

ASSEMBLY BILL NO. 312—ASSEMBLYMEN HARDY, KITE,
SHERWOOD, ELLISON; GOICOECHEA, GRADY, HAMMOND,
HANSEN, LIVERMORE, MCARTHUR, STEWART AND
WOODBURY

MARCH 18, 2011

JOINT SPONSORS: SENATORS HARDY; CEGAVSKE,
RHOADS AND SETTELMAYER

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public works.
(BDR 28-692)

FISCAL NOTE: Effect on Local Government: No.
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 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 payment of prevailing wages on public works; revising the manner in which the Labor Commissioner is required to determine prevailing wage rates; providing that collusion to affect the outcome of a prevailing wage survey is an unfair trade practice; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law sets forth general provisions applicable to public works, including
2 provisions requiring the payment of prevailing wages to workers employed on
3 public works projects. (Chapter 338 of NRS) **Section 1** of this bill provides that
4 “wages” do not include any potential future benefits to a worker. **Sections 1 and 2**
5 of this bill clarify that each instance of failing to pay prevailing wages and other
6 benefits to one or more workers constitutes an “offense” by the contractor. **Section**
7 **3** of this bill provides for the penalties that may be imposed by the Labor
8 Commissioner for the first such offense and for multiple offenses.



Under existing law, contractors on public works must pay overtime wages to workers who work more than 40 hours in a week or, except in certain circumstances, more than 8 hours in a day. **Section 4** of this bill removes the requirement that overtime wages be paid to workers who work more than 8 hours in a day. **Section 4** also eliminates a provision regarding collectively bargained exceptions to the overtime requirements.

Existing law requires the Labor Commissioner to establish the prevailing rate of wages for public works performed in each county. In determining the prevailing rate of wages for a county for a particular year, the Labor Commissioner is required to survey contractors who have performed similar work in the county during the preceding year. (NRS 338.030; NAC 338.010) **Section 5** of this bill requires the Labor Commissioner's survey to solicit and use all wages reported for comparable work performed in the county and specifies that the prevailing wage established must be solely a dollar amount which represents the average hourly wage paid in the county for each craft or type of work, excluding any allowance for travel or per diem.

Section 6 of this bill provides that collusion to affect the outcome of a prevailing wage survey is an unfair trade practice.

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 the person 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 worker or workers 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.

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



1 and other districts organized pursuant to chapters 244A, 309, 318,
2 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,
3 inclusive, and any agency or department of a county or city which
4 prepares a budget separate from that of the parent political
5 subdivision. The term includes a person who has been designated by
6 the governing body of a local government to serve as its authorized
7 representative.

8 12. "Offense" means ~~failing to:~~
9 ~~(a) Pay~~ :

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

13 (b) *Failing to:*

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

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

18 ~~(d)~~ (3) Comply with subsection 4 or 5 of NRS 338.070.

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

20 (a) Contracts to construct an entire project;

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

22 (c) Uses his or her own workforce to perform all or a part of the
23 public work; and

24 (d) Contracts for the services of any subcontractor or
25 independent contractor or is responsible for payment to any
26 contracted subcontractors or independent contractors.

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

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

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

35 (a) A project financed in whole or in part from public money
36 for:

37 (1) Public buildings;

38 (2) Jails and prisons;

39 (3) Public roads;

40 (4) Public highways;

41 (5) Public streets and alleys;

42 (6) Public utilities;

43 (7) Publicly owned water mains and sewers;

44 (8) Public parks and playgrounds;



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

(10) All other publicly owned works and property.

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

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

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

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

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

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

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

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

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

19. "Subcontractor" means a person who:

(a) Is licensed pursuant to the provisions of chapter 624 of NRS or performs such work that the person is not required to be licensed pursuant 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 materials, equipment or supplies for a construction project.

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 *direct* benefit to the worker.

↳ *The term does not include any potential future benefits to the worker.*

22. "Worker" means a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker or unskilled worker in the service of a contractor or subcontractor under any appointment or



1 contract of hire or apprenticeship, express or implied, oral or
2 written, whether lawfully or unlawfully employed. The term does
3 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*



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. *Except as otherwise provided in regulations adopted by the*
4 *Labor Commissioner pursuant to subsection 3, the commission of*
5 *an offense counts toward the cumulative offenses and*
6 *corresponding penalties set forth in paragraphs (b), (c) and (d) of*
7 *subsection 1 regardless of whether the Labor Commissioner:*

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

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

14 3. *The Labor Commissioner shall by regulation adopt criteria*
15 *to determine whether the commission of an offense counts toward*
16 *the cumulative offenses and corresponding penalties set forth in*
17 *paragraphs (b), (c) and (d) of subsection 1. The criteria so adopted*
18 *must:*

19 (a) *Distinguish between offenses of different levels of severity;*
20 *and*

21 (b) *Recognize that when a person commits an offense*
22 *deliberately, knowingly, intentionally or willfully, such an act*
23 *involves a degree of culpability which is greater than that involved*
24 *when a person commits an offense negligently, inadvertently or*
25 *through clerical error.*

26 4. *The Labor Commissioner shall notify the State Contractors'*
27 *Board of each contractor who is prohibited from being awarded a*
28 *contract for a public work pursuant to this section.*

29 **Sec. 4.** NRS 338.020 is hereby amended to read as follows:

30 338.020 1. Every contract to which a public body of this
31 State is a party, requiring the employment of skilled mechanics,
32 skilled workers, semiskilled mechanics, semiskilled workers or
33 unskilled labor in the performance of public work, must contain in
34 express terms the hourly and daily rate of wages to be paid each of
35 the classes of mechanics and workers. The hourly and daily rate of
36 wages must:

37 (a) Not be less than the rate of such wages then prevailing in the
38 county in which the public work is located, which prevailing rate of
39 wages must have been determined in the manner provided in NRS
40 338.030; and

41 (b) Be posted on the site of the public work in a place generally
42 visible to the workers.

43 2. When public work is performed by day labor, the prevailing
44 wage for each class of mechanics and workers so employed applies



1 and must be stated clearly to such mechanics and workers when
2 employed.

3 ~~3. [Except as otherwise provided in subsection 4, a]~~ A
4 contractor or subcontractor shall pay to a mechanic or worker
5 employed by the contractor or subcontractor on the public work not
6 less than one and one-half times the prevailing rate of wages
7 applicable to the class of the mechanic or worker for each hour the
8 mechanic or worker works on the public work in excess of ~~;~~

9 ~~—(a) Forty~~ 40 hours in any scheduled week of work by the
10 mechanic or worker for the contractor or subcontractor, including,
11 without limitation, hours worked for the contractor or subcontractor
12 on work other than the public work . ~~;~~ or

13 ~~—(b) Eight hours in any workday that the mechanic or worker was~~
14 ~~employed by the contractor or subcontractor, including, without~~
15 ~~limitation, hours worked for the contractor or subcontractor on work~~
16 ~~other than the public work, unless by mutual agreement the~~
17 ~~mechanic or worker works a scheduled 10 hours per day for 4~~
18 ~~calendar days within any scheduled week of work.~~

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

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

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

29 ~~—5.]~~ 4. The prevailing wage and any wages paid for overtime
30 pursuant to subsection 3 ~~[or 4]~~ to each class of mechanics or
31 workers must be in accordance with the jurisdictional classes
32 recognized in the locality where the work is performed.

33 ~~[6.]~~ 5. Nothing in this section prevents an employer who is
34 signatory to a collective bargaining agreement from assigning such
35 work in accordance with established practice.

36 **Sec. 5.** NRS 338.030 is hereby amended to read as follows:

37 338.030 1. The public body awarding any contract for public
38 work, or otherwise undertaking any public work, shall ascertain
39 from the Labor Commissioner the prevailing wage in the county in
40 which the public work is to be performed for each craft or type of
41 work.

42 2. To establish a prevailing wage in each county, including
43 Carson City, the Labor Commissioner shall, annually, survey
44 contractors who have performed work in the county. *The survey*
45 *must solicit and use all wages reported for comparable work*



1 *performed in the county, regardless of whether the work was*
2 *performed on a comparable project. The prevailing wage*
3 *established in each county for each craft or type of work must be*
4 *solely a dollar amount which represents the average hourly wage*
5 *paid in the county for each craft or type of work, excluding any*
6 *allowance for travel or per diem.* Within 30 days after the
7 determination is issued:

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

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

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

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

18 (b) Receives an objection or information pursuant to
19 subsection 2.

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

22 4. Notice of the hearing must be advertised in a newspaper
23 nearest to the locality of the work once a week for 2 weeks before
24 the time of the hearing.

25 5. At the hearing, any public body, the crafts affiliated with the
26 State Federation of Labor or other recognized national labor
27 organizations, and the contractors of the locality or their
28 representatives must be heard. From the evidence presented, the
29 Labor Commissioner shall determine the prevailing wage.

30 6. The wages so determined must be filed by the Labor
31 Commissioner and must be available to any public body which
32 awards a contract for any public work.

33 7. Nothing contained in NRS 338.020 to 338.090, inclusive,
34 may be construed to authorize the fixing of any wage below any rate
35 which may now or hereafter be established as a minimum wage for
36 any person employed upon any public work, or employed by any
37 officer or agent of any public body.

38 **Sec. 6.** NRS 598A.060 is hereby amended to read as follows:

39 598A.060 1. Every activity enumerated in this subsection
40 constitutes a contract, combination or conspiracy in restraint of
41 trade, and it is unlawful to conduct any part of any such activity in
42 this State:

43 (a) Price fixing, which consists of raising, depressing, fixing,
44 pegging or stabilizing the price of any commodity or service, and
45 which includes, but is not limited to:



(1) Agreements among competitors to depress prices at which they will buy essential raw material for the end product.

(2) Agreements to establish prices for commodities or services.

(3) Agreements to establish uniform discounts, or to eliminate discounts.

(4) Agreements between manufacturers to price a premium commodity a specified amount above inferior commodities.

(5) Agreements not to sell below cost.

(6) Agreements to establish uniform trade-in allowances.

(7) Establishment of uniform cost surveys.

(8) Establishment of minimum markup percentages.

(9) Establishment of single or multiple basing point systems for determining the delivered price of commodities.

(10) Agreements not to advertise prices.

(11) Agreements among competitors to fix uniform list prices as a place to start bargaining.

(12) Bid rigging, including the misuse of bid depositories, foreclosures of competitive activity for a period of time, rotation of jobs among competitors, submission of identical bids, and submission of complementary bids not intended to secure acceptance by the customer.

(13) Agreements to discontinue a product, or agreements with anyone engaged in the manufacture of competitive lines to limit size, styles or quantities of items comprising the lines.

(14) Agreements to restrict volume of production.

(b) Division of markets, consisting of agreements between competitors to divide territories and to refrain from soliciting or selling in certain areas.

(c) Allocation of customers, consisting of agreements not to sell to specified customers of a competitor.

(d) Tying arrangements, consisting of contracts in which the seller or lessor conditions the sale or lease of commodities or services on the purchase or leasing of another commodity or service.

(e) Monopolization of trade or commerce in this State, including, without limitation, attempting to monopolize or otherwise combining or conspiring to monopolize trade or commerce in this State.

(f) Except as otherwise provided in subsection 2, consolidation, conversion, merger, acquisition of shares of stock or other equity interest, directly or indirectly, of another person engaged in commerce in this State or the acquisition of any assets of another person engaged in commerce in this State that may:



(1) Result in the monopolization of trade or commerce in this State or would further any attempt to monopolize trade or commerce in this State; or

(2) Substantially lessen competition or be in restraint of trade.

(g) Collusion to affect the outcome of a prevailing wage survey, including, without limitation, providing in any project labor agreement, construction contract or other related agreement a requirement that any party to the agreement is required to participate in a survey performed by the Labor Commissioner pursuant to NRS 338.030.

2. The provisions of paragraph (f) of subsection 1 do not:

(a) Apply to a person who, solely for an investment purpose, purchases stock or other equity interest or assets of another person if the purchaser does not use his or her acquisition to bring about or attempt to bring about the substantial lessening of competition in this State.

(b) Prevent a person who is engaged in commerce in this State from forming a subsidiary corporation or other business organization and owning and holding all or part of the stock or equity interest of that corporation or organization.

Sec. 7. On or before October 1, 2011, the Labor Commissioner shall adopt any regulations necessary to carry out the amendatory provisions of this act.

Sec. 8. This act becomes effective upon passage and approval for the purpose of adopting regulations and on October 1, 2011, for all other purposes.

