

ASSEMBLY BILL NO. 275—ASSEMBLYMEN ELLISON, FIORE,
DUNCAN; PAUL ANDERSON, GRADY, HARDY, KIRNER,
LIVERMORE, OSCARSON, STEWART, WHEELER AND
WOODBURY

MARCH 15, 2013

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works.
(BDR 28-738)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public works; revising certain definitions relating to the payment of wages for public works; providing that the Labor Commissioner may impose an administrative penalty against a person for the commission of an offense; revising provisions governing the determination of a prevailing wage in each county; specifying that certain provisions governing the payment of prevailing wages do not apply to a school district, a charter school or the Nevada System of Higher Education; 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 for public works projects. (NRS 338.010-338.090) Existing law requires the Labor Commissioner to annually survey contractors and to determine a prevailing wage for each county. (NRS 338.030) **Sections 4 and 8** of this bill require the Director of the Department of Employment, Training and Rehabilitation, rather than the Labor Commissioner, to make that determination. **Section 1** of this bill requires the Labor Commissioner to develop and carry out methods to encourage and promote contractors to submit surveys for use in the Director's determination of the prevailing wage. **Section 7** of this bill requires the Director of the Department of Business and Industry to include on the Internet website maintained by the Department information which encourages and promotes contractors to submit those surveys.

Sections 2 and 3 of this bill provide that each instance of failing to pay prevailing wages and other benefits to one or more workers on a public work



* A B 2 7 5 *

constitutes an "offense" by the contractor. **Section 2** also amends the definition of "wages" to specify that only bona fide fringe benefits which directly benefit a worker are included in the definition of wages.

Existing law also provides specifically that any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds \$100,000 requires the payment of prevailing wages even if the construction work does not qualify as a public work. (NRS 338.075) **Section 9** of this bill eliminates the requirement that the Nevada System of Higher Education pay prevailing wages on certain construction work that does not qualify as a public work. **Section 6** of this bill excludes from the prevailing wage requirement: (1) any contract for a public work to which a school district, a charter school or the Nevada System of Higher Education is a party; and (2) a public work of, or constructed by, a school district, a charter school or the Nevada System of Higher Education.

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 a new section to read as follows:

1. The Labor Commissioner shall develop and carry out methods to encourage and promote contractors to submit surveys to the Director of the Department of Employment, Training and Rehabilitation for use in the Director's determination of the prevailing rate of wages pursuant to NRS 338.030.

2. The methods used by the Labor Commissioner pursuant to subsection 1:

(a) Must ensure the increased availability of the information on the Internet website maintained by the Department of Business and Industry pursuant to NRS 232.521; and

(b) May include, without limitation, the use of outreach programs, seminars and digital media.

Sec. 2. 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.

(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



* A B 2 7 5 *

1 thereof directly to a worker or workers employed by them on public
2 works by the day and not under a contract in writing.

3 5. "Design-build contract" means a contract between a public
4 body and a design-build team in which the design-build team agrees
5 to design and construct a public work.

6 6. "Design-build team" means an entity that consists of:

7 (a) At least one person who is licensed as a general engineering
8 contractor or a general building contractor pursuant to chapter 624
9 of NRS; and

10 (b) For a public work that consists of:

11 (1) A building and its site, at least one person who holds a
12 certificate of registration to practice architecture pursuant to chapter
13 623 of NRS.

14 (2) Anything other than a building and its site, at least one
15 person who holds a certificate of registration to practice architecture
16 pursuant to chapter 623 of NRS or landscape architecture pursuant
17 to chapter 623A of NRS or who is licensed as a professional
18 engineer pursuant to chapter 625 of NRS.

19 7. "Design professional" means:

20 (a) A person who is licensed as a professional engineer pursuant
21 to chapter 625 of NRS;

22 (b) A person who is licensed as a professional land surveyor
23 pursuant to chapter 625 of NRS;

24 (c) A person who holds a certificate of registration to engage in
25 the practice of architecture, interior design or residential design
26 pursuant to chapter 623 of NRS;

27 (d) A person who holds a certificate of registration to engage in
28 the practice of landscape architecture pursuant to chapter 623A of
29 NRS; or

30 (e) A business entity that engages in the practice of professional
31 engineering, land surveying, architecture or landscape architecture.

32 8. "Division" means the State Public Works Division of the
33 Department of Administration.

34 9. "Eligible bidder" means a person who is:

35 (a) Found to be a responsible and responsive contractor by a
36 local government or its authorized representative which requests
37 bids for a public work in accordance with paragraph (b) of
38 subsection 1 of NRS 338.1373; or

39 (b) Determined by a public body or its authorized representative
40 which awarded a contract for a public work pursuant to NRS
41 338.1375 to 338.139, inclusive, to be qualified to bid on that
42 contract pursuant to NRS 338.1379 or 338.1382.

43 10. "General contractor" means a person who is licensed to
44 conduct business in one, or both, of the following branches of the
45 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.

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

12. "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.

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

~~(a) Pay:~~

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

(b) *Failing to:*

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

~~(e)~~ (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.

14. "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 or her 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.

15. "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.

16. "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;
- (7) Publicly owned water mains and sewers;
- (8) Public parks and playgrounds;
- (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.

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

18. "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.

19. "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.

20. "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.

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

22. "Wages" means:



- 1 (a) The basic hourly rate of pay; and
- 2 (b) The amount of pension, health and welfare, vacation and
- 3 holiday pay, the cost of apprenticeship training or other similar
- 4 programs or other bona fide fringe benefits which ~~are a benefit to~~
- 5 *directly benefit* the worker.

6 23. "Worker" means a skilled mechanic, skilled worker,

7 semiskilled mechanic, semiskilled worker or unskilled worker in the

8 service of a contractor or subcontractor under any appointment or

9 contract of hire or apprenticeship, express or implied, oral or

10 written, whether lawfully or unlawfully employed. The term does

11 not include a design professional.

12 **Sec. 3.** NRS 338.015 is hereby amended to read as follows:

13 338.015 1. The Labor Commissioner shall enforce the

14 provisions of NRS 338.010 to 338.130, inclusive ~~§~~, *and section 1*

15 *of this act.*

16 2. In addition to any other remedy or penalty provided in this

17 chapter, if any person, including, without limitation, a public body,

18 *commits an offense or* violates any provision of NRS 338.010 to

19 338.130, inclusive, *and section 1 of this act* or any regulation

20 adopted pursuant thereto, the Labor Commissioner may, after

21 providing the person with notice and an opportunity for a hearing,

22 impose against the person an administrative penalty of not more

23 than \$5,000 for each such *offense or* violation.

24 3. The Labor Commissioner may, by regulation, establish a

25 sliding scale based on the severity of the *offense or* violation to

26 determine the amount of the administrative penalty to be imposed

27 against the person pursuant to this section.

28 4. The Labor Commissioner shall report the offense or

29 violation to the Attorney General, and the Attorney General may

30 prosecute the person in accordance with law.

31 **Sec. 4.** NRS 338.030 is hereby amended to read as follows:

32 338.030 1. The public body awarding any contract for public

33 work, or otherwise undertaking any public work, shall ascertain

34 from the ~~Labor Commissioner~~ *Director* the prevailing wage in the

35 county in which the public work is to be performed for each craft or

36 type of work.

37 2. To establish a prevailing wage in each county, including

38 Carson City, the ~~Labor Commissioner~~ *Director* shall, annually,

39 survey contractors who have performed work in the county. Within

40 30 days after the determination is issued:

41 (a) A public body or person entitled under subsection 5 to be

42 heard may submit an objection to the ~~Labor Commissioner~~

43 *Director* with evidence to substantiate that a different wage prevails;

44 and



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

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

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

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

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

4. 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. 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~~ **Director** shall determine the prevailing wage.

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

7. Nothing contained in NRS 338.020 to 338.090, inclusive, *and section 1 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.

8. *As used in this section, "Director" means the Director of the Department of Employment, Training and Rehabilitation.*

Sec. 5. NRS 338.035 is hereby amended to read as follows:

338.035 The obligation of a contractor engaged on a public work or a subcontractor engaged on a public work to pay wages in accordance with the determination of the ~~Labor Commissioner~~ **Director of the Department of Employment, Training and Rehabilitation** may be discharged in part by making contributions to a third person pursuant to a fund, plan or program in the name of the worker.

Sec. 6. NRS 338.080 is hereby amended to read as follows:

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

++ (a) Any work, construction, alteration, repair or other employment performed, undertaken or carried out, by or for any



1 railroad company or any person operating the same, whether such
2 work, construction, alteration or repair is incident to or in
3 conjunction with a contract to which a public body is a party, or
4 otherwise.

5 ~~12-1~~ (b) Apprentices recorded under the provisions of chapter
6 610 of NRS.

7 ~~13-1~~ (c) Any contract for a public work whose cost is less than
8 \$100,000. A unit of the project must not be separated from the total
9 project, even if that unit is to be completed at a later time, in order to
10 lower the cost of the project below \$100,000.

11 (d) *Any contract for a public work to which a school district, a*
12 *charter school or the Nevada System of Higher Education is a*
13 *party.*

14 (e) *A public work of, or constructed by, a school district, a*
15 *charter school or the Nevada System of Higher Education.*

16 2. *The provisions of paragraphs (d) and (e) of subsection 1*
17 *apply to any school district or charter school without regard to*
18 *whether the school district or charter school is providing*
19 *education to pupils:*

20 (a) *In kindergarten through grade 12; or*

21 (b) *In a prekindergarten program at the school district or*
22 *charter school or in any other early childhood educational*
23 *program affiliated with the school district or charter school.*

24 **Sec. 7.** NRS 232.521 is hereby amended to read as follows:

25 232.521 1. The Director shall include on the Internet website
26 maintained by the Department ~~1-1~~ :

27 (a) *A link which connects to the Social Security Administration*
28 *where an employer may verify the social security number of an*
29 *employee 1-1; and*

30 (b) *Information which encourages and promotes contractors*
31 *to submit surveys to the Director of the Department of*
32 *Employment, Training and Rehabilitation for his or her use in the*
33 *determination of the prevailing rate of wages pursuant to*
34 *NRS 338.030.*

35 2. The link required pursuant to subsection 1 must be
36 maintained in the area of the website that encourages and promotes
37 the growth, development and legal operation of businesses within
38 the State of Nevada.

39 3. *The information required pursuant to subsection 1 must be*
40 *maintained in the area of the website that contains information*
41 *related to the Office of the Labor Commissioner.*

42 **Sec. 8.** NRS 232.920 is hereby amended to read as follows:

43 232.920 The Director:

44 1. Shall:



* A B 2 7 5 *

1 (a) Organize the Department into divisions and other operating
2 units as needed to achieve the purposes of the Department;

3 (b) Upon request, provide the Director of the Department of
4 Administration with a list of organizations and agencies in this State
5 whose primary purpose is the training and employment of persons
6 with disabilities;

7 (c) Except as otherwise provided by a specific statute, direct the
8 divisions to share information in their records with agencies of local
9 governments which are responsible for the collection of debts or
10 obligations if the confidentiality of the information is otherwise
11 maintained under the terms and conditions required by law; ~~and~~

12 (d) Provide the employment and wage information to the Board
13 of Regents of the University of Nevada for purposes of the reporting
14 required of the Board of Regents by subsection 4 of NRS 396.531
15 ~~and~~; and

16 *(e) Determine a prevailing wage in each county pursuant to*
17 *NRS 338.030.*

18 2. Is responsible for the administration, through the divisions
19 of the Department, of the provisions of NRS 426.010 to 426.720,
20 inclusive, 426.740, 426.790 and 426.800, and chapters 612 and 615
21 of NRS, and all other provisions of law relating to the functions of
22 the Department and its divisions, but is not responsible for the
23 professional line activities of the divisions or other operating units
24 except as otherwise provided by specific statute.

25 3. May employ, within the limits of legislative appropriations,
26 such staff as is necessary for the performance of the duties of the
27 Department.

28 **Sec. 9.** NRS 338.075 is hereby repealed.

29 **Sec. 10.** On or after July 1, 2013, if the Director of the
30 Department of Employment, Training and Rehabilitation has not
31 determined the prevailing wage in a county pursuant to NRS
32 338.030, as amended by section 4 of this act, the prevailing wage in
33 that county shall be deemed to be the prevailing wage determined by
34 the Labor Commissioner pursuant to that section before July 1,
35 2013, and remains in effect for that county until the Director
36 determines the prevailing wage in that county pursuant to NRS
37 338.030, as amended by section 4 of this act.

38 **Sec. 11.** This act becomes effective on July 1, 2013.



TEXT OF REPEALED SECTION

338.075 Applicability to certain contracts for construction work of Nevada System of Higher Education. The provisions of NRS 338.020 to 338.090, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds \$100,000 even if the construction work does not qualify as a public work, as defined in subsection 16 of NRS 338.010.

③⑩



* A B 2 7 5 *