

ASSEMBLY BILL NO. 218—ASSEMBLYMEN HOGAN, CLABORN, PARKS, SMITH, ANDERSON, ATKINSON, CONKLIN, DENIS, GERHARDT, KIHUEN, KIRKPATRICK, KOIVISTO, LESLIE, MCCLAIN, MORTENSON, MUNFORD, PIERCE, SEGERBLOM AND WOMACK

FEBRUARY 28, 2007

JOINT SPONSORS: SENATORS TITUS AND WOODHOUSE

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works. (BDR 28-852)

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; clarifying the definition of an “offense”; clarifying that the Labor Commissioner may impose an administrative penalty against a person for the commission of an offense; revising provisions relating to the temporary disqualification of certain contractors from being awarded contracts for public works; requiring the Labor Commissioner to adopt certain regulations; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law sets forth general provisions applicable to public works, including provisions requiring the payment of prevailing wages to mechanics and workmen employed on a public works project. (NRS 338.010-338.090) Such provisions are also applied by reference to other state and local construction and improvement projects. (NRS 244.286, 244A.763, 268.568, 271.710, 271.800, 271A.130, 278C.240, 279.500, 349.670, 349.956, 543.545)

Existing law provides that, as used in chapter 338 of NRS, an “offense” means failing to pay the prevailing wage, failing to pay contributions for unemployment compensation, failing to provide and secure industrial insurance compensation or failing to comply with certain recordkeeping requirements. (NRS 338.010) **Section 1** of this bill clarifies that each instance of the failure to pay one or more workmen the prevailing wage on a public work constitutes an offense.



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Under existing law, the Labor Commissioner is required to enforce certain provisions of chapter 338 of NRS and if a person violates those provisions, the Labor Commissioner is required to report the violation to the Attorney General and is authorized to impose administrative penalties for the violation. (NRS 338.015) **Section 2** of this bill clarifies that the Labor Commissioner is required to report the commission of an "offense" to the Attorney General and is authorized to impose administrative penalties for the commission of an "offense." (NRS 338.010, 338.015)

Existing law provides that if an administrative penalty is imposed against a person for the commission of an "offense," the person and any corporate officers of the person are prohibited from receiving a contract for a public work for a period of 3 years, if the offense is a first offense, and for a period of 5 years, if the offense is a second or subsequent offense. (NRS 338.010, 338.017) **Section 3** of this bill graduates the periods of temporary disqualification following the imposition of an administrative penalty as follows: (1) at least 6 months but not more than 1 year for a first offense; (2) at least 1 year but not more than 3 years for a second offense; (3) at least 3 years but not more than 5 years for a third offense; and (4) at least 5 years for a fourth or subsequent offense. Also, the Labor Commissioner has discretion to temporarily disqualify a person for a first offense, but must disqualify a person for second and subsequent offenses. The Labor Commissioner is required to adopt by regulation criteria to determine whether the commission of an offense counts toward the cumulative offenses and corresponding penalties.

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

Section 1. 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 public body to be responsible for the development, solicitation, award or administration 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 bids for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373; or

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

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

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

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

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



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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 the governing body of a local government to serve as its authorized representative.

12. "Offense" means : ~~failing to:~~

(a) ~~Pay~~ *Each instance of failing to pay* the prevailing wage required pursuant to this chapter ~~to one or more workmen on a public work; or~~

(b) *Failing to:*

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

~~(c)~~ (2) Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS; or

~~(d)~~ (3) 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;



- 1 (7) Publicly owned water mains and sewers;
- 2 (8) Public parks and playgrounds;
- 3 (9) Public convention facilities which are financed at least in
- 4 part with public money; and

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

6 (b) A building for the Nevada System of Higher Education of
7 which 25 percent or more of the costs of the building as a whole are
8 paid from money appropriated by this State or from federal money.

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

11 17. "Stand-alone underground utility project" means an
12 underground utility project that is not integrated into a larger
13 project, including, without limitation:

14 (a) An underground sewer line or an underground pipeline for
15 the conveyance of water, including facilities appurtenant thereto;
16 and

17 (b) A project for the construction or installation of a storm drain,
18 including facilities appurtenant thereto,
19 ➔ that is not located at the site of a public work for the design and
20 construction of which a public body is authorized to contract with a
21 design-build team pursuant to subsection 2 of NRS 338.1711.

22 18. "Subcontract" means a written contract entered into
23 between:

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

25 (b) A subcontractor and another subcontractor or supplier,
26 ➔ for the provision of labor, materials, equipment or supplies for a
27 construction project.

28 19. "Subcontractor" means a person who:

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

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

35 20. "Supplier" means a person who provides materials,
36 equipment or supplies for a construction project.

37 21. "Wages" means:

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

39 (b) The amount of pension, health and welfare, vacation and
40 holiday pay, the cost of apprenticeship training or other similar
41 programs or other bona fide fringe benefits which are a benefit to
42 the workman.

43 22. "Workman" means a skilled mechanic, skilled workman,
44 semiskilled mechanic, semiskilled workman or unskilled workman
45 in the service of a contractor or subcontractor under any



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1 appointment or contract of hire or apprenticeship, express or
2 implied, oral or written, whether lawfully or unlawfully employed.
3 The term does not include a design professional.

4 **Sec. 2.** NRS 338.015 is hereby amended to read as follows:

5 338.015 1. The Labor Commissioner shall enforce the
6 provisions of NRS 338.010 to 338.130, inclusive.

7 2. In addition to any other remedy or penalty provided in this
8 chapter, if any person, including, without limitation, a public body,
9 *commits an offense or* violates any provision of NRS 338.010 to
10 338.130, inclusive, or any regulation adopted pursuant thereto, the
11 Labor Commissioner may, after providing the person with notice
12 and an opportunity for a hearing, impose against the person an
13 administrative penalty of not more than \$5,000 for each such
14 *offense or* violation.

15 3. The Labor Commissioner may, by regulation, establish a
16 sliding scale based on the severity of the *offense or* violation to
17 determine the amount of the administrative penalty to be imposed
18 against the person pursuant to this section.

19 4. The Labor Commissioner shall report the *offense or*
20 violation to the Attorney General, and the Attorney General may
21 prosecute the person in accordance with law.

22 **Sec. 3.** NRS 338.017 is hereby amended to read as follows:

23 338.017 1. If any administrative penalty is imposed against a
24 person for the commission of ~~{an offense:~~

25 ~~—1. That} :~~

26 *(a) A first offense, the Labor Commissioner may prohibit that*
27 *person, and the corporate officers, if any, of that person, ~~{may not~~*
28 *~~be} from being~~ awarded a contract for a public work ~~{:~~*

29 ~~—(a) For the first offense,} by a public body for a period of {3~~
30 ~~years after the date of the imposition of the administrative penalty;~~
31 ~~and~~

32 ~~—(b) For the second or subsequent offense,} at least 6 months but~~
33 ~~not more than 1 year.~~

34 *(b) A second offense, the Labor Commissioner shall prohibit*
35 *that person, and the corporate officers, if any, of that person, from*
36 *being awarded a contract for a public work by a public body for a*
37 *period of at least 1 year but not more than 3 years.*

38 *(c) A third offense, the Labor Commissioner shall prohibit that*
39 *person, and the corporate officers, if any, of that person, from*
40 *being awarded a contract for a public work by a public body for a*
41 *period of at least 3 years but not more than 5 years . ~~{after the date~~*
42 ~~*of the imposition of the administrative penalty.}*~~

43 *(d) A fourth or subsequent offense, the Labor Commissioner*
44 *shall prohibit that person, and the corporate officers, if any, of*



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1 *that person, from being awarded a contract for a public work by a*
2 *public body for a period of at least 5 years.*

3 2. The Labor Commissioner shall notify the State Contractors'
4 Board, *and every public body*, of each contractor who is prohibited
5 from being awarded a contract for a public work pursuant to this
6 section.

7 3. *Except as otherwise provided in regulations adopted by the*
8 *Labor Commissioner pursuant to subsection 4, whether or not the*
9 *Labor Commissioner:*

10 (a) *Imposes an administrative penalty against a person*
11 *pursuant to NRS 338.015 for the commission of an offense; or*

12 (b) *Prohibits a person, and the corporate officers, if any, of*
13 *that person, from being awarded a contract for a public work by a*
14 *public body for the commission of a first offense pursuant to*
15 *paragraph (a) of subsection 1,*

16 *the commission of an offense counts toward the cumulative*
17 *offenses and corresponding penalties set forth in paragraphs (b),*
18 *(c) and (d) of subsection 1.*

19 4. *The Labor Commissioner shall by regulation adopt criteria*
20 *to determine whether the commission of an offense counts toward*
21 *the cumulative offenses and corresponding penalties set forth in*
22 *paragraphs (b), (c) and (d) of subsection 1. The criteria so adopted*
23 *must:*

24 (a) *Distinguish between offenses of different levels of severity;*
25 *and*

26 (b) *Recognize that when a person commits an offense*
27 *deliberately, knowingly, intentionally or willfully, such an act*
28 *involves a degree of culpability which is greater than that involved*
29 *when a person commits an offense negligently, inadvertently or*
30 *through clerical error.*

