

Amendment No. 380

Senate Amendment to Senate Bill No. 357 (BDR 53-534)

Proposed by: Senate Committee on Commerce, Labor and Energy

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

DP/BAW



Date: 4/23/2017

S.B. No. 357—Revises provisions governing the use of apprentices on public works. (BDR 53-534)



SENATE BILL NO. 357—SENATORS ATKINSON, SEGERBLOM, SPEARMAN, DENIS, PARKS; CANCELA, CANNIZZARO, FORD, MANENDO AND WOODHOUSE

MARCH 20, 2017

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions governing the use of apprentices on public works. (BDR ~~53-534~~ 28-534)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 apprentices; ~~requiring the State Apprenticeship Council to approve or deny certain written requests submitted by a public body concerning the required use of an apprentice on a public work; authorizing the Council to suspend the right of a contractor on a public work to participate in a program of apprenticeship under certain circumstances;~~ requiring a ~~public body that awards a contract for~~ contractor or subcontractor on a public work to ensure an apprentice performs a certain percentage of the total hours of labor on the public work in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law creates the State Apprenticeship Council and requires the Council to establish standards for programs of apprenticeship. (NRS 610.030, 610.090, 610.095) The purposes of such programs include, without limitation: (1) the creation of the opportunity for persons to obtain training that will equip those persons for profitable employment and citizenship; and (2) the establishment of an organized program for the voluntary training of those persons by providing facilities for training and guidance in the arts and crafts of industry and trade. (NRS 610.020) Existing law sets forth the requirements for a public body which sponsors or finances a public work to award a contract to a contractor for the construction of the public work. (Chapter 338 of NRS) Such requirements include, without limitation: (1) the payment of the prevailing wage in the county in which the public work is located; and (2) the establishment of certain fair employment practices for contractors in connection with the performance of work under the contract awarded by the public body. (NRS 338.020, 338.125)

Section 4 of this bill requires ~~to public body that awards a contract for~~ each contractor and subcontractor on a public work for which the estimated cost exceeds \$1,000,000 to ensure that an apprentice performs not less than a certain percentage of the total hours of labor on the public work, starting at 3 percent for a contract for horizontal construction awarded in calendar year 2018 and ~~rising to 15~~ 7 percent for a contract for vertical construction awarded in or after calendar year 2022, 2019. Section 4 authorizes the Labor Commissioner to: (1) adopt, with the approval of the State Apprenticeship Council, regulations revising such percentage requirements each calendar year; and (2) impose a monetary penalty for the failure of a contractor or subcontractor to comply with the

requirement to use apprentices on a public work for the minimum percentage of hours.
 Section 4 also ~~imposes that requirement upon the Department of Transportation if the estimated cost of the contract exceeds \$2,000,000.;~~ (1) requires a public body to verify a contractor's compliance with the requirements for apprentice labor before awarding a contract for certain public works; (2) requires the public body to grant a preference in bidding for certain bidders who exceed such requirements; and (3) prohibits the award of certain contracts to a contractor or subcontractor who fails to comply with such requirements and to pay all monetary penalties imposed by the Labor Commissioner. In addition, section 4.1: (1) authorizes a public body to submit, pursuant to section 1 of this bill, a request to the Council for a waiver or modification of the requirement to use an apprentice on a public work for the minimum percentage of hours; (2) exempts from the requirement a contractor who cannot, as a result of membership in or affiliation with, or the lack thereof, a labor organization, retain the apprentices necessary to provide the required hours of labor; and (3) authorizes a contractor to submit a request to the Labor Commissioner to waive the requirement if a change in circumstances makes the completion of the public work subject to the requirement impracticable.
~~Section 3 of this bill authorizes the Council to suspend, for not more than 1 year, the right of any contractor on a public work to participate in a program of apprenticeship if the Council determines that the contractor willfully violated the provisions of the contract concerning the use of an apprentice on the public work for the minimum percentage of hours.~~
~~Section 5 of this bill expands the definition of "offense" set forth in existing law relating to public works to include the failure by a contractor to ensure that an apprentice is used on a public work for the required number of hours, thereby subjecting the contractor to a possible civil action to recover damages resulting from the commission of the offense and the temporary disqualification of the contractor from an award of a contract for a public work (NRS 338.010, 338.016, 338.017).~~ requires all money which is collected by the Labor Commissioner for monetary penalties imposed to be distributed to certain programs of apprenticeship that are approved by the State Apprenticeship Council.

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

Section 1. ~~[Chapter 610 of NRS is hereby amended by adding thereto a new section to read as follows:~~
~~1. If, pursuant to section 4 of this act, a public body submits a written request for a waiver or modification of the requirements of that section, the State Apprenticeship Council shall, within 90 days after receiving the request:~~
~~(a) Approve or deny the request in writing; and~~
~~(b) Notify the public body of the approval or denial of the request.~~
~~2. In approving or denying a request submitted pursuant to subsection 1, the State Apprenticeship Council shall:~~
~~(a) Balance the purposes of programs specified in NRS 610.020 and the need for cost effective and efficient completion of public works; and~~
~~(b) Consider:~~
~~(1) Whether a demonstrated lack of qualified apprentices exists in a specific geographic area;~~
~~(2) Whether a disproportionately high ratio of material costs to labor costs for a public work makes the minimum hours of labor required to be performed by an apprentice for the public work unfeasible; and~~
~~(3) Any other information specified by the State Apprenticeship Council.~~
~~3. A decision by the State Apprenticeship Council pursuant to this section is subject to review by the Labor Commissioner pursuant to NRS 607.207.] (Deleted by amendment.)~~

Sec. 2. ~~NRS 610.095 is hereby amended to read as follows:~~

~~610.095 The State Apprenticeship Council shall:~~

~~1. Register and approve or reject proposed programs and standards for apprenticeship.~~

~~2. After providing notice and a hearing and for good cause shown, deny an application for approval of a program, suspend, terminate, cancel or place conditions upon any approved program, or place an approved program on probation for any violation of the provisions of this title as specified in regulations adopted by the State Apprenticeship Council.~~

~~3. Approve or deny a written request for a waiver or modification submitted pursuant to section 1 of this act.~~ **(Deleted by amendment.)**

Sec. 3. ~~NRS 610.185 is hereby amended to read as follows:~~

~~610.185 The State Apprenticeship Council [shall]:~~

~~1. Shall suspend for 1 year the right of any employer, association of employers or organization of employees acting as agent for an employer to participate in a program under the provisions of this chapter if the Nevada Equal Rights Commission, after notice and hearing, finds that the employer, association or organization has discriminated against an apprentice because of race, color, creed, sex, sexual orientation, gender identity or expression, religion, disability or national origin in violation of this chapter.~~

~~2. May suspend for not more than 1 year the right of any contractor on a public work to participate in a program pursuant to the provisions of this chapter if the State Apprenticeship Council determines that, during any period in which the labor of an apprentice is used on a public work, as required by section 4 of this act, a contractor willfully violated the terms of the contract for the public work, including, without limitation, any ratio of apprentices to journeymen, supervision, wages and methods of work set forth in the contract. As used in this subsection, "public work" has the meaning ascribed to it in NRS 338.010.~~ **(Deleted by amendment.)**

Sec. 4. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in ~~subsections 2 to 5, inclusive, if a public body awards~~ subsection 6, a contractor or subcontractor who performs labor on a public work pursuant to a contract for which the estimated cost exceeds \$1,000,000 ~~the public body~~ shall ensure that an apprentice performs:

(a) For a contract or subcontract for horizontal construction awarded in calendar year ~~2018,~~ 2019 and each calendar year thereafter, not less than 3 percent, or such other percentage as the Labor Commissioner may require pursuant to regulations adopted pursuant to subsection 9, of the total hours of labor on the public work.

(b) For a contract or subcontract for vertical construction awarded in calendar year 2019 ~~and~~ and each calendar year thereafter, not less than ~~6~~ 7 percent, or such other percentage as the Labor Commissioner may require pursuant to regulations adopted pursuant to subsection 9, of the total hours of labor on the public work.

~~(c) For a contract awarded in calendar year 2020, not less than 9 percent of the total hours of labor on the public work.~~

~~(d) For a contract awarded in calendar year 2021, not less than 12 percent of the total hours of labor on the public work.~~

~~(e) For a contract awarded in calendar year 2022 or any calendar year thereafter, not less than 15 percent of the total hours of labor on the public work.~~

~~2. Except as otherwise provided in subsections 3, 4 and 5, if the Department of Transportation awards a contract for which the estimated cost exceeds \$2,000,000, the Department shall ensure that an apprentice performs:~~

~~(a) For a contract awarded in calendar year 2018, not less than 3 percent of the total hours of labor on the public work;~~

~~(b) For a contract awarded in calendar year 2019, not less than 6 percent of the total hours of labor on the public work;~~

~~(c) For a contract awarded in calendar year 2020, not less than 9 percent of the total hours of labor on the public work;~~

~~(d) For a contract awarded in calendar year 2021, not less than 12 percent of the total hours of labor on the public work;~~

~~(e) For a contract awarded in calendar year 2022 or any calendar year thereafter, not less than 15 percent of the total hours of labor on the public work.~~

~~3. A public body may, pursuant to section 1 of this act, submit a written request to the State Apprenticeship Council for a waiver or modification of the requirements of subsection 1 or 2, as applicable. If a public body submits such a request, the public body shall not request bids for or enter into a contract for which the public body submitted the request until the State Apprenticeship Council approves or denies the request pursuant to section 1 of this act.~~

4. 2. Except as otherwise provided in subsection 6, before awarding a contract for a public work for which the estimated cost exceeds \$1,000,000, a public body must verify whether each contractor who bids on the contract:

(a) For the preceding year, complied with the requirements of subsection 1 or of any subsequent regulation adopted by the Labor Commissioner pursuant to subsection 9, as applicable; or

(b) Has paid all monetary penalties imposed by the Labor Commissioner pursuant to subsection 7.

3. Except as otherwise provided in subsection 6, for the purpose of awarding a contract for a public work for which the estimated cost exceeds \$1,000,000, the bid submitted by a contractor shall be deemed to be 1 percent lower than the bid actually submitted for every percentage point by which the contractor, for the preceding year, exceeded the requirements of subsection 1 or of any subsequent regulation adopted by the Labor Commissioner pursuant to subsection 9, as applicable. The preference described in this subsection may not exceed a total of 5 percent.

4. Except as otherwise provided in subsection 6, a public body may not award a contract for a public work for which the estimated cost exceeds \$1,000,000 to a contractor unless the contractor:

(a) For the preceding year, complied with the requirements of subsection 1 or of any subsequent regulation adopted by the Labor Commissioner pursuant to subsection 9, as applicable; or

(b) Has paid all monetary penalties imposed by the Labor Commissioner pursuant to subsection 7.

5. Except as otherwise provided in subsection 6, on or after January 1, 2020, a contractor on a public work for which the estimated cost exceeds \$1,000,000 may not award a subcontract on that public work to a subcontractor if:

(a) The project which the subcontractor is proposing to perform is estimated to constitute 5 percent or more of the total hours of labor of the public work; and

(b) The subcontractor failed to:

(1) For the preceding year, comply with the requirements of subsection 1 or of any subsequent regulation adopted by the Labor Commissioner pursuant to subsection 9, as applicable; or

(2) Pay all monetary penalties imposed by the Labor Commissioner pursuant to subsection 7.

6. The provisions of subsections 1 ~~and 2~~ to 5, inclusive, do not apply to ~~a~~

;
(a) A contractor ~~engaged on a public work who cannot retain the apprentices necessary to meet the requirements of subsection 1 or 2, as applicable, as a result of membership in or affiliation with any labor organization or the lack of such membership or affiliation.~~

5. Except as otherwise provided in this subsection, each contractor engaged on a public work requiring the use of apprentices pursuant to this section shall ensure that an apprentice is used on the public work for at least the minimum percentage of hours of labor required for the public work. A contractor may submit a written request to the Labor Commissioner to waive the requirements of this section if a change in circumstances makes the completion of the public work using the apprentices required pursuant to this section impracticable. The Labor Commissioner may, for good cause shown, grant a request submitted pursuant to this subsection.

~~6~~ or subcontractor which proposes to perform, or has been awarded a contract to perform, horizontal construction on a public work and which employs fewer than 25 employees; or

(b) A contractor or subcontractor which proposes to perform, or has been awarded a contract to perform, vertical construction on a public work and which employs fewer than 6 employees.

7. Each calendar year, the Labor Commissioner shall:

(a) Determine the percentage of total hours of labor which were performed by apprentices on each public work for which the estimated cost exceeded \$1,000,000;

(b) Determine whether each applicable contractor or subcontractor who performed labor pursuant to a contract for a public work described in paragraph (a) complied with the requirements of subsection 1 or of any subsequent regulation adopted by the Labor Commissioner pursuant to subsection 9, as applicable;

(c) If applicable, determine the number of hours by which each contractor or subcontractor failed to comply with those requirements; and

(d) Impose on a contractor or subcontractor a monetary penalty, payable to the Labor Commissioner, for any failure of the contractor or subcontractor, as applicable, to comply with those requirements as follows:

(I) For a contract to perform horizontal construction on a public work on or after February 1, 2019:

(I) A contractor or subcontractor for whom apprentices performed 2 percent or more, but less than 3 percent, of the total hours of labor on the public work is required to pay \$2 for each hour of labor by which the contractor or subcontractor, as applicable, failed to comply with the requirements of subsection 1 or of any subsequent regulation adopted by the Labor Commissioner pursuant to subsection 9, as applicable.

(II) A contractor or subcontractor for whom apprentices performed 1 percent or more, but less than 2 percent, of the total hours of labor on the public work is required to pay \$4 for each hour of labor by which the contractor or subcontractor, as applicable, failed to comply with the requirements of subsection 1 or of any subsequent regulation adopted by the Labor Commissioner pursuant to subsection 9, as applicable.

(III) A contractor or subcontractor for whom apprentices performed less than 1 percent of the total hours of labor on the public work is required to

1 pay \$6 for each hour of labor by which the contractor or subcontractor, as
2 applicable, failed to comply with the requirements of subsection 1 or of any
3 subsequent regulation adopted by the Labor Commissioner pursuant to
4 subsection 9, as applicable.

5 (2) For a contract to perform vertical construction on a public work on
6 or after February 1, 2019:

7 (I) A contractor or subcontractor for whom apprentices performed 4
8 percent or more, but less than 7 percent, of the total hours of labor on the public
9 work is required to pay \$2 for each hour of labor by which the contractor or
10 subcontractor, as applicable, failed to comply with the requirements of subsection
11 1 or of any subsequent regulation adopted by the Labor Commissioner pursuant
12 to subsection 9, as applicable.

13 (II) A contractor or subcontractor for whom apprentices performed 2
14 percent or more, but less than 4 percent, of the total hours of labor on the public
15 work is required to pay \$4 for each hour of labor by which the contractor or
16 subcontractor, as applicable, failed to comply with subsection 1 or of any
17 subsequent regulation adopted by the Labor Commissioner pursuant to
18 subsection 9, as applicable.

19 (III) A contractor or subcontractor for whom apprentices performed
20 less than 2 percent of the total hours of labor on the public work is required to
21 pay \$6 for each hour of labor by which the contractor or subcontractor, as
22 applicable, failed to comply with subsection 1 or of any subsequent regulation
23 adopted by the Labor Commissioner pursuant to subsection 9, as applicable.

24 8. All money which is collected by the Labor Commissioner for monetary
25 penalties imposed pursuant to subsection 7 must be:

26 (a) Distributed only to programs of apprenticeship that are registered and
27 approved by the State Apprenticeship Council pursuant to chapter 610 of NRS;
28 and

29 (b) Used only for the recruitment, education and training of apprentices and
30 placement of apprentices in employment.

31 9. During each calendar year beginning on or after January 1, 2020, the
32 Labor Commissioner may, with the approval of the State Apprenticeship Council,
33 adopt regulations to revise by not less than 2 percentage points the percentage of
34 total hours of labor on a public work which must be performed by apprentices for
35 the following calendar year.

36 10. As used in this section ~~f~~, “apprentice”:

37 (a) “Apprentice” has the meaning ascribed to it in NRS 610.010.

38 (b) “Horizontal construction” means the construction of any fixed work
39 other than vertical construction except as specifically provided herein, including,
40 without limitation, fixed work relating to irrigation, drainage, water supply, flood
41 control, a harbor, a railroad, a highway, a tunnel, a sewer, a sewage disposal
42 plant or water treatment facility and any ancillary vertical construction which is a
43 component thereof, a bridge, an inland waterway, a pipeline for the transmission
44 of petroleum or any other liquid or gaseous substance, a pier and any fixed work
45 incidental thereto. The term includes the construction of an airport or airway, but
46 does not include the construction of any terminal or other building of an airport
47 or airway.

48 (c) “Vertical construction” means the construction or remodeling of any
49 building, structure or other improvement which is predominantly vertical,
50 including, without limitation, a building, structure or improvement for the
51 support, shelter or enclosure of persons, animals, chattels or movable property of
52 any kind and any improvement appurtenant thereto.

1 **Sec. 5.** NRS 338.010 is hereby amended to read as follows:

2 338.010 As used in this chapter:

3 1. "Authorized representative" means a person designated by a public body to
4 be responsible for the development, solicitation, award or administration of
5 contracts for public works pursuant to this chapter.

6 2. "Contract" means a written contract entered into between a contractor and
7 a public body for the provision of labor, materials, equipment or supplies for a
8 public work.

9 3. "Contractor" means:

10 (a) A person who is licensed pursuant to the provisions of chapter 624 of NRS.

11 (b) A design-build team.

12 4. "Day labor" means all cases where public bodies, their officers, agents or
13 employees, hire, supervise and pay the wages thereof directly to a worker or
14 workers employed by them on public works by the day and not under a contract in
15 writing.

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

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

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

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

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

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

29 7. "Design professional" means:

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

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

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

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

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

40 8. "Division" means the State Public Works Division of the Department of
41 Administration.

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

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

46 (b) Determined by a public body or its authorized representative which
47 awarded a contract for a public work pursuant to NRS 338.1375 to 338.139,
48 inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or
49 338.1382.

50 10. "General contractor" means a person who is licensed to conduct business
51 in one, or both, of the following branches of the contracting business:

52 (a) General engineering contracting, as described in subsection 2 of NRS
53 624.215.

(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 the prevailing wage required pursuant to this chapter;
(b) Pay the contributions for unemployment compensation required pursuant to chapter 612 of NRS;

(c) Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS; ~~for~~

(d) Comply with subsection 5 or 6 of NRS 338.070 ~~or~~ **or**;

(e) Ensure that an apprentice is used on a public work for the minimum amount of hours of labor required pursuant to section 4 of this act.

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 project financed in whole or in part from public money for:

(a) Public buildings;
(b) Jails and prisons;
(c) Public roads;
(d) Public highways;
(e) Public streets and alleys;
(f) Public utilities;
(g) Publicly owned water mains and sewers;
(h) Public parks and playgrounds;
(i) Public convention facilities which are financed at least in part with public money; and
(j) All other publicly owned works and property.

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:

(a) The basic hourly rate of pay; and

(b) The amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training or other similar programs or other bona fide fringe benefits which are a benefit to the worker.

23. "Worker" means a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker or unskilled worker in the service of a contractor or subcontractor under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. The term does not include a design professional.

Sec. 6. NRS 338.015 is hereby amended to read as follows:

338.015 1. The Labor Commissioner shall enforce the provisions of NRS 338.010 to 338.130, inclusive, ~~†, and section 4 of this act.~~

2. In addition to any other remedy or penalty provided in this chapter, if any person, including, without limitation, a public body, violates any provision of NRS 338.010 to 338.130, inclusive, ~~and† except section 4 of this act,~~ or any regulation adopted pursuant thereto, the Labor Commissioner may, after providing the person with notice and an opportunity for a hearing, impose against the person an administrative penalty of not more than \$5,000 for each such violation.

3. The Labor Commissioner may, by regulation, establish a sliding scale based on the severity of the violation to determine the amount of the administrative penalty to be imposed against the person pursuant to this section.

4. The Labor Commissioner shall report the violation to the Attorney General, and the Attorney General may prosecute the person in accordance with law.

Sec. 6.3. 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, ~~†, and section 4 of this act,~~ 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 bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, the lowest bid that is:

(a) Submitted by a responsive and responsible contractor who:

1 (1) Has been determined by the public body to be a qualified bidder
2 pursuant to NRS 338.1379 or 338.1382;

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

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

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

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

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

18 ➤ shall be deemed to be the best bid for the purposes of this section.

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

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

25 (1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377
26 of NRS on materials used for construction in this State, including, without
27 limitation, construction that is undertaken or carried out on land within the
28 boundaries of this State that is managed by the Federal Government or is on an
29 Indian reservation or Indian colony, of not less than \$5,000 for each consecutive
30 12-month period for 60 months immediately preceding the submission of the
31 affidavit from the certified public accountant;

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

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

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

41 (1) License as a general contractor pursuant to the provisions of chapter
42 624 of NRS; and

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

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

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

51 (1) The sales and use taxes pursuant to chapters 372, 374 and 377 of NRS
52 on materials used for construction in this State, including, without limitation,
53 construction that is undertaken or carried out on land within the boundaries of this

1 State that is managed by the Federal Government or is on an Indian reservation or
2 Indian colony, of not less than \$5,000 for each consecutive 12-month period for 60
3 months immediately preceding the submission of the affidavit from the certified
4 public accountant;

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

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

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

14 (1) License as a specialty contractor pursuant to the provisions of chapter
15 624 of NRS; and

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

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

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

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

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

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

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

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

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

50 (b) Is found by the Board to have, within the preceding 5 years, materially
51 breached a contract for a public work for which the cost exceeds \$5,000,000, the
52 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 or substantiating evidence, the public body shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and the public body or its authorized representative may proceed to award the contract accordingly.

Sec. 6.7. 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, ~~and~~ **and section 4 of this act**, 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 bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, the lowest bid that is:

(a) Submitted by a contractor who:

(1) Has been found to be a responsible and responsive contractor by the local government or its authorized representative;

(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

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

4 (2) Does not submit, within 2 hours after the completion of the opening of
5 the bids by the public body or its authorized representative, a signed affidavit
6 certifying that he or she will comply with the requirements of paragraphs (a) to (d),
7 inclusive, of subsection 1 of NRS 338.0117 for the duration of the contract,
8 ➤ shall be deemed to be the best bid for the purposes of this section.

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

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

15 (1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377
16 of NRS on materials used for construction in this State, including, without
17 limitation, construction that is undertaken or carried out on land within the
18 boundaries of this State that is managed by the Federal Government or is on an
19 Indian reservation or Indian colony, of not less than \$5,000 for each consecutive
20 12-month period for 60 months immediately preceding the submission of the
21 affidavit from the certified public accountant;

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

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

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

31 (1) License as a general contractor pursuant to the provisions of chapter
32 624 of NRS; and

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

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

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

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

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

52 (3) Any combination of such sales and use taxes and governmental
53 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 accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain eligibility to hold such a certificate.

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

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

9. If a contractor who applies to the State Contractors' Board for a certificate of eligibility to receive a preference in bidding on 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.

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

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

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

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

24 **Sec. 7.** The amendatory provisions of this act do not apply to a contract for a
25 public work that is awarded before ~~January 1, 2018.~~ February 1, 2019.

26 **Sec. 8.** This act becomes effective on January 1, 2018.