

ASSEMBLY BILL NO. 361—ASSEMBLYWOMAN NEAL

MARCH 21, 2011

Referred to Committee on Government Affairs

**SUMMARY**—Revises provisions relating to preferences in bidding on smaller public works contracts. (BDR 28-1053)

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

CONTAINS UNFUNDED MANDATE (§ 3)  
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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 provisions relating to preferences in bidding on a contract for a public work for which the estimated cost is \$100,000 or less; requiring a person who is awarded a contract for a public work to gather and report to the public body which awards the contract certain information concerning the applicants for employment on the public work; requiring a public body which awards a contract for a public work to gather and report to the State Public Works Board certain information concerning the bidders for the contract; requiring the State Public Works Board to gather and maintain certain information concerning public works reported to it by various public bodies; requiring the State Public Works Board to report to the Attorney General certain information concerning public works reported to it by various public bodies; requiring the Attorney General to determine when sufficient information exists to support certain preferences in bidding on a public work and to notify the Governor of such determination; requiring the Governor to issue a proclamation indicating that sufficient information exists to support certain preferences in bidding on a public work upon notice from the Attorney General; and providing other matters properly relating thereto.



\* A B 3 6 1 \*

**Legislative Counsel's Digest:**

Under existing law, if a local business owned by a veteran with a service-connected disability submits a bid for a public work for which the estimated cost is \$100,000 or less, the business receives a preference of 5 percent of the bid amount. (NRS 338.13844) Additionally, the State Public Works Board must report to the Legislature or Interim Finance Committee every 6 months the number of bids from local businesses owned by a veteran with a service-connected disability, the number of contracts awarded to those businesses and the total dollar amount of those contracts. (NRS 338.13846) **Section 6** of this bill creates a similar preference for local businesses owned by a woman or a member of a minority group. **Section 7** of this bill imposes similar reporting requirements on the State Public Works Board for these businesses.

**Section 3** of this bill requires a person who is awarded a contract for a public work to gather, maintain and report to the public body awarding the contract certain information concerning the hiring, wages, race, ethnicity and gender of applicants for employment on the public work. **Section 3** also requires that a public body awarding a contract for a public work must gather, compile, maintain and report to the State Public Works Board certain information concerning the cost of the public work, the awarding of the contract, the race, ethnicity, gender, number of employees and length of time in business of the bidders for the contract, and the information received from the person awarded the contract concerning the applicants for employment on the public work. Finally, **section 3** requires that the State Public Works Board must compile and maintain the information received by the Board in accordance with **section 3**, make the information available to the public, report the information annually to the Director of the Legislative Counsel Bureau and report the information quarterly to the Attorney General.

**Sections 3 and 5-7** of this bill do not become effective until: (1) the Attorney General reviews the information provided by the State Public Works Board and determines that the information is sufficient to successfully defend a legal challenge to those provisions; (2) the Attorney General notifies the Governor of the sufficiency of the information; and (3) the Governor issues a proclamation declaring that sufficient information exists to justify the implementation of those provisions.

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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 the provisions set forth as sections 2 and 3 of this act.

**Sec. 2.** *“Business owned by a woman or member of a minority group” means a business:*

*1. Of which at least 51 percent of the ownership interest is held by one or more women or members of a racial or ethnic minority group;*

*2. That is organized to engage in commercial transactions; and*

*3. That is managed and operated on a day-to-day basis by one or more women or members of a racial or ethnic minority group.*



**Sec. 3. 1. A public body which awards a contract for a public work shall:**

**(a) Gather and maintain, for every person who submits a bid or otherwise competes for the contract, the following information:**

**(1) The cost of the public work;**

**(2) Whether the person was awarded the contract;**

**(3) The race, ethnicity and gender of the person;**

**(4) The number of employees of the person at the time the person submitted the bid; and**

**(5) The length of time for which the person had been in business at the time the person submitted the bid;**

**(b) Include in the contract a clause requiring the person who is awarded the contract to:**

**(1) Gather and maintain the information required by subsection 2; and**

**(2) Report the information as required by subsection 2;**

**(c) Compile and maintain the information reported to the public body pursuant to subsection 2 by the person who is awarded the contract; and**

**(d) Report to the State Public Works Board the information which the public body:**

**(1) Gathers and maintains pursuant to paragraph (a); and**

**(2) Compiles and maintains pursuant to paragraph (c).**

**2. The person who is awarded the contract by the public body shall:**

**(a) Gather and maintain, for every applicant for employment on the public work with the person who is awarded the contract and with every contractor, subcontractor and other person who provides labor, equipment, materials, supplies or services for the public work, the following information:**

**(1) The wages being offered for the job;**

**(2) Whether the applicant was hired for the job; and**

**(3) The race, ethnicity and gender of the applicant; and**

**(b) Report to the public body the information gathered and maintained pursuant to paragraph (a).**

**3. The State Public Works Board shall:**

**(a) Compile and maintain the information reported by a public body pursuant to subsection 1;**

**(b) Make available to the public the information compiled and maintained pursuant to paragraph (a) after removing any personal information, as that term is defined in NRS 603A.040;**

**(c) Report annually the information compiled and maintained pursuant to paragraph (a) to the Director of the Legislative Counsel Bureau in any format requested by the Director; and**



(d) Report quarterly the information compiled and maintained pursuant to paragraph (a) to the Attorney General in any format requested by the Attorney General.

4. For the purposes of subsection 1, if a person who submits a bid or otherwise competes for the contract is:

(a) A design-build team, the public body must gather and maintain the required information for each member of the design-build team.

(b) Not a natural person, the public body must gather and maintain the required information for each natural person who owns or controls all or a portion of the person who submits the bid or otherwise competes for the contract.

**Sec. 4.** NRS 338.090 is hereby amended to read as follows:

338.090 1. Any person, including the officers, agents or employees of a public body, who violates any provision of NRS 338.010 to 338.090, inclusive, *and section 3 of this act*, or any regulation adopted pursuant thereto, is guilty of a misdemeanor.

2. The Labor Commissioner, in addition to any other remedy or penalty provided in this chapter:

(a) Shall assess a person who, after an opportunity for a hearing, is found to have failed to pay the prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive, an amount equal to the difference between the prevailing wages required to be paid and the wages that the contractor or subcontractor actually paid; and

(b) May, in addition to any other administrative penalty, impose an administrative penalty not to exceed the costs incurred by the Labor Commissioner to investigate and prosecute the matter.

3. If the Labor Commissioner finds that a person has failed to pay the prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive, the public body may, in addition to any other remedy or penalty provided in this chapter, require the person to pay the actual costs incurred by the public body to investigate the matter.

**Sec. 5.** NRS 338.1384 is hereby amended to read as follows:

338.1384 As used in NRS 338.1384 to 338.13847, inclusive, *and section 2 of this act*, unless the context otherwise requires, the words and terms defined in NRS 338.13841, 338.13842 and 338.13843 *and section 2 of this act* have the meanings ascribed to them in those sections.

**Sec. 6.** NRS 338.13844 is hereby amended to read as follows:

338.13844 1. For the purpose of awarding a contract for a public work of this State for which the estimated cost is \$100,000 or less, as governed by NRS 338.13862, if a local business owned by a veteran with a service-connected disability *or a local business owned by a woman or member of a minority group* submits a bid,



1 the bid shall be deemed to be 5 percent lower than the bid actually  
2 submitted.

3 2. The preference described in subsection 1 may not be  
4 combined with any other preference.

5 **Sec. 7.** NRS 338.13846 is hereby amended to read as follows:

6 338.13846 The State Public Works Board shall report every 6  
7 months to the Legislature, if it is in session, or to the Interim  
8 Finance Committee, if the Legislature is not in session. The report  
9 must contain, for the period since the last report:

10 1. The number of contracts for public works of this State that  
11 were subject to the provisions of NRS 338.1384 to 338.13847,  
12 inclusive ~~[-]~~, *and section 2 of this act.*

13 2. The total dollar amount of contracts for public works of this  
14 State that were subject to the provisions of NRS 338.1384 to  
15 338.13847, inclusive ~~[-]~~, *and section 2 of this act.*

16 3. The number of local businesses owned by veterans with  
17 service-connected disabilities that submitted a bid or proposal on a  
18 contract for a public work of this State.

19 4. *The number of local businesses owned by a woman or*  
20 *member of a minority group that submitted a bid or proposal on a*  
21 *contract for a public work of this State.*

22 5. The number of contracts for public works of this State that  
23 were awarded to local businesses owned by veterans with service-  
24 connected disabilities ~~[-]~~

25 ~~—5-]~~ *or to local businesses owned by a woman or member of a*  
26 *minority group.*

27 6. The total number of dollars worth of contracts for public  
28 works of this State that were awarded to local businesses owned by  
29 veterans with service-connected disabilities ~~[-]~~

30 ~~—6-]~~ *or to local businesses owned by a woman or member of a*  
31 *minority group.*

32 7. Any other information deemed relevant by the Director of  
33 the Legislative Counsel Bureau.

34 **Sec. 8.** 1. The Attorney General shall review the information  
35 received from the State Public Works Board pursuant to section 3 of  
36 this act quarterly to determine whether sufficient information exists  
37 to successfully defend a legal challenge to the provisions of sections  
38 2, 5, 6 and 7 of this act.

39 2. If the Attorney General determines that sufficient  
40 information exists pursuant to subsection 1, the Attorney General  
41 shall notify the Governor of that determination.

42 3. Upon receiving a notification from the Attorney General  
43 pursuant to subsection 2, the Governor shall issue a proclamation  
44 indicating that sufficient information exists to justify the  
45 implementation of sections 2, 5, 6 and 7 of this act.



1     **Sec. 9.** The provisions of NRS 354.599 do not apply to any  
2 additional expenses of a local government that are related to the  
3 provisions of this act.

4     **Sec. 10.** 1. This section and sections 1, 3, 4, 8 and 9 of this  
5 act become effective on July 1, 2011.

6     2. Sections 2, 5, 6 and 7 of this act become effective on the  
7 date that the Governor issues a proclamation pursuant to subsection  
8 3 of section 8 of this act.

