prosecute the  
9 person in accordance with law.

10 **Sec. 5.** NRS 338.020 is hereby amended to read as follows:

11 338.020 1. Every contract ~~[to which a public body of this~~  
12 ~~State is a party,]~~ requiring the employment of skilled mechanics,  
13 skilled workmen, semiskilled mechanics, semiskilled workmen or  
14 unskilled labor in the performance of public work, must contain in  
15 express terms the hourly and daily rate of wages to be paid each of  
16 the classes of mechanics and workmen. The hourly and daily rate of  
17 wages *to be paid to each such class* must:

18 (a) Not be less than the ~~[rate of such wages then]~~ prevailing  
19 *wage* in the county in which the public work is located, ~~[which~~  
20 ~~prevailing rate of wages must have been determined in the manner~~  
21 ~~provided in NRS 338.030;]~~ *as determined by the Labor*  
22 *Commissioner pursuant to section 3 of this act;* and

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

25 2. When public work is performed by day labor, the prevailing  
26 wage for each class of mechanics and workmen so employed applies  
27 and must be stated clearly to such mechanics and workmen when  
28 employed.

29 3. Except as otherwise provided in subsection 4, a contractor or  
30 subcontractor shall pay to a mechanic or workman employed by the  
31 contractor or subcontractor on the public work not less than one and  
32 one-half times the prevailing ~~[rate of wages]~~ *wage* applicable to the  
33 class of the mechanic or workman whenever the mechanic or  
34 workman works:

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

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

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

44 (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 at least 60 days before the date on which the prevailing wages that have been determined for the recognized class of workmen by the Labor Commissioner for that year pursuant to section 3 of this act become effective.*

*Any increase in the prevailing wage pursuant to this subsection becomes effective on the date on which the prevailing wages that have been determined for the recognized class of workmen by the Labor Commissioner for that year pursuant to section 3 of this act become effective.*

8. Nothing in this section ~~prevents~~ :

(a) *Prevents* an employer who is signatory to a collective bargaining agreement from assigning such work in accordance with ~~the~~ established practice ~~in the area~~.

(b) *Requires a public body to amend a contract for a public work, authorize a change order or otherwise increase the amount of compensation paid to a contractor or subcontractor for a public work, if the Labor Commissioner increases the prevailing wage for a recognized class of workmen pursuant to subsection 7.*

**Sec. 6.** 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:]~~ **Labor Commissioner determines the prevailing wages pursuant to section 3 of this act:**

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

(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]~~ **recognized class of workmen** by 50 cents or more per hour in any county.

~~[3.]~~ **2.** 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]~~ **any** objection or information pursuant to subsection ~~[2.]~~ **1.**

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

~~[4.]~~ **3.** 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.]~~ **4.** 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.]~~ **5.** 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 ~~[and to any person or governmental entity that is otherwise required to comply with the provisions of NRS 338.010 to 338.090, inclusive, and sections 2 and 3 of this act.]~~

~~[7.]~~ **6.** Nothing contained in NRS 338.020 to 338.090, inclusive, **and sections 2 and 3 of this act** 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. 7.** NRS 338.070 is hereby amended to read as follows:

338.070 1. Any public body awarding a contract , **or any person or governmental entity that is otherwise required to comply**





1 *with the provisions of NRS 338.010 to 338.090, inclusive, and*  
2 *sections 2 and 3 of this act*, shall:

3 (a) Investigate possible violations of the provisions of NRS  
4 338.010 to 338.090, inclusive, *and sections 2 and 3 of this act*  
5 committed in the course of the execution of the contract, and  
6 determine whether a violation has been committed and inform the  
7 Labor Commissioner of any such violations; ~~and~~

8 (b) *If based on a copy of the record received pursuant to*  
9 *subsection 5, a public body reasonably believes that a contractor*  
10 *or subcontractor has failed to compensate a workman in*  
11 *compliance with any applicable state or federal law for work on a*  
12 *public work, project or undertaking other than the public work,*  
13 *project or undertaking that is the subject of the contract, the*  
14 *public body shall notify the Labor Commissioner of the possible*  
15 *violation; and*

16 (c) When making payments to the contractor engaged on the  
17 public work of money becoming due under the contract, withhold  
18 and retain all sums forfeited pursuant to the provisions of NRS  
19 338.010 to 338.090, ~~inclusive~~, *and sections 2 and 3 of this act*.

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

23 3. Except as otherwise provided in subsection 6, it is lawful for  
24 any contractor engaged on a public work to withhold from any  
25 subcontractor engaged on the public work sufficient sums to cover  
26 any penalties withheld from the contractor by the awarding public  
27 body on account of the failure of the subcontractor to comply with  
28 the terms of NRS 338.010 to 338.090, ~~inclusive~~, *and sections 2*  
29 *and 3 of this act*. If payment has already been made to the  
30 subcontractor, the contractor may recover from the subcontractor the  
31 amount of the penalty or forfeiture in a suit at law.

32 4. A contractor engaged on a public work and each  
33 subcontractor engaged on the public work shall keep or cause to be  
34 kept an accurate record showing ~~the name, the occupation and the~~  
35 :

36 (a) *The name and occupation of each workman employed by*  
37 *the contractor and subcontractor in connection with the public*  
38 *work and the city and state in which each such workman resides*  
39 *and, if different, the city and state in which a workman has a*  
40 *mailing address;*

41 (b) *The actual per diem, wages and benefits paid to each*  
42 *workman employed by the contractor and subcontractor in*  
43 *connection with the public work* ~~;~~ *; and*

44 (c) *A summary of the total number of hours worked per week*  
45 *by each workman employed by the contractor and subcontractor*





1 *in connection with each public work and, if applicable, each*  
2 *project other than a public work.*

3 5. The record maintained pursuant to subsection 4 must be  
4 open at all reasonable hours to the inspection of the public body  
5 awarding the contract. The contractor engaged on the public work or  
6 subcontractor engaged on the public work shall ensure that a copy of  
7 the record for each calendar month is received by the public body  
8 awarding the contract no later than 15 days after the end of the  
9 month. The copy must be open to public inspection as provided in  
10 NRS 239.010. The record in the possession of the public body  
11 awarding the contract may be discarded by the public body 2 years  
12 after final payment is made by the public body for the public work.

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

21 (a) The subcontractor provided to the contractor, for submission  
22 to the public body by the contractor, a copy of the record not later  
23 than the later of:

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

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

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

29 ➤ Nothing in this subsection prohibits a subcontractor from  
30 submitting a copy of a record for a calendar month directly to the  
31 public body by the time specified in subsection 5.

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

35 **Sec. 8.** This act becomes effective on January 1, 2006.







