

ASSEMBLY BILL NO. 258—ASSEMBLYMEN HICKEY, HARDY,
ELLISON, WHEELER, HAMBRICK; PAUL ANDERSON,
DUNCAN, FIORE, GRADY, HANSEN, KIRNER, LIVERMORE,
STEWART AND WOODBURY

MARCH 13, 2013

JOINT SPONSOR: SENATOR HARDY

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to prevailing wage requirements for public works. (BDR 28-908)

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 provisions governing the use of certain administrative procedures for complaints concerning violations of the prevailing wage requirements for public works; prohibiting the commencement of a civil action against an employer for a violation of the prevailing wage requirement for public works unless certain administrative remedies have been exhausted; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the Labor Commissioner enforces the provisions governing the payment of prevailing wages for public works. (NRS 338.015) Existing regulations adopted by the Labor Commissioner set forth the procedure for filing a complaint alleging a violation of the prevailing wage requirements for public works. (NAC 338.105-338.116) **Section 1** of this bill requires a complaint alleging a violation of the prevailing wage requirements for public works to be filed only pursuant to the procedure set forth in existing law and regulations governing public works. **Section 1** further prohibits a person from commencing a civil action against an employer for a violation of the prevailing wage requirements for public works unless the person has exhausted certain available administrative remedies.

Existing law sets forth the powers and duties of the Labor Commissioner. (Chapter 607 of NRS) **Sections 7-10** of this bill prohibit the use of the procedure set forth in those provisions of existing law and the regulations adopted pursuant to



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14 those provisions for a complaint alleging a violation of the prevailing wage
15 requirements for public works.

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 a new section to read as follows:

3 ***1. A complaint alleging that a violation of the provisions of***
4 ***this section and NRS 338.020 to 338.090, inclusive, has occurred***
5 ***may be filed only pursuant to the provisions of this chapter and***
6 ***any regulations adopted pursuant thereto.***

7 ***2. A person may not commence a civil action in a court of***
8 ***competent jurisdiction against an employer for a violation of the***
9 ***provisions of NRS 338.020 to 338.090, inclusive and section 1 of***
10 ***this act, unless the person has exhausted all available***
11 ***administrative remedies provided by this chapter and any***
12 ***regulations adopted pursuant thereto.***

13 **Sec. 2.** NRS 338.0115 is hereby amended to read as follows:

14 338.0115 1. Except as otherwise provided in subsection 2,
15 the provisions of this chapter and chapters 332 and 339 of NRS do
16 not apply to a contract under which a private developer, for the
17 benefit of a private development, constructs a water or sewer line
18 extension and any related appurtenances:

19 (a) Which qualify as a public work pursuant to NRS 338.010;
20 and

21 (b) For which the developer will receive a monetary contribution
22 or refund from a public body as reimbursement for a portion of the
23 costs of the project.

24 2. If, pursuant to the provisions of such a contract, the
25 developer is not responsible for paying all of the initial construction
26 costs of the project, the provisions of NRS 338.0117, 338.013 to
27 338.090, inclusive, and ***section 1 of this act and*** 338.1373 to
28 338.148, inclusive, apply to the contract.

29 **Sec. 3.** NRS 338.050 is hereby amended to read as follows:

30 338.050 For the purpose of NRS 338.010 to 338.090, inclusive,
31 ***and section 1 of this act,*** except as otherwise provided by specific
32 statute, every worker who performs work for a public work covered
33 by a contract therefor is subject to all of the provisions of NRS
34 338.010 to 338.090, inclusive, ***and section 1 of this act*** regardless
35 of any contractual relationship alleged to exist between such worker
36 and his or her employer.

37 **Sec. 4.** NRS 338.080 is hereby amended to read as follows:

38 338.080 None of the provisions of NRS 338.020 to 338.090,
39 inclusive, ***and section 1 of this act*** apply to:



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1 1. Any work, construction, alteration, repair or other
2 employment performed, undertaken or carried out, by or for any
3 railroad company or any person operating the same, whether such
4 work, construction, alteration or repair is incident to or in
5 conjunction with a contract to which a public body is a party, or
6 otherwise.

7 2. Apprentices recorded under the provisions of chapter 610 of
8 NRS.

9 3. Any contract for a public work whose cost is less than
10 \$100,000. A unit of the project must not be separated from the total
11 project, even if that unit is to be completed at a later time, in order to
12 lower the cost of the project below \$100,000.

13 **Sec. 5.** NRS 271A.130 is hereby amended to read as follows:

14 271A.130 1. Except as otherwise provided in this section and
15 NRS 271A.140 and notwithstanding any other law to the contrary,
16 any contract or other agreement relating to or providing for the
17 construction, improvement, repair, demolition, reconstruction, other
18 acquisition, equipment, operation or maintenance of any project
19 financed in whole or in part pursuant to this chapter is exempt from
20 any law requiring competitive bidding or otherwise specifying
21 procedures for the award of contracts for construction or other
22 contracts, or specifying procedures for the procurement of goods or
23 services. The governing body of the municipality shall require a
24 quarterly report on the demography of the workers employed by any
25 contractor or subcontractor for each such project.

26 2. The provisions of subsection 1 do not apply to any project
27 which is constructed or maintained by a governmental entity on any
28 property while the governmental entity owns that property.

29 3. Except as otherwise provided in subsection 4, a person who
30 enters into any contract or other agreement for the construction,
31 improvement, repair, demolition or reconstruction of any project
32 that is paid for in whole or in part:

33 (a) From the proceeds of bonds or notes issued pursuant to
34 paragraph (a) of subsection 1 of NRS 271A.120; or

35 (b) Pursuant to an agreement for reimbursement entered into
36 pursuant to paragraph (b) of subsection 1 of NRS 271A.120,

37 shall include in the contract or other agreement the contractual
38 provisions and stipulations that are required to be included in a
39 contract for a public work pursuant to the provisions of NRS
40 338.013 to 338.090, inclusive **H**, and *section 1 of this act*. The
41 governing body of the municipality, the contractor who is awarded
42 the contract or enters into the agreement to perform the construction,
43 improvement, repair, demolition or reconstruction, and any
44 subcontractor who performs any portion of the contract or
45 agreement shall comply with the provisions of NRS 338.013 to



338.090, inclusive, *and section 1 of this act* in the same manner as if the governing body of the municipality had undertaken the project or had awarded the contract.

4. The provisions of subsection 3 do not apply to a contract or other agreement for the construction, improvement, repair, demolition or reconstruction of any improvement to a building leased to a tenant that is paid for, in whole or in part, or which benefits from the proceeds of bonds or notes issued pursuant to paragraph (a) of subsection 1 of NRS 271A.120 or pursuant to an agreement for reimbursement entered into pursuant to paragraph (b) of subsection 1 of NRS 271A.120 and which is entered into after completion of the original construction:

(a) For any subsequent improvement to the building by the original tenant or a subsequent tenant.

(b) For any improvement to the building by the original tenant which is undertaken more than 60 months after the building is first made available for lease.

5. The governing body of the municipality shall ensure that each contractor and developer to whom the provisions of NRS 271A.140 apply complies with those provisions.

6. As used in this section:

(a) "Original construction" means any contract or other agreement for the construction, improvement, repair, demolition or reconstruction of a project paid for, in whole or in part, or which benefits:

(1) From the proceeds of bonds or notes issued pursuant to paragraph (a) of subsection 1 of NRS 271A.120; or

(2) Pursuant to an agreement for reimbursement entered into pursuant to paragraph (b) of subsection 1 of NRS 271A.120.

(b) "Original tenant" means the first tenant of any leased property after the property is first made available for lease.

Sec. 6. NRS 318.140 is hereby amended to read as follows:

318.140 In the case of a district created wholly or in part for acquiring sanitary sewer improvements:

1. The board may:

(a) Construct, reconstruct, improve or extend the sanitary sewer system or any part thereof, including, without limitation, mains, laterals, wyes, tees, meters and collection, treatment and disposal plants.

(b) Sell any product or by-product thereof and acquire the appropriate outlets within or without the district and extend the sewer lines of the district thereto.

(c) Enter into and perform, without any election, contracts or agreements for a term not to exceed 50 years with any person or a public agency, to provide the services, equipment or supplies



1 necessary or appropriate to conduct tests of the discharge of
2 pollutants into the state's water and to report the results of those
3 tests as required by chapter 445A of NRS or the regulations adopted
4 thereunder. For the purposes of this paragraph, "public agency" has
5 the meaning ascribed to it in NRS 277.100.

6 2. The provisions of chapters 332 and 339 of NRS do not apply
7 to a contract under which a private developer extends a sewer main
8 to his or her development or installs any appurtenances to that
9 extension. Except as otherwise provided in this subsection, the
10 provisions of chapter 338 of NRS do not apply to such a contract. If
11 the developer does not pay all of the initial construction costs of the
12 extension, the provisions of NRS 338.013 to 338.090, inclusive, *and*
13 *section 1 of this act* apply to the contract.

14 **Sec. 7.** Chapter 607 of NRS is hereby amended by adding
15 thereto a new section to read as follows:

16 *The administrative procedure set forth in this chapter and any*
17 *regulations adopted pursuant thereto must not be used for a*
18 *complaint alleging a violation of the provisions of NRS 338.020 to*
19 *338.090, inclusive, and section 1 of this act.*

20 **Sec. 8.** NRS 607.160 is hereby amended to read as follows:

21 607.160 1. The Labor Commissioner:

22 (a) Shall enforce all labor laws of the State of Nevada:

23 (1) Without regard to whether an employee or worker is
24 lawfully or unlawfully employed; and

25 (2) The enforcement of which is not specifically and
26 exclusively vested in any other officer, board or commission.

27 (b) May adopt regulations to carry out the provisions of
28 paragraph (a).

29 2. If the Labor Commissioner has reason to believe that a
30 person is violating or has violated a labor law or regulation, the
31 Labor Commissioner may take any appropriate action against the
32 person to enforce the labor law or regulation whether or not a claim
33 or complaint has been made to the Labor Commissioner concerning
34 the violation.

35 3. Before the Labor Commissioner may enforce an
36 administrative penalty against a person who violates a labor law or
37 regulation, *other than a violation of the provisions of NRS 338.020*
38 *to 338.090, inclusive, and section 1 of this act, or any regulations*
39 *adopted pursuant thereto*, the Labor Commissioner must provide
40 the person with notice and an opportunity for a hearing as set forth
41 in NRS 607.207.

42 4. In determining the amount of any administrative penalty to
43 be imposed against a person who violates a labor law or regulation,
44 the Labor Commissioner shall consider the person's previous record



1 of compliance with the labor laws and regulations and the severity
2 of the violation.

3 5. All money collected by the Labor Commissioner as an
4 administrative penalty must be deposited in the State General Fund.

5 6. The actions and remedies authorized by the labor laws are
6 cumulative. If a person violates a labor law or regulation, the Labor
7 Commissioner may seek a civil remedy, impose an administrative
8 penalty or take other administrative action against the person
9 whether or not the person is prosecuted, convicted or punished for
10 the violation in a criminal proceeding. The imposition of a civil
11 remedy, an administrative penalty or other administrative action
12 against the person does not operate as a defense in any criminal
13 proceeding brought against the person.

14 7. If, after due inquiry, the Labor Commissioner believes that a
15 person who is financially unable to employ counsel has a valid and
16 enforceable claim for wages, commissions or other demands, the
17 Labor Commissioner may present the facts to the Attorney General.
18 The Attorney General shall prosecute the claim if the Attorney
19 General determines that the claim is valid and enforceable.

20 **Sec. 9.** NRS 607.205 is hereby amended to read as follows:

21 607.205 In aid of the Labor Commissioner's enforcement
22 responsibilities under the labor laws of the State of Nevada, *other*
23 *than the Labor Commissioner's enforcement responsibilities*
24 *relating to violations of the provisions of NRS 338.020 to 338.090,*
25 *inclusive, and section 1 of this act, or any regulations adopted*
26 *pursuant thereto*, the Labor Commissioner or a person designated
27 by the Labor Commissioner may conduct hearings and issue
28 decisions thereon in the manner set forth in NRS 607.207.

29 **Sec. 10.** NRS 607.207 is hereby amended to read as follows:

30 607.207 1. When an enforcement question is presented under
31 any labor law of the State of Nevada, *other than a violation of the*
32 *provisions of NRS 338.020 to 338.090, inclusive, and section 1 of*
33 *this act, or any regulations adopted pursuant thereto*, the
34 determination of which is not exclusively vested in another officer,
35 board or commission, the Labor Commissioner or a person
36 designated by the Labor Commissioner may conduct a hearing in
37 any place convenient to the parties, if practicable, and otherwise in a
38 place chosen by the Labor Commissioner.

39 2. Notice of the hearing must be given by registered or certified
40 mail to each party and to any person who has in writing requested
41 such notice. The hearing must be conducted not less than 15 days
42 after the mailing of the notices. The proceedings must be recorded
43 and one copy must be provided at cost to any party who requests it.
44 The Labor Commissioner or a person designated by the Labor



- 1 Commissioner shall, in any such hearing, make full use of the
- 2 authority conferred upon him or her by NRS 607.210.
- 3 **Sec. 11.** The amendatory provisions of this act do not apply to
- 4 a complaint or civil action specified in section 1 of this act which is
- 5 filed or commenced before October 1, 2013.

