

MOCK-UP

PROPOSED AMENDMENT 4540 TO
SENATE BILL NO. 357
FIRST REPRINT

PREPARED FOR SENATOR ATKINSON
MAY 9, 2017

PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

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.

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

1 **Section 1.** (Deleted by amendment.)

2 **Sec. 2.** (Deleted by amendment.)

3 **Sec. 3.** (Deleted by amendment.)

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

6 *1. Except as otherwise provided in subsection 5 or 6, on or after*
7 *February 1, 2019, a ~~contractor or subcontractor who performs labor on~~*
8 *a public work pursuant to public body shall not award a contract for*
9 *which the estimated cost exceeds \$1,000,000 ~~shall ensure that an~~*
10 *apprentice performs to a contractor unless:*

11 (a) For ~~a contract or subcontract~~ the immediately preceding
12 calendar year the contractor ensured that an apprentice performed:

13 (1) Not less than 3 percent, or such other percentage as the Labor
14 Commissioner may require pursuant to regulations adopted pursuant to
15 subsection 9, of the total hours of labor reported by the contractor to
16 public bodies for all contracts or subcontracts for horizontal
17 construction on a public work in this State which were awarded ~~fi~~

~~calendar year 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,~~ to the contractor and to which the provisions of NRS 338.020 to 338.090, inclusive, apply; or

(2) 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 reported by the contractor to public bodies for all contracts or subcontracts for vertical construction on a public work in this State which were awarded ~~in calendar year 2019 and each calendar year thereafter, not less than 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.~~ to the contractor and to which the provisions of NRS 338.020 to 338.090, inclusive, apply; or

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

2. Except as otherwise provided in subsection 5 or 6, on or after February 1, 2020, a contractor on a public work for which the estimated cost exceeds \$1,000,000 may not award a subcontract for more than 5 percent of the value of that public work to a subcontractor unless:

(a) For the immediately preceding calendar year the subcontractor ensured that an apprentice performed:

(1) 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 reported by the subcontractor to public bodies for all contracts or subcontracts for horizontal construction on a public work in this State which were awarded to the subcontractor and to which the provisions of NRS 338.020 to 338.090, inclusive, apply; or

(2) 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 reported by the subcontractor to public bodies for all contracts or subcontracts for vertical construction on a public work in this State which were awarded to the subcontractor and to which the provisions of NRS 338.020 to 338.090, inclusive, apply; or

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

3. Except as otherwise provided in subsection 5 or 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.~~

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

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

6 ~~3.] the award of the contract would comply with the provisions of~~
7 ~~subsection 1.~~

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

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

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

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

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

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

32 ~~(b) The subcontractor failed to:~~

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

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

38 A public body may submit a
39 written request to the Labor Commissioner for an exemption from the
40 requirements of subsection 1 for a public work. If a public body submit
41 such a request, the public body shall not request bids for or enter into a
42 contract for which the public body submitted the request until the Labor
43 Commissioner approves or denies the request pursuant to this
44 subsection. Not later than 90 days after receiving a request pursuant to
45 this subsection, the Labor Commissioner shall approve or deny the
request in writing and notify the public body of the approval or denial of

1 the request. The Labor Commissioner may grant a request for an
2 exemption submitted pursuant to this subsection only if the Labor
3 Commissioner finds that there is a demonstrated lack of qualified
4 apprentices in the specific geographic area in which the public work for
5 which an exemption is requested will be performed. If the Labor
6 Commissioner grants an exemption to a public body pursuant to this
7 subsection, any contractor performing work on that public work is
8 exempt from the requirements of subsection 2.

9 6. The provisions of subsections 1 to ~~5,~~ 4, inclusive, do not apply
10 to:

11 (a) A contractor or subcontractor which proposes to perform, or has
12 been awarded a contract to perform, horizontal construction on a public
13 work and which employs fewer than 25 employees; or

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

17 7. Each calendar year, the Labor Commissioner shall:

18 (a) Determine the percentage of total hours of labor which were
19 performed by apprentices on each public work ~~for which the estimated~~
20 ~~cost exceeded \$1,000,000,~~ to which the provisions of NRS 338.020 to
21 338.090 apply;

22 (b) Determine whether ~~each applicable~~ a contractor or
23 subcontractor ~~who performed labor pursuant to a contract for a public~~
24 ~~work described in paragraph (a) complied with~~ satisfies the
25 requirements of subsection 1 or 2, as applicable, or of any subsequent
26 regulation adopted by the Labor Commissioner pursuant to subsection 9,
27 as applicable;

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

31 (d) ~~Impose on~~ If a contractor or subcontractor does not satisfy the
32 criteria set forth in paragraph (a) of subsection 1 or paragraph (a) of
33 subsection 2, as applicable, establish the amount of a monetary penalty
34 which must be paid by a contractor or subcontractor ~~to~~ to remain
35 qualified to be awarded a contract for a public work for which the
36 estimated cost exceeds \$1,000,000. The monetary penalty ~~is~~ must be
37 payable to the Labor Commissioner, ~~for any failure of the contractor or~~
38 ~~subcontractor, as applicable, to comply with those requirements~~ and
39 must be established as follows:

40 (I) For a contract to perform horizontal construction on a public
41 work on or after ~~February~~ January 1, ~~2019,~~ 2018:

42 (I) A contractor or subcontractor for whom apprentices
43 performed 2 percent or more, but less than 3 percent, of the total hours
44 of labor on the public work is required to pay \$2 for each hour of labor
45 by which the contractor or subcontractor, as applicable, failed to comply

1 with the requirements of subsection 1 or of any subsequent regulation
2 adopted by the Labor Commissioner pursuant to subsection 9, as
3 applicable.

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

11 (III) A contractor or subcontractor for whom apprentices
12 performed less than 1 percent of the total hours of labor on the public
13 work is required to pay \$6 for each hour of labor by which the contractor
14 or subcontractor, as applicable, failed to comply with the requirements of
15 subsection 1 or of any subsequent regulation adopted by the Labor
16 Commissioner pursuant to subsection 9, as applicable.

17 (2) For a contract to perform vertical construction on a public
18 work on or after ~~February~~ January 1, 2018, ~~2019~~:
19

20 (I) A contractor or subcontractor for whom apprentices
21 performed ~~4~~ 2 percent or more, but less than ~~7~~ 3 percent, of the total
22 hours of labor on the public work is required to pay \$2 for each hour of
23 labor by which the contractor or subcontractor, as applicable, failed to
24 comply with the requirements of subsection 1 or of any subsequent
25 regulation adopted by the Labor Commissioner pursuant to subsection 9,
26 as applicable.

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

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

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

41 (a) Distributed only to programs of apprenticeship that are registered
42 and approved by the State Apprenticeship Council pursuant to chapter
43 610 of NRS; and

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

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

7 10. *As used in this section:*

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

10 (b) *“Horizontal construction” means the construction of any fixed*
11 *work other than vertical construction except as specifically provided*
12 *herein, including, without limitation, fixed work relating to irrigation,*
13 *drainage, water supply, flood control, a harbor, a railroad, a highway, a*
14 *tunnel, a sewer, a sewage disposal plant or water treatment facility and*
15 *any ancillary vertical construction which is a component thereof, a*
16 *bridge, an inland waterway, a pipeline for the transmission of petroleum*
17 *or any other liquid or gaseous substance, a pier and any fixed work*
18 *incidental thereto. The term includes the construction of an airport or*
19 *airway, but does not include the construction of any terminal or other*
20 *building of an airport or airway.*

21 (c) *“Vertical construction” means the construction or remodeling of*
22 *any building, structure or other improvement which is predominantly*
23 *vertical, including, without limitation, a building, structure or*
24 *improvement for the support, shelter or enclosure of persons, animals,*
25 *chattels or movable property of any kind and any improvement*
26 *appurtenant thereto.*

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

28 338.010 As used in this chapter:

29 1. “Authorized representative” means a person designated by a public
30 body to be responsible for the development, solicitation, award or
31 administration of contracts for public works pursuant to this chapter.

32 2. “Contract” means a written contract entered into between a
33 contractor and a public body for the provision of labor, materials,
34 equipment or supplies for a public work.

35 3. “Contractor” means:

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

38 (b) A design-build team.

39 4. “Day labor” means all cases where public bodies, their officers,
40 agents or employees, hire, supervise and pay the wages thereof directly to
41 a worker or workers employed by them on public works by the day and not
42 under a contract in writing.

43 5. “Design-build contract” means a contract between a public body
44 and a design-build team in which the design-build team agrees to design
45 and construct a public work.

- 1 6. “Design-build team” means an entity that consists of:
2 (a) At least one person who is licensed as a general engineering
3 contractor or a general building contractor pursuant to chapter 624 of NRS;
4 and
5 (b) For a public work that consists of:
6 (1) A building and its site, at least one person who holds a
7 certificate of registration to practice architecture pursuant to chapter 623 of
8 NRS.
9 (2) Anything other than a building and its site, at least one person
10 who holds a certificate of registration to practice architecture pursuant to
11 chapter 623 of NRS or landscape architecture pursuant to chapter 623A of
12 NRS or who is licensed as a professional engineer pursuant to chapter 625
13 of NRS.
14 7. “Design professional” means:
15 (a) A person who is licensed as a professional engineer pursuant to
16 chapter 625 of NRS;
17 (b) A person who is licensed as a professional land surveyor pursuant
18 to chapter 625 of NRS;
19 (c) A person who holds a certificate of registration to engage in the
20 practice of architecture, interior design or residential design pursuant to
21 chapter 623 of NRS;
22 (d) A person who holds a certificate of registration to engage in the
23 practice of landscape architecture pursuant to chapter 623A of NRS; or
24 (e) A business entity that engages in the practice of professional
25 engineering, land surveying, architecture or landscape architecture.
26 8. “Division” means the State Public Works Division of the
27 Department of Administration.
28 9. “Eligible bidder” means a person who is:
29 (a) Found to be a responsible and responsive contractor by a local
30 government or its authorized representative which requests bids for a
31 public work in accordance with paragraph (b) of subsection 1 of NRS
32 338.1373; or
33 (b) Determined by a public body or its authorized representative which
34 awarded a contract for a public work pursuant to NRS 338.1375 to
35 338.139, inclusive, to be qualified to bid on that contract pursuant to NRS
36 338.1379 or 338.1382.
37 10. “General contractor” means a person who is licensed to conduct
38 business in one, or both, of the following branches of the contracting
39 business:
40 (a) General engineering contracting, as described in subsection 2 of
41 NRS 624.215.
42 (b) General building contracting, as described in subsection 3 of NRS
43 624.215.

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

4 12. "Local government" means every political subdivision or other
5 entity which has the right to levy or receive money from ad valorem or
6 other taxes or any mandatory assessments, and includes, without
7 limitation, counties, cities, towns, boards, school districts and other
8 districts organized pursuant to chapters 244A, 309, 318, 379, 474, 538,
9 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, and any
10 agency or department of a county or city which prepares a budget separate
11 from that of the parent political subdivision. The term includes a person
12 who has been designated by the governing body of a local government to
13 serve as its authorized representative.

14 13. "Offense" means failing to:

15 (a) Pay the prevailing wage required pursuant to this chapter;

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

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

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

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

24 14. "Prime contractor" means a contractor who:

25 (a) Contracts to construct an entire project;

26 (b) Coordinates all work performed on the entire project;

27 (c) Uses his or her own workforce to perform all or a part of the public
28 work; and

29 (d) Contracts for the services of any subcontractor or independent
30 contractor or is responsible for payment to any contracted subcontractors
31 or independent contractors.

32 ➔ The term includes, without limitation, a general contractor or a specialty
33 contractor who is authorized to bid on a project pursuant to NRS 338.139
34 or 338.148.

35 15. "Public body" means the State, county, city, town, school district
36 or any public agency of this State or its political subdivisions sponsoring or
37 financing a public work.

38 16. "Public work" means any project for the new construction, repair
39 or reconstruction of a project financed in whole or in part from public
40 money for:

41 (a) Public buildings;

42 (b) Jails and prisons;

43 (c) Public roads;

44 (d) Public highways;

45 (e) Public streets and alleys;

- 1 (f) Public utilities;
- 2 (g) Publicly owned water mains and sewers;
- 3 (h) Public parks and playgrounds;
- 4 (i) Public convention facilities which are financed at least in part with
- 5 public money; and
- 6 (j) All other publicly owned works and property.

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

9 18. "Stand-alone underground utility project" means an underground
10 utility project that is not integrated into a larger project, including, without
11 limitation:

12 (a) An underground sewer line or an underground pipeline for the
13 conveyance of water, including facilities appurtenant thereto; and

14 (b) A project for the construction or installation of a storm drain,
15 including facilities appurtenant thereto,

16 ↪ that is not located at the site of a public work for the design and
17 construction of which a public body is authorized to contract with a
18 design-build team pursuant to subsection 2 of NRS 338.1711.

19 19. "Subcontract" means a written contract entered into between:

20 (a) A contractor and a subcontractor or supplier; or

21 (b) A subcontractor and another subcontractor or supplier,

22 ↪ for the provision of labor, materials, equipment or supplies for a
23 construction project.

24 20. "Subcontractor" means a person who:

25 (a) Is licensed pursuant to the provisions of chapter 624 of NRS or
26 performs such work that the person is not required to be licensed pursuant
27 to chapter 624 of NRS; and

28 (b) Contracts with a contractor, another subcontractor or a supplier to
29 provide labor, materials or services for a construction project.

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

32 22. "Wages" means:

33 (a) The basic hourly rate of pay; and

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

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

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

43 338.015 1. The Labor Commissioner shall enforce the provisions of
44 NRS 338.010 to 338.130, inclusive ~~§~~, *and section 4 of this act.*

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

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

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

15 **Sec. 6.3.** NRS 338.1389 is hereby amended to read as follows:

16 338.1389 1. Except as otherwise provided in subsection 10 and
17 NRS 338.1385, 338.1386 and 338.13864 ~~§~~ *and section 4 of this act*, a
18 public body or its authorized representative shall award a contract for a
19 public work for which the estimated cost exceeds \$250,000 to the
20 contractor who submits the best bid.

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

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

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

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

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

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

36 (1) Does not provide, at the time he or she submits the bid, a valid
37 certificate of eligibility to receive a preference in bidding on public works
38 issued to him or her by the State Contractors' Board pursuant to subsection
39 3 or 4; or

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

45 ↪ shall be deemed to be the best bid for the purposes of this section.

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

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

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

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

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

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

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

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

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

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

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

44 (2) The governmental services tax imposed pursuant to chapter 371
45 of NRS on the vehicles used in the operation of his or her business in this

1 State of not less than \$5,000 for each consecutive 12-month period for 60
2 months immediately preceding the submission of the affidavit from the
3 certified public accountant; or

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

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

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

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

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

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

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

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

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

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

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

43 (a) Submits false information to the Board regarding the required
44 payment of taxes, the contractor is not eligible to receive a preference in

1 bidding on public works for a period of 5 years after the date on which the
2 Board becomes aware of the submission of the false information; or

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

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

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

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

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

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

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

31 14. If a public body receives a written objection pursuant to
32 subsection 13, the public body shall determine whether the objection is
33 accompanied by the proof or substantiating evidence required pursuant to
34 paragraph (a) of that subsection. If the public body determines that the
35 objection is not accompanied by the required proof or substantiating
36 evidence, the public body shall dismiss the objection and the public body
37 or its authorized representative may proceed immediately to award the
38 contract. If the public body determines that the objection is accompanied
39 by the required proof or substantiating evidence, the public body shall
40 determine whether the contractor qualifies for the certificate pursuant to
41 the provisions of this section and the public body or its authorized
42 representative may proceed to award the contract accordingly.

43 **Sec. 6.7.** NRS 338.147 is hereby amended to read as follows:

44 338.147 1. Except as otherwise provided in subsection 10 and NRS
45 338.143, 338.1442 and 338.1446 ~~§~~ *and section 4 of this act*, a local

1 government or its authorized representative shall award a contract for a
2 public work for which the estimated cost exceeds \$250,000 to the
3 contractor who submits the best bid.

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

6 (a) Submitted by a contractor who:

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

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

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

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

19 (1) Does not provide, at the time he or she submits the bid, a valid
20 certificate of eligibility to receive a preference in bidding on public works
21 issued to him or her by the State Contractors' Board pursuant to subsection
22 3 or 4; or

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

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

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

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

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

44 (2) The governmental services tax imposed pursuant to chapter 371
45 of NRS on the vehicles used in the operation of his or her business in this

1 State of not less than \$5,000 for each consecutive 12-month period for 60
2 months immediately preceding the submission of the affidavit from the
3 certified public accountant; or

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (a) Sales and use taxes and governmental services taxes paid in this
45 State by an affiliate or parent company of the contractor, if the affiliate or

1 parent company is also a general contractor or specialty contractor, as
2 applicable; and

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

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

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

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

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

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

30 (b) Is found by the Board to have, within the preceding 5 years,
31 materially breached a contract for a public work for which the cost exceeds
32 \$5,000,000, the contractor is not eligible to receive a preference in bidding
33 on public works.

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

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

43 12. The State Contractors' Board shall adopt regulations and may
44 assess reasonable fees relating to the certification of contractors for a
45 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
3 work wrongfully holds a certificate of eligibility to receive a preference in
4 bidding on public works may challenge the validity of the certificate by
5 filing a written objection with the local government to which the contractor
6 has submitted a bid on a contract for the construction of a public work. A
7 written objection authorized pursuant to this subsection must:

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

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

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

27 **Sec. 7.** The amendatory provisions of this act do not apply to a
28 contract for a public work that is awarded before February 1, 2019.

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