

ASSEMBLY BILL NO. 136—ASSEMBLYMEN FRIERSON, BENITEZ-THOMPSON, CARLTON, MCCURDY, DALY; ASSEFA, BACKUS, BILBRAY-AXELROD, CARRILLO, COHEN, DURAN, FLORES, FUMO, GORELOW, JAUREGUI, MARTINEZ, MILLER, MONROE-MORENO, MUNK, NEAL, NGUYEN, PETERS, SPIEGEL, SPRINKLE, SWANK, THOMPSON, TORRES, WATTS AND YEAGER

FEBRUARY 13, 2019

Referred to Committee on Government Affairs

SUMMARY—Makes various changes relating to public construction. (BDR 28-145)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public construction; revising the manner in which the prevailing wage is determined; lowering the estimated thresholds at or above which prevailing wage requirements apply to certain public construction projects; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires that mechanics and workers employed on certain public construction projects be paid at least the wage prevailing for the type of work that the mechanic or worker performs in the county in which the public work is located. (NRS 338.020) Existing law also: (1) prescribes the manner in which the Labor Commissioner must determine the prevailing wage for such a project; and (2) requires the Labor Commissioner to set the prevailing wage for such projects of school districts and the Nevada System of Higher Education at 90 percent of the rate of prevailing wage determined in the county in which the project is located. (NRS 338.030) **Section 2** of this bill eliminates the requirement to set prevailing wage for public works and other construction projects of school districts and the Nevada System of Higher Education at 90 percent of the rate of prevailing wage on other public works in the applicable county.

Under existing law, any contract for a public work whose cost is \$250,000 or more, including, without limitation, any contract for construction work of the Nevada System of Higher Education, is subject to the prevailing wage requirements. (NRS 338.075, 338.080) Existing law also exempts charter schools from such prevailing wage requirements. (NRS 338.080) **Sections 3 and 4** of this



bill lower the minimum threshold for the applicability of prevailing wage requirements from \$250,000 to \$100,000. **Section 4** also subjects charter schools to the prevailing wage requirements. **Section 1** of this bill makes a conforming change.

Section 5 of this bill provides that the amendatory provisions of this bill do not apply to a public work or other public construction project awarded before July 1, 2019.

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

Section 1. NRS 338.018 is hereby amended to read as follows:

338.018 The provisions of NRS 338.013 to 338.018, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds ~~[\$250,000]~~ **\$100,000** even if the construction work does not qualify as a public work, as defined in subsection 17 of NRS 338.010.

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

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

2. ~~[(The)]~~ **To determine a** prevailing wage in each county, including Carson City, ~~[must be established as follows:~~

~~—(a) The] the~~ Labor Commissioner shall, annually, survey contractors who have performed work in the county.

~~[(b) Based on the survey conducted pursuant to paragraph (a), where the rate of wages is the same for more than 50 percent of the total hours worked by each craft or type of work in that county on construction similar to the proposed construction, that rate will be determined as the prevailing wage.~~

~~—(c) Where no such rate can be determined, the prevailing wage for a craft or type of work will be determined as the average rate of wages paid per hour based on the number of hours worked per rate, to that craft or type of work.~~

~~—(d) The Labor Commissioner shall determine the prevailing wage to be 90 percent of the rate determined pursuant to paragraphs (a), (b) and (c) for:~~

~~—(1) Any contract for a public work or any other construction, alteration, repair, remodeling or reconstruction of an improvement or property to which a school district or the Nevada System of Higher Education is a party; and~~

~~—(2) A public work of, or constructed by, a school district or the Nevada System of Higher Education, or any other construction,~~



~~alteration, repair, remodeling or reconstruction of an improvement or property of or constructed by a school district or the Nevada System of Higher Education.~~

~~3.]~~ Within 30 days after the determination is issued:

(a) A public body or person entitled under subsection ~~[6.]~~ 5 to be heard may submit an objection to the Labor Commissioner with evidence to substantiate that a different wage prevails; and

(b) Any person may submit information to the Labor Commissioner that would support a change in the prevailing wage of a craft or type of work by 50 cents or more per hour in any county.

~~[4.]~~ 3. The Labor Commissioner shall hold a hearing in the locality in which the work is to be executed if the Labor Commissioner:

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

(b) Receives an objection or information pursuant to subsection ~~[3.]~~ 2.

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

~~[5.]~~ 4. Notice of the hearing must be advertised in a newspaper nearest to the locality of the work once a week for 2 weeks before the time of the hearing.

~~[6.]~~ 5. At the hearing, any public body, the crafts affiliated with the State Federation of Labor or other recognized national labor organizations, and the contractors of the locality or their representatives must be heard. From the evidence presented, the Labor Commissioner shall determine the prevailing wage.

~~[7.]~~ 6. The wages so determined must be filed by the Labor Commissioner and must be available to any public body which awards a contract for any public work.

~~[8.]~~ 7. Nothing contained in NRS 338.020 to 338.090, inclusive, may be construed to authorize the fixing of any wage below any rate which may now or hereafter be established as a minimum wage for any person employed upon any public work, or employed by any officer or agent of any public body.

Sec. 3. NRS 338.075 is hereby amended to read as follows:

338.075 The provisions of NRS 338.020 to 338.090, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds ~~[\$250,000]~~ **\$100,000** even if the construction work does not qualify as a public work, as defined in subsection 17 of NRS 338.010.

Sec. 4. NRS 338.080 is hereby amended to read as follows:

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



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

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

9 3. Any contract for a public work whose *estimated* cost is less
10 than ~~[\$250,000.]~~ *\$100,000*. A unit of the project must not be
11 separated from the total project, even if that unit is to be completed
12 at a later time, in order to lower the *estimated* cost of the project
13 below ~~[\$250,000.]~~

14 ~~—4. Any contract for a public work or any other construction,~~
15 ~~alteration, repair, remodeling or reconstruction of an improvement~~
16 ~~or property to which a charter school is a party, notwithstanding any~~
17 ~~other provision of law.~~

18 ~~—5. A public work of, or constructed by, a charter school, or any~~
19 ~~other construction, alteration, repair, remodeling or reconstruction~~
20 ~~of an improvement or property of or constructed by a charter school,~~
21 ~~notwithstanding any other provision of law.]~~ *\$100,000*.

22 **Sec. 5.** 1. The amendatory provisions of this act do not apply
23 to a public work or other project of construction, alteration, repair,
24 remodeling or reconstruction of an improvement or property of a
25 public body that is awarded before July 1, 2019.

26 2. As used in this section:

27 (a) “Public body” has the meaning ascribed to it in
28 NRS 338.010.

29 (b) “Public work” has the meaning ascribed to it in
30 NRS 338.010.

31 **Sec. 6.** This act becomes effective on July 1, 2019.

