

ASSEMBLY BILL NO. 318—ASSEMBLYMEN HARDY, HICKEY,
HAMBRICK; DUNCAN, GRADY, HANSEN, KIRNER AND
STEWART

MARCH 18, 2013

JOINT SPONSORS: SENATORS HARDY, GOICOECHEA;
HAMMOND AND SETTELMAYER

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to the payment of
overtime compensation and prevailing wages.
(BDR 28-720)

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 compensation; revising provisions relating to
the payment of overtime compensation and prevailing
wages; and providing other matters properly relating
thereto.

Legislative Counsel's Digest:

1 The Fair Labor Standards Act requires that compensation for overtime be paid
2 to certain employees for hours worked in excess of 40 hours in any week of work.
3 (29 U.S.C. § 207) Under existing Nevada law, contractors on public works are
4 required to pay overtime compensation to mechanics and workers who work more
5 than 40 hours in a week of work or, except in certain circumstances, more than 8
6 hours in a workday. (NRS 338.020) **Section 1** of this bill removes the requirement
7 that overtime compensation be paid to such mechanics and workers who work more
8 than 8 hours in a day, while retaining the provisions which require payment of
9 compensation for overtime for hours worked in excess of 40 hours in any week of
10 work. **Section 1** also repeals a provision regarding collectively bargained
11 exceptions to the overtime requirements.

12 **Sections 2-4** of this bill increase the monetary threshold at which prevailing
13 wages are required to be paid on public works or other projects from \$100,000 to
14 \$1.5 million. (NRS 279.500, 338.075, 338.080) **Section 3** of this bill also makes the
15 requirements relating to the payment of prevailing wages inapplicable to the repair
16 of an existing building, facility or structure if the building, facility or structure is
17 not replaced or the size, type or extent of the building, facility or structure is not



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18 changed or increased by the repair, and even if the repair is a unit of a larger
19 project.

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

1 **Section 1.** NRS 338.020 is hereby amended to read as follows:
2 338.020 1. Every contract to which a public body of this
3 State is a party, requiring the employment of skilled mechanics,
4 skilled workers, semiskilled mechanics, semiskilled workers or
5 unskilled labor in the performance of public work, must contain in
6 express terms the hourly and daily rate of wages to be paid each of
7 the classes of mechanics and workers. The hourly and daily rate of
8 wages must:

9 (a) Not be less than the rate of such wages then prevailing in the
10 county in which the public work is located, which prevailing rate of
11 wages must have been determined in the manner provided in NRS
12 338.030; and

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

15 2. When public work is performed by day labor, the prevailing
16 wage for each class of mechanics and workers so employed applies
17 and must be stated clearly to such mechanics and workers when
18 employed.

19 3. ~~{Except as otherwise provided in subsection 4, a}~~ A
20 contractor or subcontractor shall pay to a mechanic or worker
21 employed by the contractor or subcontractor on the public work not
22 less than one and one-half times the prevailing rate of wages
23 applicable to the class of the mechanic or worker for each hour the
24 mechanic or worker works on the public work in excess of ~~†~~:

25 ~~—(a) Forty~~ 40 hours in any scheduled week of work by the
26 mechanic or worker for the contractor or subcontractor, including,
27 without limitation, hours worked for the contractor or subcontractor
28 on work other than the public work. ~~†; or~~

29 ~~—(b) Eight hours in any workday that the mechanic or worker was~~
30 ~~employed by the contractor or subcontractor, including, without~~
31 ~~limitation, hours worked for the contractor or subcontractor on work~~
32 ~~other than the public work, unless by mutual agreement the~~
33 ~~mechanic or worker works a scheduled 10 hours per day for 4~~
34 ~~calendar days within any scheduled week of work.~~

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



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

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

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

Sec. 2. NRS 338.075 is hereby amended to read as follows:

338.075 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]~~ *\$1,500,000* even if the construction work does not qualify as a public work, as defined in subsection 16 of NRS 338.010.

Sec. 3. NRS 338.080 is hereby amended to read as follows:

338.080 None of the provisions of NRS 338.020 to 338.090, inclusive, apply to:

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

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

3. ~~[Any]~~ *Except as otherwise provided in subsection 4, any* contract for a public work whose cost is less than ~~[\$100,000.]~~ *\$1,500,000*. A unit of the project must not be separated from the total project, even if that unit is to be completed at a later time, in order to lower the cost of the project below ~~[\$100,000.]~~ *\$1,500,000*.

4. *Any repair of an existing building, facility or structure if:*

(a) The existing building, facility or structure is not replaced;
or

(b) The size, type or extent of the existing building, facility or structure is not thereby changed or increased,

↪ even if the repair is a unit of a larger project.

Sec. 4. NRS 279.500 is hereby amended to read as follows:

279.500 1. The provisions of NRS 338.010 to 338.090, inclusive, apply to any contract for new construction, repair or reconstruction which is awarded on or after October 1, 1991, by an agency for work to be done in a project.



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2. If an agency provides property for development at less than the fair market value of the property, or provides financial incentives to the developer with a value of more than ~~[\$100,000,]~~ **\$1,500,000**, the agency must provide in the agreement with the developer that the development project is subject to the provisions of NRS 338.010 to 338.090, inclusive, to the same extent as if the agency had awarded the contract for the project. This subsection applies only to the project covered by the agreement between the agency and the developer. This subsection does not apply to future development of the property unless additional financial incentives with a value of more than ~~[\$100,000]~~ **\$1,500,000** are provided to the developer.

Sec. 5. NRS 608.018 is hereby amended to read as follows:

608.018 1. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works:

(a) More than 40 hours in any scheduled week of work; or

(b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

2. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate not less than 1 1/2 times the minimum rate prescribed pursuant to NRS 608.250 works more than 40 hours in any scheduled week of work.

3. The provisions of subsections 1 and 2 do not apply to:

(a) Employees who are not covered by the minimum wage provisions of NRS 608.250;

(b) Outside buyers;

(c) Employees in a retail or service business if their regular rate is more than 1 1/2 times the minimum wage, and more than half their compensation for a representative period comes from commissions on goods or services, with the representative period being, to the extent allowed pursuant to federal law, not less than 1 month;

(d) Employees who are employed in bona fide executive, administrative or professional capacities;

(e) Employees covered by collective bargaining agreements which provide otherwise for overtime;

(f) Drivers, drivers' helpers, loaders and mechanics for motor carriers subject to the Motor Carrier Act of 1935, as amended;

(g) Employees of a railroad;

(h) Employees of a carrier by air;



- 1 (i) Drivers or drivers' helpers making local deliveries and paid
2 on a trip-rate basis or other delivery payment plan;
3 (j) Drivers of taxicabs or limousines;
4 (k) Agricultural employees;
5 (l) Employees of business enterprises having a gross sales
6 volume of less than \$250,000 per year;
7 (m) Any salesperson or mechanic primarily engaged in selling
8 or servicing automobiles, trucks or farm equipment; and
9 (n) A mechanic or worker for any hours to which the provisions
10 of subsection 3 ~~for 4~~ of NRS 338.020 apply.
11 **Sec. 6.** This act becomes effective on July 1, 2013.

