

SENATE BILL NO. 392—SENATOR KIECKHEFER

MARCH 17, 2015

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to prevailing wage.
(BDR 28-828)

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

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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 prevailing wage; amending the method for determining the prevailing wage; revising the manner in which a claim or complaint regarding the payment of wages may be filed; increasing the threshold cost for public works requiring the payment of prevailing wage; revising the procedure for the advertisement for and selection of bids for a public work; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that contracts for public works which cost \$100,000 or more must pay mechanics and workers the wage then prevailing in the county in which the public work is located. (NRS 338.020, 338.080) **Section 4** of this bill increases the threshold cost of such a public work to \$1,000,000 or more which must be adjusted by the Labor Commissioner for inflation every 5 years beginning on January 1, 2020.

Existing law provides that the prevailing wage must be determined by the Labor Commissioner by conducting a survey. (NRS 338.030) **Section 2** of this bill revises the manner in which the survey is conducted by excluding workers who are being paid prevailing wage when calculating the prevailing wage. **Section 1** of this bill provides for a set portion of the calculated prevailing wage which may be used for fringe benefits.

Section 3 of this bill provides that any claim or complaint regarding the wages paid to a worker employed on the public work must be made solely by the worker.

Existing law requires a public body to advertise a request for bids on a public work, and to accept the lowest bid. (NRS 338.1385, 338.1389) **Sections 5 and 7** of this bill require a public body or local government, as applicable, that is accepting bids for a public work to hold a public pre-bid meeting. **Sections 6 and 8** of this bill require a public body or local government, as applicable, to rank bids using certain criteria and to interview the top ranked bids to determine the best value bid.



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

Section 1. NRS 338.020 is hereby amended to read as follows:

338.020 1. Every contract to which a public body of this State is a party, requiring the employment of skilled mechanics, skilled workers, semiskilled mechanics, semiskilled workers or unskilled labor in the performance of public work, must contain in express terms the hourly and daily rate of wages to be paid each of the classes of mechanics and workers. The hourly and daily rate of wages must:

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

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

2. *The actual hourly wage paid to a mechanic or worker entitled to be paid the prevailing wage must be at least two-thirds of the prevailing wage as determined by the Labor Commissioner pursuant to NRS 338.030. The remaining one-third of the prevailing wage may be provided as fringe benefits, including, without limitation, pension or retirement, health care, vacation and holiday pay, training or other bona fide fringe benefits, if those benefits accrue to the exclusive benefit of the mechanic or worker. The total pay and benefits must be an amount that is at least the prevailing wage for the class of mechanic or worker.*

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

~~13.1~~ 4. Except as otherwise provided in subsection ~~4.1~~ 5, a contractor or subcontractor shall pay to a mechanic or worker employed by the contractor or subcontractor on the public work not less than one and one-half times the prevailing rate of wages applicable to the class of the mechanic or worker for each hour the mechanic or worker works on the public work in excess of:

(a) Forty hours in any scheduled week of work by the mechanic or worker for the contractor or subcontractor, including, without limitation, hours worked for the contractor or subcontractor on work other than the public work; or

(b) Eight hours in any workday that the mechanic or worker was employed by the contractor or subcontractor, including, without limitation, hours worked for the contractor or subcontractor on work other than the public work, unless by mutual agreement the



1 mechanic or worker works a scheduled 10 hours per day for 4
2 calendar days within any scheduled week of work.

3 ~~{4-}~~ 5. The provisions of subsection ~~{3-}~~ 4 do not apply to a
4 mechanic or worker who is covered by a collective bargaining
5 agreement that provides for the payment of wages at not less than
6 one and one-half times the rate of wages set forth in the collective
7 bargaining agreement for work in excess of:

8 (a) Forty hours in any scheduled week of work; or

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

13 ~~{5-}~~ 6. The prevailing wage and any wages paid for overtime
14 pursuant to subsection ~~{3-or}~~ 4 or 5 to each class of mechanics or
15 workers must be in accordance with the jurisdictional classes
16 recognized in the locality where the work is performed.

17 ~~{6-}~~ 7. Nothing in this section prevents an employer who is
18 signatory to a collective bargaining agreement from assigning such
19 work in accordance with established practice.

20 **Sec. 2.** NRS 338.030 is hereby amended to read as follows:

21 338.030 1. *The Legislature hereby declares that the*
22 *provisions of this section impose a form of governmental wage*
23 *controls on the private sector. Those controls are generally*
24 *contrary to the policy of this State. The provisions of this section*
25 *and any applicable related sections must be interpreted narrowly.*
26 *In resolving issues that may arise concerning the classification of*
27 *workers, the payment of prevailing wage or the applicability of this*
28 *chapter, the Labor Commissioner shall consider any cost to the*
29 *public and shall endeavor to minimize that cost.*

30 2. The public body awarding any contract for public work, or
31 otherwise undertaking any public work, shall ascertain from the
32 Labor Commissioner the prevailing wage in the county in which the
33 public work is to be performed for each craft or type of work.

34 ~~{2-}~~ 3. To establish a prevailing wage in each county,
35 including Carson City, the Labor Commissioner shall, annually,
36 survey contractors who have performed work in the county. *The*
37 *prevailing wage for each craft or type of work in each county must*
38 *be established by calculating the mean hourly wage, including*
39 *fringe benefits, if any, of all reported wages for each craft or type*
40 *of work in a county. When calculating a prevailing wage, the*
41 *Commissioner shall not consider any wages paid on a public work*
42 *which required the payment of a prevailing wage pursuant to NRS*
43 *338.020.* Within 30 days after the determination is issued:



(a) A public body or person entitled under subsection ~~15.1~~ 6 to be heard may submit an objection to the Labor Commissioner with evidence to substantiate that a different wage prevails; and

(b) Any person may submit information to the Labor Commissioner 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.

~~13.1~~ 4. The Labor Commissioner shall hold a hearing in the locality in which the work is to be executed if the Labor Commissioner:

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

(b) Receives an objection or information pursuant to subsection ~~12.1~~ 3.

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

~~14.1~~ 5. 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.

~~15.1~~ 6. 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 shall determine the prevailing wage.

~~16.1~~ 7. The wages so determined must be filed by the Labor Commissioner and must be available to any public body which awards a contract for any public work.

~~17.1~~ 8. Nothing contained in NRS 338.020 to 338.090, inclusive, 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.

Sec. 3. NRS 338.060 is hereby amended to read as follows:

338.060 1. Except as otherwise provided in subsection ~~18.1~~ 9, a contractor engaged on a public work shall forfeit, as a penalty to the public body on behalf of which the contract has been made and awarded to the contractor, not less than \$20 nor more than \$50 for each calendar day or portion thereof that each worker employed on the public work is paid less than the designated rate for any work done under the contract, by the contractor or any subcontractor engaged on the public work.

2. Except as otherwise provided in subsection ~~18.1~~ 9, a contractor engaged on a public work shall forfeit, as a penalty to the public body on behalf of which the contract has been made and awarded to the contractor, not less than \$20 nor more than \$50 for each calendar day or portion thereof for each worker employed on



the public work for which the contractor or subcontractor willfully included inaccurate or incomplete information in the monthly record required to be submitted to the public body pursuant to subsection 6 of NRS 338.070.

3. Except as otherwise provided in subsection ~~18.1~~ 9, a contractor engaged on a public work shall forfeit, as a penalty to the public body on behalf of which the contract has been made and awarded to the contractor, not less than \$20 nor more than \$50 for each calendar day or portion thereof that each worker employed on the public work is not reported to the public body awarding the contract by the contractor or any subcontractor engaged on the public work as required pursuant to subsection 6 of NRS 338.070, up to a maximum of:

(a) For the first failure to comply during the term of the contract for the public work, \$1,000; and

(b) For each subsequent failure to comply during the term of the contract for the public work, \$5,000.

4. Except as otherwise provided in subsection ~~18.1~~ 9, if a violation of more than one provision of subsections 1, 2 and 3 involves the same worker, the contractor shall forfeit the penalty set forth in each subsection that was violated.

5. A public body awarding a contract for a public work shall cause a stipulation setting forth the penalties specified in subsections 1 to 4, inclusive, to be inserted in the contract.

6. *Except as otherwise provided in this subsection, any claim or complaint submitted to the Labor Commissioner pursuant to chapter 607 of NRS regarding the wages paid to a worker employed on a public work must be made solely by that worker. A labor union, association or other organization may not initiate or file a claim or complaint on behalf of a worker with or without his or her consent. This subsection does not apply to a bona fide legal aid organization or other person who is providing legal representation to a worker at that worker's request or to a claim or complaint brought by the estate of a deceased worker.*

7. The Labor Commissioner shall, by regulation, establish a sliding scale based on the size of the business of a contractor engaged on a public work to determine the amount of the penalty to be imposed pursuant to subsections 1 and 2.

~~17.1~~ 8. If a penalty is imposed pursuant to this section, the costs of the proceeding, including investigative costs and attorney's fees, may be recovered by the Labor Commissioner and the public body.

~~18.1~~ 9. The Labor Commissioner may, for good cause shown, waive or reduce any penalty imposed pursuant to this section.



Sec. 4. 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, apply to:

~~{1-}~~ **(a)** 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-}~~ **(b)** Apprentices recorded under the provisions of chapter 610 of NRS.

~~{3-}~~ **(c)** Any contract for a public work whose cost is less than ~~[\$100,000-]~~ **\$1,000,000.** 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-]~~ **\$1,000,000.**

2. *The Labor Commissioner shall, on or before January 1, 2020, and every 5 years thereafter, adjust the amount set forth in paragraph (c) of subsection 1 to reflect inflation, as measured by the average percentage of increase or decrease in the Consumer Price Index for All Urban Consumers of the United States Department of Labor, Bureau of Labor Statistics, for the preceding 5 years. The Labor Commissioner shall determine the amount of the increase or decrease required by this subsection and establish the adjusted amounts to take effect on January 1 of that year.*

Sec. 5. NRS 338.1385 is hereby amended to read as follows:

338.1385 **1.** Except as otherwise provided in subsection 9, this State, or a governing body or its authorized representative that awards a contract for a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it ~~{advertises}~~ :

(1) *Advertises* in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and having a general circulation within the county ~~{-}~~ ; **and**

(2) *Holds a public pre-bid meeting, the time and place of which must be included in the advertisement for bids pursuant to subparagraph (1).*

(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of



1 NRS 338.1386, 338.13862 and 338.13864 and, with respect to the
2 State, NRS 338.1384 to 338.13847, inclusive.

3 (c) Divide a public work into separate portions to avoid the
4 requirements of paragraph (a) or (b).

5 2. At least once each quarter, the authorized representative of a
6 public body shall report to the public body any contract that the
7 authorized representative awarded pursuant to subsection 1 in the
8 immediately preceding quarter.

9 3. Each advertisement for bids must include a provision that
10 sets forth the requirement that a contractor must be qualified
11 pursuant to NRS 338.1379 or 338.1382 to bid on the contract.

12 4. Approved plans and specifications for the bids must be on
13 file at a place and time stated in the advertisement for the inspection
14 of all persons desiring to bid thereon and for other interested
15 persons. Contracts for the public work must be awarded on the basis
16 of bids received.

17 5. Except as otherwise provided in subsection 6 and NRS
18 338.1389, a public body or its authorized representative shall award
19 a contract to the lowest responsive and responsible bidder.

20 6. Any bids received in response to an advertisement for bids
21 may be rejected if the public body or its authorized representative
22 responsible for awarding the contract determines that:

23 (a) The bidder is not a qualified bidder pursuant to NRS
24 338.1379 or 338.1382;

25 (b) The bidder is not responsive or responsible;

26 (c) The quality of the services, materials, equipment or labor
27 offered does not conform to the approved plans or specifications; or

28 (d) The public interest would be served by such a rejection.

29 7. A public body may let a contract without competitive
30 bidding if no bids were received in response to an advertisement for
31 bids and:

32 (a) The public body publishes a notice stating that no bids were
33 received and that the contract may be let without further bidding;

34 (b) The public body considers any bid submitted in response to
35 the notice published pursuant to paragraph (a);

36 (c) The public body lets the contract not less than 7 days after
37 publishing a notice pursuant to paragraph (a); and

38 (d) The contract is awarded to the lowest responsive and
39 responsible bidder.

40 8. Before a public body may commence the performance of a
41 public work itself pursuant to the provisions of this section, based
42 upon a determination that the public interest would be served by
43 rejecting any bids received in response to an advertisement for bids,
44 the public body shall prepare and make available for public
45 inspection a written statement containing:



(a) A list of all persons, including supervisors, whom the public body intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the public body intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including, the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the public body expects to save by rejecting the bids and performing the public work itself.

9. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.1685 to 338.16995, inclusive.

Sec. 6. NRS 338.1389 is hereby amended to read as follows:

338.1389 1. Except as otherwise provided in subsection 10 and NRS 338.1385, 338.1386 and 338.13864, a public body or its authorized representative shall award a contract for a public work for which the estimated cost exceeds \$250,000 to the contractor who submits the best *value* bid.

2. ~~{Except as otherwise provided in}~~ *Notwithstanding the provisions of* subsection 10 or ~~{limited by subsection}~~ 11, the ~~{lowest}~~ *best value* bid ~~{that is:}~~ *must be determined in the following manner:*



(a) ~~Submitted by a responsive and responsible contractor who:~~
~~— (1) Has been determined by the public body to be~~ *The public body or its authorized representative shall verify that each applicant is a qualified bidder pursuant to NRS 338.1379 or 338.1382 .* ~~;~~

(b) The public body or its authorized representative shall rank the verified proposals submitted to the public body by evaluating the proposals using the following criteria specified in the bid proposal:

(1) The estimated cost;

~~(2) [At the time the contractor submits his or her bid, provides a valid certificate of eligibility to receive a preference in bidding on public works issued to the contractor by the State Contractors' Board pursuant to subsection 3 or 4; and] Whether the contractor has received a preference in bidding pursuant to NRS 338.0117;~~

~~(3) [Within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117; and~~

~~— (b) Not more than 5 percent higher than the bid submitted by the lowest responsive and responsible bidder who:~~

~~— (1) Does not provide, at the time he or she submits the bid, a valid certificate of eligibility to receive a preference in bidding on public works issued to him or her by the State Contractors' Board pursuant to subsection 3 or 4; or~~

~~— (2) Does not submit, within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, a signed affidavit certifying that he or she will comply with the requirements of paragraphs (a) to (d), inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract;~~

~~→ shall be deemed to be the best bid for the purposes of this section.] The qualifications and experience of the contractor and subcontractors;~~

(4) The quality of the services, materials, equipment or labor offered in the bid;

(5) The reputation of the contractor and subcontractors for safety, quality and timeliness of project completion;

(6) The history of customer satisfaction on previous projects;

(7) The history of the contractor in initiating change orders or modifications to projects;

(8) Any past experience that the public body has had with the contractor or subcontractors;



(9) Whether the contractor or subcontractors are local businesses, small businesses or veteran-, women- or minority-owned businesses;

(10) The utilization by the contractor or subcontractors of workers who are veterans, members of ethnic or racial minorities or women;

(11) The contractor's understanding of the scope, deliverables and schedules for the public work; and

(12) Any other criteria that the public body determines is relevant and is specifically listed in the request for bids.

(c) After the public body or its authorized representative ranks the proposals, the public body or its authorized representative shall select for interviews the three verified applicants whose proposals received the highest scores and thereafter conduct the interviews. If there are fewer than three verified applicants, the public body or its authorized representative may proceed in the interview and selection process with each verified applicant or may cancel and rebid the project.

(d) After conducting the interviews, the public body or its authorized representative shall rank the applicants by using a ranking process that applies the same criteria but is separate from the process used to rank the applicants pursuant to paragraph (b) and is based only on information submitted during the interview process.

(e) After creating the final rankings of the applicants, the public body or its authorized representative shall enter into contract negotiations with the applicant offering the best value bid. If the public body or its authorized representative is unable to negotiate a contract with that applicant, the public body or its authorized representative shall terminate negotiations with that applicant. The public body or its authorized representative may then undertake negotiations with the applicant offering the next best value bid in sequence until an agreement is reached and, if the negotiation is undertaken by an authorized representative of the public body, approved by the public body or until a determination is made by the public body to reject all applicants.

(f) The public body or its authorized representative shall make available to all applicants and the public the final rankings of the applicants and shall provide, upon request, an explanation to any unsuccessful applicant of the reasons why the applicant was unsuccessful.

3. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a



certified public accountant setting forth that the general contractor has, while licensed as a general contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a general contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

4. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding



1 the submission of the affidavit from the certified public accountant;
2 or

3 (3) Any combination of such sales and use taxes and
4 governmental services tax; or

5 (b) Acquired, by purchase, inheritance, gift or transfer through a
6 stock option plan, all the assets and liabilities of a viable, operating
7 construction firm that possesses a:

8 (1) License as a specialty contractor pursuant to the
9 provisions of chapter 624 of NRS; and

10 (2) Certificate of eligibility to receive a preference in bidding
11 on public works.

12 5. For the purposes of complying with the requirements set
13 forth in paragraph (a) of subsection 3 and paragraph (a) of
14 subsection 4, a contractor shall be deemed to have paid:

15 (a) Sales and use taxes and governmental services taxes that
16 were paid in this State by an affiliate or parent company of the
17 contractor, if the affiliate or parent company is also a general
18 contractor or specialty contractor, as applicable; and

19 (b) Sales and use taxes that were paid in this State by a joint
20 venture in which the contractor is a participant, in proportion to the
21 amount of interest the contractor has in the joint venture.

22 6. A contractor who has received a certificate of eligibility to
23 receive a preference in bidding on public works from the State
24 Contractors' Board pursuant to subsection 3 or 4 shall, at the time
25 for the renewal of his or her contractor's license pursuant to NRS
26 624.283, submit to the Board an affidavit from a certified public
27 accountant setting forth that the contractor has, during the
28 immediately preceding 12 months, paid the taxes required pursuant
29 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
30 applicable, to maintain eligibility to hold such a certificate.

31 7. A contractor who fails to submit an affidavit to the Board
32 pursuant to subsection 6 ceases to be eligible to receive a preference
33 in bidding on public works unless the contractor reapplies for and
34 receives a certificate of eligibility pursuant to subsection 3 or 4, as
35 applicable.

36 8. If a contractor holds more than one contractor's license, the
37 contractor must submit a separate application for each license
38 pursuant to which the contractor wishes to qualify for a preference
39 in bidding. Upon issuance, the certificate of eligibility to receive a
40 preference in bidding on public works becomes part of the
41 contractor's license for which the contractor submitted the
42 application.

43 9. If a contractor who applies to the State Contractors' Board
44 for a certificate of eligibility to receive a preference in bidding on
45 public works:



(a) Submits false information to the Board regarding the required payment of taxes, the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information; or

(b) Is found by the Board to have, within the preceding 5 years, materially breached a contract for a public work for which the cost exceeds \$5,000,000, the contractor is not eligible to receive a preference in bidding on public works.

10. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of subsection 2, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that work.

11. If a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the bid may receive a preference in bidding only if both or all of the joint venturers separately meet the requirements of subsection 2.

12. The State Contractors' Board shall adopt regulations and may assess reasonable fees relating to the certification of contractors for a preference in bidding on public works.

13. A person who submitted a bid on the public work or an entity who believes that the contractor who was awarded the contract for the public work wrongfully holds a certificate of eligibility to receive a preference in bidding on public works may challenge the validity of the certificate by filing a written objection with the public body to which the contractor has submitted a bid on a contract for the construction of a public work. A written objection authorized pursuant to this subsection must:

(a) Set forth proof or substantiating evidence to support the belief of the person or entity that the contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works; and

(b) Be filed with the public body not later than 3 business days after the opening of the bids by the public body or its authorized representative.

14. If a public body receives a written objection pursuant to subsection 13, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the public body determines that the objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection and the public body or its authorized representative may proceed immediately to award the contract. If the public body determines that the objection is accompanied by the required proof



1 or substantiating evidence, the public body shall determine whether
2 the contractor qualifies for the certificate pursuant to the provisions
3 of this section and the public body or its authorized representative
4 may proceed to award the contract accordingly.

5 **Sec. 7.** NRS 338.143 is hereby amended to read as follows:

6 338.143 1. Except as otherwise provided in subsection 8, a
7 local government or its authorized representative that awards a
8 contract for a public work in accordance with paragraph (b) of
9 subsection 1 of NRS 338.1373 shall not:

10 (a) Commence a public work for which the estimated cost
11 exceeds \$100,000 unless it ~~advertises~~ :

12 *(1) Advertises* in a newspaper qualified pursuant to chapter
13 238 of NRS that is published in the county where the public work
14 will be performed for bids for the public work. If no qualified
15 newspaper is published within the county where the public work
16 will be performed, the required advertisement must be published in
17 some qualified newspaper that is printed in the State of Nevada and
18 has a general circulation within the county ~~H~~ ; and

19 *(2) Holds a public pre-bid meeting, the time and place of*
20 *which must be included in the advertisement for bids pursuant to*
21 *subparagraph (1).*

22 (b) Commence a public work for which the estimated cost is
23 \$100,000 or less unless it complies with the provisions of NRS
24 338.1442, 338.1444 or 338.1446.

25 (c) Divide a public work into separate portions to avoid the
26 requirements of paragraph (a) or (b).

27 2. At least once each quarter, the authorized representative of a
28 local government shall report to the governing body any contract
29 that the authorized representative awarded pursuant to subsection 1
30 in the immediately preceding quarter.

31 3. Approved plans and specifications for the bids must be on
32 file at a place and time stated in the advertisement for the inspection
33 of all persons desiring to bid thereon and for other interested
34 persons. Contracts for the public work must be awarded on the basis
35 of bids received.

36 4. Except as otherwise provided in subsection 5 and NRS
37 338.147, the local government or its authorized representative shall
38 award a contract to the lowest responsive and responsible bidder.

39 5. Any bids received in response to an advertisement for bids
40 may be rejected if the local government or its authorized
41 representative responsible for awarding the contract determines that:

42 (a) The bidder is not responsive or responsible;

43 (b) The quality of the services, materials, equipment or labor
44 offered does not conform to the approved plans or specifications; or

45 (c) The public interest would be served by such a rejection.



6. A local government may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The local government publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The local government considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The local government lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

7. Before a local government may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the local government shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the local government intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the local government intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the local government expects to save by rejecting the bids and performing the public work itself.

8. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;



(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.1685 to 338.16995, inclusive.

Sec. 8. NRS 338.147 is hereby amended to read as follows:

338.147 1. Except as otherwise provided in subsection 10 and NRS 338.143, 338.1442 and 338.1446, a local government or its authorized representative shall award a contract for a public work for which the estimated cost exceeds \$250,000 to the contractor who submits the best *value* bid.

2. ~~{Except as otherwise provided in}~~ *Notwithstanding the provisions of* subsection 10 or ~~{limited by subsection}~~ 11, the ~~{lowest}~~ *best value* bid ~~{that is:}~~ *must be determined in the following manner:*

(a) ~~{Submitted by a contractor who:}~~ *The local government or its authorized representative shall verify that each applicant is a responsible and responsive contractor.*

(b) *The public body or its authorized representative shall rank the verified proposals submitted to the public body by evaluating the proposals using the following criteria specified in the bid proposal:*

(1) ~~{Has been found to be a responsible and responsive contractor by the local government or its authorized representative;}~~ *The estimated cost;*

(2) ~~{At the time the contractor submits his or her bid, provides a valid certificate of eligibility to receive a preference in bidding on public works issued to the contractor by the State Contractors' Board pursuant to subsection 3 or 4; and}~~ *Whether the contractor has received a preference in bidding pursuant to NRS 338.0117;*

(3) ~~{Within 2 hours after the completion of the opening of the bids by the local government or its authorized representative, submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117; and}~~

~~—(b) Not more than 5 percent higher than the bid submitted by the lowest responsive and responsible bidder who:~~

~~—(1) Does not provide, at the time he or she submits the bid, a valid certificate of eligibility to receive a preference in bidding on public works issued to him or her by the State Contractors' Board pursuant to subsection 3 or 4; or~~



~~—— (2) Does not submit, within 2 hours after the completion of the opening of the bids by the public body or its authorized representative, a signed affidavit certifying that he or she will comply with the requirements of paragraphs (a) to (d), inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract, shall be deemed to be the best bid for the purposes of this section.]~~ *The qualifications and experience of the contractor and subcontractors;*

(4) The quality of the services, materials, equipment or labor offered in the bid;

(5) The reputation of the contractor and subcontractors for safety, quality and timeliness of project completion;

(6) The history of customer satisfaction on previous projects;

(7) The history of the contractor in initiating change orders or modifications to projects;

(8) Any past experience that the public body has had with the contractor or subcontractors;

(9) Whether the contractor or subcontractors are local businesses, small businesses or veteran-, women- or minority-owned businesses;

(10) The utilization by the contractor or subcontractors of worker who are veterans, members of ethnic or racial minorities or women;

(11) The contractor's understanding of the scope, deliverables and schedules of the public work; and

(12) Any other criteria that the public body determines is relevant and is specifically listed in the request for bids.

(c) After the local government or its authorized representative ranks the proposals, the local government or its authorized representative shall select for interviews the three verified applicants whose proposals received the highest scores and thereafter conduct the interviews. If there are fewer than three verified applicants, the local government or its authorized representative may proceed in the interview and selection process with each verified applicant or may cancel and rebid the project.

(d) After conducting the interviews, the local government or its authorized representative shall rank the applicants by using a ranking process that applies the same criteria but is separate from the process used to rank the applicants pursuant to paragraph (b) and is based only on information submitted during the interview process.

(e) After creating the final rankings of the applicants, the local government or its authorized representative shall enter into contract negotiations with the applicant offering the best value



bid. If the local government or its authorized representative is unable to negotiate a contract with that applicant, the local government or its authorized representative shall terminate negotiations with that applicant. The local government or its authorized representative may then undertake negotiations with the applicant offering the next best value bid in sequence until an agreement is reached and, if the negotiation is undertaken by an authorized representative of the local government, approved by the local government or until a determination is made by the local government to reject all applicants.

(f) The local government or its authorized representative shall make available to all applicants and the public the final rankings of the applicants and shall provide, upon request, an explanation to any unsuccessful applicant of the reasons why the applicant was unsuccessful.

3. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the general contractor has, while licensed as a general contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a general contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.



4. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this State:

(a) Paid directly, on his or her own behalf:

(1) The sales and use taxes pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his or her business in this State of not less than \$5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a specialty contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

5. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 and paragraph (a) of subsection 4, a contractor shall be deemed to have paid:

(a) Sales and use taxes and governmental services taxes paid in this State by an affiliate or parent company of the contractor, if the affiliate or parent company is also a general contractor or specialty contractor, as applicable; and

(b) Sales and use taxes paid in this State by a joint venture in which the contractor is a participant, in proportion to the amount of interest the contractor has in the joint venture.

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall, at the time for the renewal of his or her contractor's license pursuant to NRS 624.283, submit to the Board an affidavit from a certified public



1 accountant setting forth that the contractor has, during the
2 immediately preceding 12 months, paid the taxes required pursuant
3 to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as
4 applicable, to maintain eligibility to hold such a certificate.

5 7. A contractor who fails to submit an affidavit to the Board
6 pursuant to subsection 6 ceases to be eligible to receive a preference
7 in bidding on public works unless the contractor reapplies for and
8 receives a certificate of eligibility pursuant to subsection 3 or 4, as
9 applicable.

10 8. If a contractor holds more than one contractor's license, the
11 contractor must submit a separate application for each license
12 pursuant to which the contractor wishes to qualify for a preference
13 in bidding. Upon issuance, the certificate of eligibility to receive a
14 preference in bidding on public works becomes part of the
15 contractor's license for which the contractor submitted the
16 application.

17 9. If a contractor who applies to the State Contractors' Board
18 for a certificate of eligibility to receive a preference in bidding on
19 public works:

20 (a) Submits false information to the Board regarding the
21 required payment of taxes, the contractor is not eligible to receive a
22 preference in bidding on public works for a period of 5 years after
23 the date on which the Board becomes aware of the submission of the
24 false information; or

25 (b) Is found by the Board to have, within the preceding 5 years,
26 materially breached a contract for a public work for which the cost
27 exceeds \$5,000,000, the contractor is not eligible to receive a
28 preference in bidding on public works.

29 10. If any federal statute or regulation precludes the granting of
30 federal assistance or reduces the amount of that assistance for a
31 particular public work because of the provisions of subsection 2,
32 those provisions do not apply insofar as their application would
33 preclude or reduce federal assistance for that work.

34 11. If a bid is submitted by two or more contractors as a joint
35 venture or by one of them as a joint venturer, the bid may receive a
36 preference in bidding only if both or all of the joint venturers
37 separately meet the requirements of subsection 2.

38 12. The State Contractors' Board shall adopt regulations and
39 may assess reasonable fees relating to the certification of contractors
40 for a preference in bidding on public works.

41 13. A person who submitted a bid on the public work or an
42 entity who believes that the contractor who was awarded the
43 contract for the public work wrongfully holds a certificate of
44 eligibility to receive a preference in bidding on public works may
45 challenge the validity of the certificate by filing a written objection



1 with the local government to which the contractor has submitted a
2 bid on a contract for the construction of a public work. A written
3 objection authorized pursuant to this subsection must:

4 (a) Set forth proof or substantiating evidence to support the
5 belief of the person or entity that the contractor wrongfully holds a
6 certificate of eligibility to receive a preference in bidding on public
7 works; and

8 (b) Be filed with the local government not later than 3 business
9 days after the opening of the bids by the local government or its
10 authorized representative.

11 14. If a local government receives a written objection pursuant
12 to subsection 13, the local government shall determine whether the
13 objection is accompanied by the proof or substantiating evidence
14 required pursuant to paragraph (a) of that subsection. If the local
15 government determines that the objection is not accompanied by the
16 required proof or substantiating evidence, the local government shall
17 dismiss the objection and the local government or its authorized
18 representative may proceed immediately to award the contract. If
19 the local government determines that the objection is accompanied
20 by the required proof or substantiating evidence, the local
21 government shall determine whether the contractor qualifies for the
22 certificate pursuant to the provisions of this section and the local
23 government or its authorized representative may proceed to award
24 the contract accordingly.

25 **Sec. 9.** NRS 608.018 is hereby amended to read as follows:

26 608.018 1. An employer shall pay 1 1/2 times an employee's
27 regular wage rate whenever an employee who receives
28 compensation for employment at a rate less than 1 1/2 times the
29 minimum rate prescribed pursuant to NRS 608.250 works:

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

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

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

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

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

42 (b) Outside buyers;

43 (c) Employees in a retail or service business if their regular rate
44 is more than 1 1/2 times the minimum wage, and more than half
45 their compensation for a representative period comes from



1 commissions on goods or services, with the representative period
2 being, to the extent allowed pursuant to federal law, not less than 1
3 month;

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

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

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

10 (g) Employees of a railroad;

11 (h) Employees of a carrier by air;

12 (i) Drivers or drivers' helpers making local deliveries and paid
13 on a trip-rate basis or other delivery payment plan;

14 (j) Drivers of taxicabs or limousines;

15 (k) Agricultural employees;

16 (l) Employees of business enterprises having a gross sales
17 volume of less than \$250,000 per year;

18 (m) Any salesperson or mechanic primarily engaged in selling
19 or servicing automobiles, trucks or farm equipment; and

20 (n) A mechanic or worker for any hours to which the provisions
21 of subsection ~~3~~ 4 or ~~4~~ 5 of NRS 338.020 apply.

22 **Sec. 10.** The Labor Commissioner shall, as soon as practicable
23 on or after the date of passage and approval of this act, adopt
24 regulations to carry out the provisions of this act. The Labor
25 Commissioner shall prepare, distribute and administer the July 1,
26 2015, prevailing wage survey and all subsequent surveys conducted
27 to establish a prevailing wage in each county in strict compliance
28 with the amendatory provisions of this act.

29 **Sec. 11.** This act becomes effective upon passage and
30 approval.

