

ASSEMBLY BILL NO. 37—COMMITTEE
ON GOVERNMENT AFFAIRS

(ON BEHALF OF CLARK COUNTY)

PREFILED DECEMBER 20, 2012

Referred to Committee on Government Affairs

SUMMARY—Authorizes certain larger counties to enforce the prevailing wage requirement for public works. (BDR 28-391)

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 relating to the enforcement of the prevailing wage requirement for public works projects; authorizing certain larger counties to enforce those provisions; authorizing the governing body of such counties to provide certain remedies and impose administrative penalties for violations of those provisions; 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 projects. (NRS 338.015) Existing law also authorizes the Labor Commissioner: (1) to provide certain remedies for violations of those provisions; and (2) after providing notice and an opportunity for a hearing, to impose an administrative penalty against a person who violates those provisions. (NRS 338.015, 338.017, 338.090)

This bill authorizes a county whose population is 700,000 or more (currently Clark County), or a person designated by the county to be responsible for the development, solicitation, award or administration of contracts for public works, to enforce the provisions governing the payment of prevailing wages for public works projects awarded by the county in lieu of enforcement by the Labor Commissioner. This bill also authorizes the governing body of such a larger county: (1) to provide certain remedies for violations of those provisions; (2) after providing notice and an opportunity for a hearing, to impose an administrative penalty against a person who violates those provisions; and (3) to enact an ordinance to carry out the provisions of this bill.



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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 a new section to read as follows:

1. A county whose population is 700,000 or more or its authorized representative may, in lieu of the Labor Commissioner, enforce the provisions of NRS 338.010 to 338.090, inclusive, with regard to a violation of those provisions committed in the course of the execution of a contract for a public work that was awarded by the county or its authorized representative if the county or its authorized representative has, in accordance with the requirements set forth in NRS 338.070 and the regulations adopted pursuant to NRS 338.010 to 338.090, inclusive:

(a) Conducted an investigation and made a determination that a violation of the provisions of NRS 338.010 to 338.090, inclusive, was committed; and

(b) Served a copy of the determination upon the contractor or subcontractor alleged to have committed the violation.

2. After providing the contractor or subcontractor alleged to have committed the violation with notice and an opportunity for a hearing, the governing body of the county:

(a) May, in addition to any other remedy or penalty provided in this section, impose against the contractor or subcontractor an administrative penalty for each violation;

(b) If an administrative penalty is imposed pursuant to paragraph (a), may suspend the ability of the contractor or subcontractor, and the corporate officers, if any, of that contractor or subcontractor, to be awarded a contract for a public work for that county for a specified period after the date of the imposition of the administrative penalty; and

(c) If the violation involved the failure to pay the prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive:

(1) Shall, in addition to any other remedy or penalty imposed by this section, assess the contractor or subcontractor 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

(2) May, in addition to any other remedy or penalty imposed by this section, require the contractor or subcontractor to pay the actual costs incurred by the county to investigate the matter.

3. The governing body of the county may enact an ordinance to carry out the purposes of this section. Such an ordinance may include, without limitation:



1 (a) *The procedure for a hearing conducted pursuant to*
2 *subsection 2;*

3 (b) *The establishment of a sliding scale based on the severity*
4 *of the violation to determine the amount of any administrative*
5 *penalty to be imposed against a contractor or subcontractor but*
6 *not to exceed \$5,000 for each such violation; and*

7 (c) *The parameters of any period of suspension on the*
8 *awarding of a contract for a public work with the county which*
9 *may be imposed upon a contractor or subcontractor, or the*
10 *corporate officers, if any, of that contractor or subcontractor.*

11 4. *The county or its authorized representative shall report to*
12 *the Attorney General its determination that a violation of the*
13 *provisions of NRS 338.010 to 338.090, inclusive, was committed,*
14 *and the Attorney General may prosecute the contractor or*
15 *subcontractor in accordance with law.*

16 5. *All money collected pursuant to this section as an*
17 *administrative penalty must be deposited in the county general*
18 *fund.*

19 **Sec. 2.** NRS 338.015 is hereby amended to read as follows:

20 338.015 1. *Except as otherwise provided in subsection 2:*

21 (a) The Labor Commissioner shall enforce the provisions of
22 NRS 338.010 to 338.130, inclusive.

23 ~~12-1~~ (b) In addition to any other remedy or penalty provided in
24 this chapter, if any person, including, without limitation, a public
25 body, violates any provision of NRS 338.010 to 338.130, inclusive,
26 or any regulation adopted pursuant thereto, the Labor Commissioner
27 may, after providing the person with notice and an opportunity for a
28 hearing, impose against the person an administrative penalty of not
29 more than \$5,000 for each such violation.

30 ~~13-1~~ (c) The Labor Commissioner may, by regulation, establish
31 a sliding scale based on the severity of the violation to determine the
32 amount of the administrative penalty to be imposed against the
33 person pursuant to this section.

34 ~~14-1~~ (d) The Labor Commissioner shall report the violation to
35 the Attorney General, and the Attorney General may prosecute the
36 person in accordance with law.

37 2. *Except as otherwise provided in this subsection, the*
38 *provisions of subsection 1 do not apply with respect to the*
39 *violation of a provision of NRS 338.010 to 338.090, inclusive, that*
40 *a county whose population is 700,000 or more, or its authorized*
41 *representative, is enforcing in accordance with section 1 of this*
42 *act. The powers and duties of the Labor Commissioner set forth in*
43 *subsection 1 are unaffected by the exemption set forth in this*
44 *subsection if the Labor Commissioner:*



1 (a) *Determines that a person to whom a county whose*
2 *population is 700,000 or more, or its authorized representative,*
3 *has awarded a contract for a public work has violated a provision*
4 *of NRS 338.010 to 338.090, inclusive, in the course of carrying out*
5 *that contract; and*

6 (b) *After providing written notice of that fact to the county and*
7 *its authorized representative, if any, determines that neither the*
8 *county nor its authorized representative, if any, has within a*
9 *reasonable time after receiving the written notice commenced*
10 *enforcement of the violation in accordance with section 1 of this*
11 *act.*

12 **Sec. 3.** NRS 338.017 is hereby amended to read as follows:

13 338.017 If any administrative penalty is imposed *by the Labor*
14 *Commissioner* against a person for the commission of an offense:

15 1. That person, and the corporate officers, if any, of that
16 person, may not be awarded a contract for a public work:

17 (a) For the first offense, for a period of 3 years after the date of
18 the imposition of the administrative penalty; and

19 (b) For the second or subsequent offense, for a period of 5 years
20 after the date of the imposition of the administrative penalty.

21 2. The Labor Commissioner shall notify the State Contractors'
22 Board of each contractor who is prohibited from being awarded a
23 contract for a public work pursuant to this section.

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

25 338.090 1. Any person, including the officers, agents or
26 employees of a public body, who violates any provision of NRS
27 338.010 to 338.090, inclusive, or any regulation adopted pursuant
28 thereto, is guilty of a misdemeanor.

29 2. ~~That~~ *Except as otherwise provided in section 1 of this act,*
30 *the* Labor Commissioner, in addition to any other remedy or penalty
31 provided in this chapter:

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

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

40 3. If the Labor Commissioner finds that a person has failed to
41 pay the prevailing wage required pursuant to NRS 338.020 to
42 338.090, inclusive, the public body may, in addition to any other
43 remedy or penalty provided in this chapter, require the person to pay
44 the actual costs incurred by the public body to investigate the
45 matter.



1 **Sec. 5.** This act becomes effective on July 1, 2013.

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