

Assembly Bill No. 190—Assemblymen Daly, McCurdy, Carrillo, Fumo, Flores; Assefa, Backus, Benitez-Thompson, Bilbray-Axelrod, Carlton, Cohen, Duran, Frierson, Gorelow, Jauregui, Martinez, Miller, Monroe-Moreno, Munk, Neal, Nguyen, Peters, Smith, Spiegel, Swank, Thompson, Torres, Watts and Yeager

Joint Sponsors: Senators Parks, Ohrenschall, Cancela; and Denis

CHAPTER.....

AN ACT relating to construction; revising the requirements pursuant to which a contractor or subcontractor engaged on a public work may discharge his or her obligation to pay prevailing wages to workers; revising provisions relating to the determination of the prevailing wages by the Labor Commissioner and the duration of such rates on a public work; prohibiting a public body from using a reverse auction when awarding a contract for public work; clarifying the application of prevailing wage requirements to certain construction projects that are not public works; eliminating certain prohibitions relating to agreements with labor organizations concerning contracts with a public body for a public work or with an awardee of certain grants, tax abatements, tax credits or tax exemptions from a public body; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth general provisions applicable to public works, including provisions requiring, with certain exceptions, the payment of prevailing wages for public works projects. (NRS 338.010-338.090) Under existing law, a contractor or subcontractor engaged on a public work is authorized to discharge his or her obligation to pay prevailing wages to workers in part by making certain contributions in the name of the worker. (NRS 338.035) **Section 5** of this bill sets forth the requirements pursuant to which a contractor or subcontractor engaged on a public work may discharge any part of his or her obligation to pay prevailing wages to a worker by providing bona fide fringe benefits in the name of the worker. Those requirements include, among other things, that the bona fide fringe benefits are paid equally for all hours worked in a calendar year by the worker for the contractor or subcontractor. **Section 1** of this bill defines “bona fide fringe benefits” to mean a benefit in the form of a contribution that is made not less frequently than monthly to an independent third party pursuant to a fund, plan or program: (1) which is established for the sole and exclusive benefit of a worker and his or her family and dependents; and (2) for which none of the assets will revert to, or otherwise be credited to, any contributing employer or sponsor of the fund, plan or program. **Sections 2 and 8** of this bill makes conforming changes.

Section 5 requires the Labor Commissioner, after providing notice and an opportunity for a hearing, to: (1) impose an administrative penalty against a



contractor or subcontractor who discharges any part of his or her obligation to pay prevailing wages in an unauthorized manner; (2) require the contractor or subcontractor to make the affected worker whole by paying to the worker as wages any amounts disallowed as bona fide fringe benefits; (3) report the violation to the Attorney General; and (4) notify certain entities of the violation. **Section 5** provides that the amount of the penalty to be imposed against a contractor or subcontractor who discharges any part of his or her obligation to pay prevailing wages in an unauthorized manner must be based on the sliding scale adopted by regulation of the Labor Commissioner for certain other administrative penalties. **Section 5** also authorizes the Labor Commissioner to recover the costs of the proceeding if a penalty is imposed against such a contractor or subcontractor. Existing law provides that if an administrative penalty is imposed against a person for an offense concerning public works: (1) the person and any corporate officer of the person are prohibited from receiving a contract for a public work for specified periods depending on the number of offenses; and (2) the Labor Commissioner is required to notify the State Contractors' Board with regard to each contractor who is prohibited from being awarded such a contract. (NRS 338.010, 338.017) **Section 1** of this bill makes a violation of **section 5** an "offense" for that purpose. **Sections 2, 3, 6 and 9** of this bill make conforming changes.

Existing law requires the Labor Commissioner to determine the prevailing wage in a county for each craft or type of work. (NRS 338.030) Existing regulations prescribe the manner in which the Labor Commissioner must determine the prevailing wage for a recognized class of workers. Existing regulations additionally authorize the Labor Commissioner to adjust the prevailing rate of wages for a recognized class of workers in accordance with wage and benefit adjustments and classifications of workers in a collective bargaining agreement if the Labor Commissioner determines that the prevailing rate of wages for a recognized class of workers is a wage which has been collectively bargained. (NAC 338.010) If the Labor Commissioner determines that the prevailing rate of wages for a recognized class of workers is a wage which has been collectively bargained, **section 4** of this bill requires the Labor Commissioner to: (1) include in his or her determination of that prevailing wage any compensation in addition to the basic hourly wage or benefit for the craft or type of work required to be paid by the collective bargaining agreement; and (2) amend the determination of the prevailing wage for the craft or type of work in response to an increase in the wage prescribed in the collective bargaining agreement that occurs before the next annual determination of that prevailing wage by the Labor Commissioner.

Existing regulations require the prevailing rates of wages in effect at the time of the opening of bids of a contract to remain in effect for the duration of the project for which a contract has been awarded. (NAC 338.040) Existing regulations similarly address this requirement when the contract for the public work is entered into without opening bids. (NAC 338.065) **Section 4** codifies these requirements in statute, but limits the duration of the requirements to the 36 months immediately following the date on which the bids were opened or, if the contract was not awarded pursuant to a competitive bidding process, to the 36 months immediately following the date on which the contractor was selected or the contract was entered into. Additionally, **section 4** provides that if a contract for a public work is not completed or terminated within 36 months and the prevailing wages in effect on the last day of the 36-month period are lower than the prevailing wages paid during the 36-month period under the contract, the prevailing wages paid during that 36-month period must be paid for the immediately following 36 months.

Existing law prescribes general procedures for awarding a contract for public work. (Chapter 338 of NRS) **Section 8.5** of this bill prohibits a public body from



using a reverse auction, in which a bidder may submit more than one bid if each subsequent response to online bidding is at a lower price, when awarding a contract for public work.

Existing law makes the prevailing wage requirements applicable to certain construction projects that are not public works. (NRS 244A.058, 244A.763, 268.568, 271.710, 271.800, 278C.240, 279.500, 318.140, 318.144, 332.390, 333A.120, 349.670, 349.956, 388A.635, 408.3886, 543.545, 701B.265, 701B.625; Reno-Tahoe Airport Authority Act § 9.5) **Sections 10-28** of this bill clarify that those prevailing wage requirements apply in the same manner as if the applicable public body had undertaken the project or awarded the contract.

Existing law, with certain exceptions, prohibits a public body from: (1) requiring or prohibiting a bidder, contractor or subcontractor from entering into or adhering to any agreement with one or more labor organizations in regard to a public work; or (2) discriminating against a bidder, contractor or subcontractor for entering or not entering into, or adhering or refusing to adhere to, any agreement with one or more labor organizations in regard to the public work. Existing law further prohibits a public body, with certain exceptions, from awarding a grant, tax abatement, tax credit or tax exemption that is conditioned upon a requirement that the awardee include in a contract for a project that is the subject of the grant, tax abatement, tax credit or tax exemption a term that: (1) requires or prohibits a bidder, contractor or subcontractor from entering into or adhering to any agreement with one or more labor organizations in regard to the project; or (2) discriminates against a bidder, contractor or subcontractor for entering or not entering into, or adhering or refusing to adhere to, any agreement with one or more labor organizations in regard to the project. (NRS 338.1405) **Section 31** of this bill eliminates these prohibitions.

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

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

Section 1. NRS 338.010 is hereby amended to read as follows:
338.010 As used in this chapter:

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

2. *“Bona fide fringe benefit” means a benefit in the form of a contribution that is made not less frequently than monthly to an independent third party pursuant to a fund, plan or program:*

(a) Which is established for the sole and exclusive benefit of a worker and his or her family and dependents; and

(b) For which none of the assets will revert to, or otherwise be credited to, any contributing employer or sponsor of the fund, plan or program.

↪ The term includes, without limitation, benefits for a worker that are determined pursuant to a collective bargaining agreement and



included in the determination of the prevailing wage by the Labor Commissioner pursuant to NRS 338.030.

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

~~3-4~~ 4. “Contractor” means:

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

(b) A design-build team.

~~4-4~~ 5. “Day labor” means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a worker or workers employed by them on public works by the day and not under a contract in writing.

~~5-5~~ 6. “Design-build contract” means a contract between a public body and a design-build team in which the design-build team agrees to design and construct a public work.

~~6-6~~ 7. “Design-build team” means an entity that consists of:

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

(b) For a public work that consists of:

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

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

~~7-7~~ 8. “Design professional” means:

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

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

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

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

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



~~[8-]~~ **9.** “Division” means the State Public Works Division of the Department of Administration.

~~[9-]~~ **10.** “Eligible bidder” means a person who is:

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

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

~~[10-]~~ **11.** “General contractor” means a person who is licensed to conduct business in one, or both, of the following branches of the contracting business:

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

(b) General building contracting, as described in subsection 3 of NRS 624.215.

~~[11-]~~ **12.** “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-]~~ **13.** “Horizontal construction” means the construction of any fixed work, including any irrigation, drainage, water supply, flood control, harbor, railroad, highway, tunnel, airport or airway, sewer, sewage disposal plant or water treatment facility and any ancillary vertical components thereof, bridge, inland waterway, pipeline for the transmission of petroleum or any other liquid or gaseous substance, pier, and work incidental thereto. The term does not include vertical construction, the construction of any terminal or other building of an airport or airway, or the construction of any other building.

~~[13-]~~ **14.** “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, 318, 318A, 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.

~~[14-]~~ **15.** “Offense” means ~~[failing to:]~~ :



(a) Failing to:

~~[(a)]~~ **(1)** Pay the prevailing wage required pursuant to this chapter;

~~[(b)]~~ **(2)** Pay the contributions for unemployment compensation required pursuant to chapter 612 of NRS;

~~[(c)]~~ **(3)** Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS; or

~~[(d)]~~ **(4)** Comply with subsection 5 or 6 of NRS 338.070.

~~[(5)]~~ ***(b) Discharging an obligation to pay wages in a manner that violates the provisions of NRS 338.035.***

16. “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.

~~[(6)]~~ **17.** “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.

~~[(7)]~~ **18.** “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.

~~[(8)]~~ **19.** “Specialty contractor” means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.

~~[(9)]~~ **20.** “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.

~~{20-}~~ 21. “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.

~~{21-}~~ 22. “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.

~~{22-}~~ 23. “Supplier” means a person who provides materials, equipment or supplies for a construction project.

~~{23-}~~ 24. “Vertical construction” means the construction or remodeling of any building, structure or other improvement that is predominantly vertical, including, without limitation, a building, structure or improvement for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, and any improvement appurtenant thereto.

~~{24-}~~ 25. “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.

~~{25-}~~ 26. “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. 2. 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.

2. ~~It is~~ *Except as otherwise provided in NRS 338.035 and 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, 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. 3. 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 even if the construction work does not qualify as a public work, as defined in ~~subsection 17 of~~ NRS 338.010.

Sec. 4. NRS 338.030 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 prevailing wage in each county, including Carson City, must be established as follows:

(a) 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 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. 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.

➤ 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. 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. 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. If the Labor Commissioner determines pursuant to subsection 2 that the prevailing wage for a craft or type of work is a wage that has been collectively bargained, the Labor Commissioner shall:

(a) Include in his or her determination of that prevailing wage any compensation in addition to the basic hourly wage or benefit for the craft or type of work required to be provided by the collective bargaining agreement, including, without limitation,



premium pay for hours worked in excess of a shift of 8 hours or 12 hours or such other time increment set forth in the agreement or on a weekend or holiday and zone pay. As used in this paragraph, "zone pay" means additional pay for performing work at a work site that is located in a zone established in a collective bargaining agreement.

(b) Issue an amendment to the determination of the prevailing wage for the craft or type of work if the collective bargaining agreement provides for an increase in the wage before the next determination of that prevailing wage by the Labor Commissioner pursuant to subsection 2.

8. 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.]~~ 9. *If the contract for a public work:*

(a) Is to be awarded pursuant to a competitive bidding process, the prevailing wages in effect at the time of the opening of the bids for a contract for a public work must be paid until the completion or termination of the contract or for the 36 months immediately following the date on which the bids were opened, whichever is earlier.

(b) Is not to be awarded pursuant to a competitive bidding process, except as otherwise provided in this paragraph, the prevailing rate of wages in effect on the date on which the contractor for the contract is selected by the awarding body must be paid until the completion or termination of the contract or for the 36 months immediately following the date on which the contractor was selected, whichever is earlier. If the contract is not entered into within 90 days after the date of the selection of the contractor, the prevailing rates of wages in effect on the date on which the contract is entered into must be paid until the completion or termination of the contract or for the 36 months immediately following the date on which the contract was entered into, whichever is earlier.

10. *If a contract for a public work is not completed or terminated within 36 months immediately following the date on which the bids were opened pursuant to paragraph (a) of subsection 9, within 36 months immediately following the date on which the contractor was selected, within 36 months immediately following the date the contract was entered into pursuant to paragraph (b) of subsection 9 or for any 36-month period thereafter until the contract is completed or terminated:*



(a) Except as otherwise provided in paragraph (b), the prevailing wages in effect on the last day of the 36-month period must be paid for the immediately following 36 months.

(b) If the prevailing wages in effect on the last day of the 36-month period are lower than the prevailing wages paid during that 36-month period under the contract, the prevailing wages paid during that 36-month period must be paid for the immediately following 36 months.

11. 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. 5. NRS 338.035 is hereby amended to read as follows:

338.035 ~~{The}~~

1. Except as otherwise provided in subsection 7, the obligation of a contractor engaged on a public work or a subcontractor engaged on a public work to pay wages in accordance with the determination of the Labor Commissioner may be discharged in part by ~~{making contributions to a third person pursuant to a fund, plan or program}~~ providing bona fide fringe benefits in the name of the worker.

2. A contractor or subcontractor may, pursuant to subsection 1, discharge any part of his or her obligation to pay wages in accordance with the determination of the Labor Commissioner only to the extent that the bona fide fringe benefits provided in the name of the worker are annualized.

3. A contractor or subcontractor who, pursuant to subsection 1, discharges any part of his or her obligation to pay wages in accordance with the determination of the Labor Commissioner shall provide to the Labor Commissioner and the public body that awarded the contract for the public work any information requested by the Labor Commissioner or the public body, as applicable, to verify compliance with this section.

4. In addition to any other remedy or penalty provided in this chapter, after providing the contractor or subcontractor with notice and an opportunity for a hearing, the Labor Commissioner shall, if the Labor Commissioner finds that the contractor or subcontractor has violated a provision of this section:

(a) For the first violation, impose against the contractor or subcontractor an administrative penalty of not less than \$20 nor more than \$50 for each calendar day or portion thereof that each



worker employed on the public work is affected by the violation, up to a maximum of \$2,500;

(b) For the second or any subsequent violation within 5 years after the date of imposition of an administrative penalty pursuant to paragraph (a), impose against the contractor or subcontractor an administrative penalty of not less \$20 nor more than \$50 for each calendar day or portion thereof that each worker employed on the public work is affected by the violation, up to a maximum of \$5,000;

(c) Require the contractor or subcontractor to make the affected worker whole by paying to the worker as wages any amounts disallowed as bona fide fringe benefits in a manner prescribed by the Labor Commissioner;

(d) Report the violation to the Attorney General, and the Attorney General may prosecute the contractor or subcontractor in accordance with law; and

(e) In addition to notifying the State Contractors' Board pursuant to NRS 338.017, notify the provider of workers' compensation for the contractor or subcontractor, the Employment Security Division of the Department of Employment, Training and Rehabilitation and the public body that awarded the contract for the public work of the violation.

5. The amount of the penalty to be imposed pursuant to subsection 4 must be based on the sliding scale adopted by regulation pursuant to NRS 338.060.

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

7. The provisions of this section do not apply with regard to:

(a) A worker whose benefits are determined pursuant to a collective bargaining agreement; or

(b) Contributions made in the name of the worker by a contractor or subcontractor to a defined contribution plan to the extent that the amount contributed does not exceed 25 percent of the hourly prevailing rate of wages for the worker on the public work.

8. As used in this section:

(a) "Annualized" means an amount paid equally for all hours worked in a calendar year by the worker for the contractor or subcontractor who is providing bona fide fringe benefits.

(b) "Defined contribution plan" has the meaning ascribed to it in 29 U.S.C. § 1002(34).



Sec. 6. 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 even if the construction work does not qualify as a public work, as defined in ~~subsection 17 of~~ NRS 338.010.

Sec. 7. (Deleted by amendment.)

Sec. 8. NRS 338.090 is hereby amended to read as follows:

338.090 1. Except as otherwise provided in subsection ~~4~~ 5, any person, including the officers, agents or employees of a public body, who violates any provision of NRS 338.010 to 338.090, inclusive, or any regulation adopted pursuant thereto, is guilty of a misdemeanor.

2. The Labor Commissioner, in addition to any other remedy or penalty provided in this chapter:

(a) Shall, *except as otherwise provided in subsection 4*, assess a person who, after an opportunity for a hearing, is found to have failed to pay the prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive, an amount equal to the difference between the prevailing wages required to be paid and the wages that the contractor or subcontractor actually paid; and

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

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

4. *The Labor Commissioner is not required to assess a person an amount equal to the difference between the prevailing wages required to be paid and the wages that the contractor or subcontractor actually paid if the contractor or subcontractor has already paid that amount to a worker pursuant to paragraph (c) of subsection 4 of NRS 338.035.*

5. The provisions of subsection 1 do not apply to a subcontractor specified in NRS 338.072.

Sec. 8.5. NRS 338.1373 is hereby amended to read as follows:

338.1373 1. A local government or its authorized representative shall award a contract for a public work pursuant to the provisions of NRS 338.1415 and:

(a) NRS 338.1377 to 338.139, inclusive;



- (b) NRS 338.143 to 338.148, inclusive;
- (c) NRS 338.1685 to 338.16995, inclusive; or
- (d) NRS 338.1711 to 338.173, inclusive.

2. *A public body shall not use a reverse auction when awarding a contract for a public work.*

3. Except as otherwise provided in this subsection, subsection ~~3~~ 4 and chapter 408 of NRS, the provisions of this chapter apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the Department of Transportation pursuant to NRS 408.201 and 408.313 to 408.433, inclusive. The provisions of NRS 338.1375 to 338.1382, inclusive, 338.1386, 338.13862, 338.13864, 338.139, 338.142 and 338.1711 to 338.1727, inclusive, do not apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the Department of Transportation pursuant to NRS 408.201 and 408.313 to 408.433, inclusive.

~~3~~ 4. To the extent that a provision of this chapter precludes the granting of federal assistance or reduces the amount of such assistance with respect to a contract for the construction, reconstruction, improvement or maintenance of highways that is awarded by the Department of Transportation pursuant to NRS 408.201 and 408.313 to 408.433, inclusive, that provision of this chapter does not apply to the Department of Transportation or the contract.

5. *As used in this section:*

(a) *“Online bidding” has the meaning ascribed to it in NRS 332.047.*

(b) *“Reverse auction” means a process by which a bidder may submit more than one bid if each subsequent response to online bidding is at a lower price.*

Sec. 9. NRS 338.1908 is hereby amended to read as follows:

338.1908 1. The governing body of each local government shall, by July 28, 2009, develop a plan to retrofit public buildings, facilities and structures, including, without limitation, traffic-control systems, and to otherwise use sources of renewable energy to serve those buildings, facilities and structures. Such a plan must:

(a) Include a list of specific projects. The projects must be prioritized and selected on the basis of the following criteria:

- (1) The length of time necessary to commence the project.
- (2) The number of workers estimated to be employed on the project.



(3) The effectiveness of the project in reducing energy consumption.

(4) The estimated cost of the project.

(5) Whether the project is able to be powered by or otherwise use sources of renewable energy.

(6) Whether the project has qualified for participation in one or more of the following programs:

(I) The Solar Energy Systems Incentive Program created by NRS 701B.240;

(II) The Renewable Energy School Pilot Program created by NRS 701B.350;

(III) The Wind Energy Systems Demonstration Program created by NRS 701B.580; or

(IV) The Waterpower Energy Systems Demonstration Program created by NRS 701B.820.

(b) Include a list of potential funding sources for use in implementing the projects, including, without limitation, money available through the Energy Efficiency and Conservation Block Grant Program as set forth in 42 U.S.C. § 17152 and grants, gifts, donations or other sources of money from public and private sources.

2. The governing body of each local government shall transmit the plan developed pursuant to subsection 1 to the Director of the Office of Energy and to any other entity designated for that purpose by the Legislature.

3. As used in this section:

(a) "Local government" means each city or county that meets the definition of "eligible unit of local government" as set forth in 42 U.S.C. § 17151 and each unit of local government, as defined in ~~subsection 13 of~~ NRS 338.010, that does not meet the definition of "eligible entity" as set forth in 42 U.S.C. § 17151.

(b) "Renewable energy" means a source of energy that occurs naturally or is regenerated naturally, including, without limitation:

(1) Biomass;

(2) Fuel cells;

(3) Geothermal energy;

(4) Solar energy;

(5) Waterpower; and

(6) Wind.

↪ The term does not include coal, natural gas, oil, propane or any other fossil fuel, or nuclear energy.



(c) "Retrofit" means to alter, improve, modify, remodel or renovate a building, facility or structure to make that building, facility or structure more energy-efficient.

Sec. 10. NRS 244A.058 is hereby amended to read as follows:

244A.058 1. A board that has adopted an ordinance imposing a fee pursuant to NRS 244A.810 may, on behalf of the county and in its name:

(a) Acquire, lease, improve, equip, operate and maintain within the county a minor league baseball stadium project.

(b) Subject to the provisions of chapter 350 of NRS, issue revenue bonds of the county to acquire, lease, improve or equip, or any combination thereof, within the county a minor league baseball stadium project.

2. Bonds issued pursuant to this section must be payable from the proceeds of the fee imposed by the county pursuant to NRS 244A.810 and may be additionally secured by and payable from the gross or net revenues of the minor league baseball stadium project, including, without limitation, amounts received from any minor league baseball team pursuant to a contract with that team, fees, rates and charges for the use of the stadium by a minor league baseball team or any other uses of the stadium, and related uses, including, without limitation, parking and concessions, surcharges on tickets in an amount approved by the board, grants, whether conditional or unconditional, made for the payment of debt service or otherwise for the purposes of the minor league baseball stadium project, and any and all other sources of revenue attributable to the minor league baseball stadium project as provided by the board in the ordinance authorizing the issuance of bonds or any instrument supplemental or appertaining thereto.

3. The provisions of chapters 332, 338 and 339 of NRS do not apply to a contract entered into by a county and a private developer pursuant to which the private developer constructs a minor league baseball stadium project, except that the contract must include a provision stating that the requirements of NRS ~~[338.010]~~ **338.013** to 338.090, inclusive, apply to any construction work to be performed under the contract. *The board, the private developer and any contractor and subcontractor on the minor league baseball stadium project shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the board had undertaken the minor league baseball stadium project or had awarded the contract.*



Sec. 11. NRS 244A.763 is hereby amended to read as follows:

244A.763 1. NRS 244A.669 to 244A.763, inclusive, without reference to other statutes of this State, constitute full authority for the exercise of powers granted in those sections, including, but not limited to, the authorization and issuance of bonds.

2. No other act or law with regard to the authorization or issuance of bonds that provides for an election, requires an approval, or in any way impedes or restricts the carrying out of the acts authorized in NRS 244A.669 to 244A.763, inclusive, to be done, applies to any proceedings taken or acts done pursuant to those sections, except for laws to which reference is expressly made in those sections or by necessary implication of those sections.

3. The provisions of no other law, either general or local, except as provided in NRS 244A.669 to 244A.763, inclusive, apply to the doing of the things authorized in those sections to be done, and no board, agency, bureau, commission or official not designated in those sections has any authority or jurisdiction over the doing of any of the acts authorized in those sections to be done, except:

(a) As otherwise provided in those sections.

(b) That a project for the generation and transmission of electricity is subject to review and approval by the state regulatory agencies which have jurisdiction of the matters involved, including, without limitation, the Public Utilities Commission of Nevada, the State Environmental Commission and the State Department of Conservation and Natural Resources.

4. No notice, consent or approval by any public body or officer thereof may be required as a prerequisite to the sale or issuance of any bonds, the making of any contract or lease, or the exercise of any other power under NRS 244A.669 to 244A.763, inclusive, except as provided in those sections.

5. A project is not subject to any requirements relating to public buildings, structures, ground works or improvements imposed by the statutes of this State or any other similar requirements which may be lawfully waived by this section, and any requirement of competitive bidding or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of the counties is not applicable to any action taken pursuant to NRS 244A.669 to 244A.763, inclusive, except that the provisions of NRS ~~338.010~~ 338.013 to 338.090, inclusive, apply to any contract for new construction, repair or reconstruction for which tentative approval for financing is granted on or after January 1, 1992, by the county for work to be done in a project. *The board of county commissioners, the lessee,*



purchaser or obligor or designee thereof, any contractor who is awarded a contract or entered into an agreement to perform the construction, repair or reconstruction and any subcontractor who performs any portion of the construction, repair or reconstruction shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the board of county commissioners had undertaken the project or had awarded the contract.

6. Any bank or trust company located within or without this State may be appointed and act as a trustee with respect to bonds issued and projects financed pursuant to NRS 244A.669 to 244A.763, inclusive, without the necessity of associating with any other person or entity as cofiduciary except that such association is not prohibited.

7. The powers conferred by NRS 244A.669 to 244A.763, inclusive, are in addition and supplemental to, and not in substitution for, and the limitations imposed by those sections do not affect the powers conferred by any other law.

8. No part of NRS 244A.669 to 244A.763, inclusive, repeals or affects any other law or part thereof, except to the extent that those sections are inconsistent with any other law, it being intended that those sections provide a separate method of accomplishing its objectives, and not an exclusive one.

Sec. 12. NRS 268.568 is hereby amended to read as follows:

268.568 1. NRS 268.512 to 268.568, inclusive, without reference to other statutes of the State, constitute full authority for the exercise of powers granted in those sections, including, but not limited to, the authorization and issuance of bonds.

2. No other act or law with regard to the authorization or issuance of bonds that provides for an election, requires an approval, or in any way impedes or restricts the carrying out of the acts authorized in NRS 268.512 to 268.568, inclusive, to be done, including, without limitation, the charter of any city, applies to any proceedings taken or acts done pursuant to those sections, except for laws to which reference is expressly made in those sections.

3. The provisions of no other law, either general or local, except as provided in NRS 268.512 to 268.568, inclusive, apply to the doing of the things authorized in NRS 268.512 to 268.568, inclusive, to be done, and no board, agency, bureau, commission or official not designated in those sections has any authority or jurisdiction over the doing of any of the acts authorized in those sections to be done, except as otherwise provided in those sections.



4. No notice, consent or approval by any public body or officer thereof may be required as a prerequisite to the sale or issuance of any bonds, the making of any contract or lease, or the exercise of any other power under NRS 268.512 to 268.568, inclusive, except as provided in those sections.

5. A project is not subject to any requirements relating to public buildings, structures, ground works or improvements imposed by the statutes of this state or any other similar requirements which may be lawfully waived by this section, and any requirement of competitive bidding or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of the cities is not applicable to any action taken pursuant to NRS 268.512 to 268.568, inclusive, except that the provisions of NRS ~~338.010~~ 338.013 to 338.090, inclusive, apply to any contract for new construction, repair or reconstruction for which tentative approval for financing is granted on or after January 1, 1992, by the city for work to be done in a project. *The governing body, the lessee, purchaser or obligor or designee thereof, any contractor who is awarded a contract or enters into an agreement to perform the construction, repair or reconstruction in a project and any subcontractor who performs any portion of the construction, repair or reconstruction in a project shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the governing body had undertaken the project or had awarded the contract.*

6. Notwithstanding the provisions of NRS 662.245 or any other specific statute to the contrary, any bank or trust company located within or without this state may be appointed and act as a trustee with respect to bonds issued and projects financed pursuant to NRS 268.512 to 268.568, inclusive, without meeting the qualifications set forth in NRS 662.245.

7. The powers conferred by NRS 268.512 to 268.568, inclusive, are in addition and supplemental to, and not in substitution for, and the limitations imposed by those sections do not affect the powers conferred by, any other law.

8. No part of NRS 268.512 to 268.568, inclusive, repeals or affects any other law or part thereof, except to the extent that those sections are inconsistent with any other law, it being intended that those sections provide a separate method of accomplishing its objectives, and not an exclusive one.

Sec. 13. NRS 271.710 is hereby amended to read as follows:

271.710 1. A governing body may adopt an ordinance pursuant to NRS 271.325 creating a district and ordering a project to



be acquired or improved and may contract with a person to construct or improve a project, issue bonds or otherwise finance the cost of the project and levy assessments, without complying with the provisions of NRS 271.305 to 271.320, inclusive, 271.330 to 271.345, inclusive, 271.380 and 271.385 and, except as otherwise provided in this section, the provisions of any law requiring public bidding or otherwise imposing requirements on any public contract, project, works or improvements, including, without limitation, chapters 332, 338 and 339 of NRS, if the governing body has entered into a written agreement with the owners of all of the assessable property within the district which states that:

(a) The governing body agrees to enter into a contract for the acquisition, construction or improvement of the project or projects in the district which includes:

(1) A provision stating that the requirements of NRS ~~338.010~~ 338.013 to 338.090, inclusive, apply to any construction work to be performed under the contract; and

(2) The price, stated as a lump sum or as unit prices, which the governing body agrees to pay for the project if the project meets all requirements and specifications in the contract.

(b) The owners of the assessable property agree that if the rate of interest on any assessment levied for the district is determined from time to time as provided in NRS 271.487, the owners will provide written notice to the governing body in a timely manner when a parcel of the assessable property in the district is sold to a person who intends to occupy a dwelling unit on the parcel as his or her residence.

(c) The owners of the assessable property agree that the governing body may create the district, levy the assessments and for all other purposes relating to the district proceed pursuant to the provisions of this section.

2. If an ordinance is adopted and the agreement entered into pursuant to subsection 1 so states:

(a) The governing body may amend the ordinance creating the district, change the assessment roll and redistribute the assessments required by NRS 271.390 in the same manner in which these actions were originally taken to add additional property to the district. The assessments may be redistributed between the assessable property originally in the district and the additional assessable property if:

(1) The owners of additional assessable property also consent in writing to inclusion of their property in the district and to the amount of the assessment against their property; and



(2) The redistribution of the assessments is not prohibited by any covenants made for the benefit of the owners of any bonds or interim warrants issued for the district.

(b) The governing body may amend the ordinance creating the district, change the assessment roll and redistribute the assessments required by NRS 271.390 in the same manner in which these actions were originally taken to remove assessable property from the district. The assessments may be redistributed among the assessable property remaining in the district if:

(1) The owners of the remaining assessable property consent in writing to the amount of the revised assessment on their property; and

(2) The redistribution of the assessments is not prohibited by any covenants made for the benefit of the owners of any bonds or interim warrants issued for the district.

(c) The governing body may adopt any ordinance pertaining to the district including the ordinance creating the district required by NRS 271.325, the ordinance authorizing interim warrants required by NRS 271.355, the ordinance levying assessments required by NRS 271.390, the ordinance authorizing bonds required by NRS 271.475 or any ordinance amending those ordinances after a single reading and without holding a hearing thereon, as if an emergency exists, upon an affirmative vote of not less than two-thirds of all voting members of the governing body, excluding from any computation any vacancy on the governing body and any members thereon who may vote to break a tie vote, and provide that the ordinances become effective at the time an emergency ordinance would have become effective. The provisions of NRS 271.308 do not apply to any such ordinance.

(d) The governing body may provide for a reserve fund, letter of credit, surety bond or other collateral for payment of any interim warrants or bonds issued for the district and include all or any portion of the costs thereof in the amounts assessed against the property in the district and in the amount of bonds issued for the district. The governing body may provide for the disposition of interest earned on the reserve fund and other bond proceeds, for the disposition of unexpended bond proceeds after completion of the project and for the disposition of the unexpended balance in the reserve fund after payment in full of the bonds for the district.

3. If the governing body of a municipality forms a district pursuant to the provisions of this section, the governing body:

(a) Is not required to adopt the resolutions required pursuant to the provisions of NRS 271.280, 271.310, 271.360 and 271.390.



(b) Shall be deemed to have adopted the resolution required pursuant to the provisions of NRS 271.325 if the plans and specifications are sufficiently specific to allow a competent contractor with the assistance of a competent engineer to estimate the cost of constructing the project and to construct the project.

4. The governing body, the owners of the assessable property, any contractor who is awarded a contract or enters into an agreement to perform the construction work on a project pursuant to this section, and any subcontractor who performs any portion of the construction work on the project shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the governing body had undertaken the project or had awarded the contract.

Sec. 14. NRS 271.800 is hereby amended to read as follows:

271.800 1. A governing body may, pursuant to NRS 271.275 or 271.710, establish a district to finance an underground conversion project. Before the governing body may adopt an ordinance pursuant to NRS 271.325 to establish such a district, each service provider that owns the overhead service facilities to be converted to underground facilities must submit its written approval of the project to the governing body. The governing body shall not establish a district to finance an underground conversion project without receiving the written approval of each such service provider pursuant to this subsection.

2. Before initiating the establishment of a district pursuant to this section, the governing body must request in writing and receive from each service provider that owns the overhead service facilities to be converted in the proposed improvement district a written estimate of the cost to convert those facilities to underground facilities. The service provider shall provide its estimate of the cost of the conversion to the governing body not later than 120 days after the service provider receives the request from the governing body.

3. If a district already exists for the location for which the underground conversion project is proposed, the governing body may, pursuant to NRS 271.295, combine the underground conversion project with other projects in that district.

4. An underground conversion project must be constructed by one or more of the service providers that own the overhead service facilities to be converted, pursuant to a written agreement between the governing body and each service provider that will engage in the construction. Such a project must be constructed in accordance with the standard underground practices and procedures approved by the Public Utilities Commission of Nevada.



5. The provisions of any law requiring public bidding or otherwise imposing requirements on any public contract, project, works or improvements, including, without limitation, the provisions of chapters 332, 338 and 339 of NRS, do not apply to a contract entered into by a municipality and a service provider pursuant to this section, except that the contract must include a provision stating that the requirements of NRS ~~[338.010]~~ **338.013** to 338.090, inclusive, apply to any construction work to be performed under the contract. *The governing body, the service provider, any contractor who is awarded a contract or enters into an agreement to perform the construction work on an underground conversion project, and any subcontractor who performs any portion of the construction work on an underground conversion project shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the governing body had undertaken the underground conversion project or had awarded the contract.*

6. Construction on an underground conversion project approved pursuant to this chapter may not commence until:

(a) An ordinance creating a district is adopted pursuant to NRS 271.325;

(b) The time for filing an appeal pursuant to NRS 271.315 has expired, or if such an appeal has been timely filed, a final, nonappealable judgment upholding the validity of the ordinance has been rendered;

(c) Arrangements for the financing of the construction have been completed through the issuance of bonds or interim warrants; and

(d) The service provider has obtained all applicable permits, easements and licenses necessary to convert the facilities.

Sec. 15. NRS 278C.240 is hereby amended to read as follows:

278C.240 The provisions of NRS ~~[338.010]~~ **338.013** to 338.090, inclusive, apply to any construction work to be performed under any contract or other agreement related to an undertaking ordered by a governing body pursuant to this chapter. *The governing body, the developer, any contractor who is awarded the contract or enters into the agreement to perform the construction work and any subcontractor who performs any portion of the construction work related to such an undertaking shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the governing body had undertaken the undertaking or had awarded the contract.*

Sec. 16. NRS 279.500 is hereby amended to read as follows:

279.500 1. The provisions of NRS ~~[338.010]~~ **338.013** to 338.090, inclusive, apply to any contract for new construction,



repair or reconstruction which is awarded on or after October 1, 1991, by an agency for work to be done in a project.

2. If an agency:

(a) Provides property for development at less than the fair market value of the property;

(b) Provides a loan to a small business pursuant to NRS 279.700 to 279.730, inclusive; or

(c) Provides financial incentives to a developer with a value of more than \$100,000,

↪ regardless of whether the project is publicly or privately owned, the agency must provide in the loan agreement with the small business or the agreement with the developer, as applicable, that the development project is subject to the provisions of NRS ~~338.010~~ **338.013** to 338.090, inclusive, to the same extent as if the agency had awarded the contract for the project. *The agency, the small business or the developer, as applicable, any contractor who is awarded the contract or enters into the agreement to perform the project, and any subcontractor who performs any portion of the project shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the agency had undertaken the project or had awarded the contract.* This subsection applies only to the project covered by the loan agreement between the agency and the small business or the agreement between the agency and the developer, as applicable. This subsection does not apply to future development of the property unless an additional loan, or additional financial incentives with a value of more than \$100,000, are provided to the small business or developer, as applicable.

Sec. 17. NRS 318.140 is hereby amended to read as follows:

318.140 In the case of a district created wholly or in part for acquiring sanitary sewer improvements:

1. The board may:

(a) Construct, reconstruct, improve or extend the sanitary sewer system or any part thereof, including, without limitation, mains, laterals, wyes, tees, meters and collection, treatment and disposal plants.

(b) Sell any product or by-product thereof and acquire the appropriate outlets within or without the district and extend the sewer lines of the district thereto.

(c) Enter into and perform, without any election, contracts or agreements for a term not to exceed 50 years with any person or a public agency, to provide the services, equipment or supplies necessary or appropriate to conduct tests of the discharge of



pollutants into the state's water and to report the results of those tests as required by chapter 445A of NRS or the regulations adopted thereunder. For the purposes of this paragraph, "public agency" has the meaning ascribed to it in NRS 277.100.

2. The provisions of chapters 332 and 339 of NRS do not apply to a contract under which a private developer extends a sewer main to his or her development or installs any appurtenances to that extension. Except as otherwise provided in this subsection, the provisions of chapter 338 of NRS do not apply to such a contract. If the developer does not pay all of the initial construction costs of the extension, the provisions of NRS 338.013 to 338.090, inclusive, apply to the contract. *The board, the developer, any contractor who is awarded a contract or enters into an agreement to perform the extension or installation of appurtenances to the extension, and any subcontractor who performs any portion of the extension or installation of appurtenances to the extension shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the board had undertaken the extension or had awarded the contract.*

Sec. 18. NRS 318.144 is hereby amended to read as follows:

318.144 1. The board may acquire, construct, reconstruct, improve, extend or better a works, system or facilities for the supply, storage and distribution of water for private and public purposes.

2. The provisions of chapters 332 and 339 of NRS do not apply to a contract under which a private developer constructs water facilities for his or her development. Except as otherwise provided in this subsection, the provisions of chapter 338 of NRS do not apply to such a contract. If the developer does not pay all of the initial construction costs of the facility, the provisions of NRS 338.013 to 338.090, inclusive, apply to the contract. *The board, the developer, any contractor who is awarded a contract or enters into an agreement to perform the construction of the facility, and any subcontractor who performs any portion of the construction of the facility shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the board had undertaken the construction or had awarded the contract.*

Sec. 19. NRS 332.390 is hereby amended to read as follows:

332.390 1. If a performance contract entered into pursuant to NRS 332.300 to 332.440, inclusive, requires the employment of skilled mechanics, skilled workers, semiskilled mechanics, semiskilled workers or unskilled labor to perform the performance contract, the performance contract must include a provision relating



to the prevailing wage as required pursuant to NRS ~~[338.020]~~ **338.013** to 338.090, inclusive. *The local government, the qualified service company, any contractor who is awarded a contract or enters into an agreement to perform the work for the performance contract, and any subcontractor who performs any portion of that work shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the local government had undertaken the work or had awarded the contract.*

2. Before a qualified service company enters into a performance contract pursuant to NRS 332.300 to 332.440, inclusive, that exceeds \$100,000, the qualified service company must furnish to the contracting body any bonds required pursuant to NRS 339.025. The provisions of chapter 339 of NRS apply to any performance contract described in this subsection.

Sec. 20. NRS 333A.120 is hereby amended to read as follows:

333A.120 If a performance contract entered into pursuant to this chapter requires the employment of skilled mechanics, skilled workers, semiskilled mechanics, semiskilled workers or unskilled labor to perform the performance contract, the performance contract must include a provision relating to the prevailing wage as required pursuant to NRS ~~[338.020]~~ **338.013** to 338.090, inclusive. *The using agency, the qualified service company, any contractor who is awarded a contract or enters into an agreement to perform the work for the performance contract, and any subcontractor who performs any portion of that work shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the using agency had undertaken the work or had awarded the contract.*

Sec. 21. NRS 349.670 is hereby amended to read as follows:

349.670 1. NRS 349.400 to 349.670, inclusive, without reference to other statutes of the State, constitute full authority for the exercise of powers granted in those sections, including but not limited to the authorization and issuance of bonds.

2. No other act or law with regard to the authorization or issuance of bonds that provides for an election, requires an approval, or in any way impedes or restricts the carrying out of the acts authorized in NRS 349.400 to 349.670, inclusive, to be done, applies to any proceedings taken or acts done pursuant to those sections, except for laws to which reference is expressly made in those sections or by necessary implication of those sections.

3. The provisions of no other law, either general or local, except as provided in NRS 349.400 to 349.670, inclusive, apply to the doing of the things authorized in those sections to be done, and



no board, agency, bureau, commission or official not designated in those sections has any authority or jurisdiction over the doing of any of the acts authorized in those sections to be done, except as otherwise provided in those sections.

4. A project is not subject to any requirements relating to public buildings, structures, ground works or improvements imposed by the statutes of this state or any other similar requirements which may be lawfully waived by this section, and any requirement of competitive bidding or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property is not applicable to any action taken pursuant to NRS 349.400 to 349.670, inclusive, except that the provisions of NRS ~~338.010~~ **338.013** to 338.090, inclusive, apply to any contract for new construction, repair or reconstruction for which tentative approval for financing is granted on or after January 1, 1992, by the Director for work to be done in a project. *The Director, the lessee, purchaser, obligor or other enterprise, any contractor who is awarded a contract or enters into an agreement to perform the construction, repair or reconstruction for a project, and any subcontractor who performs any portion of such construction, repair or reconstruction shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if a public body had undertaken the project or had awarded the contract.*

5. Any bank or trust company located within or without this state may be appointed and act as a trustee with respect to bonds issued and projects financed pursuant to NRS 349.400 to 349.670, inclusive, without the necessity of associating with any other person or entity as cofiduciary, but such an association is not prohibited.

6. The powers conferred by NRS 349.400 to 349.670, inclusive, are in addition and supplemental to, and not in substitution for, and the limitations imposed by those sections do not affect the powers conferred by any other law.

7. No part of NRS 349.400 to 349.670, inclusive, repeals or affects any other law or part thereof, except to the extent that those sections are inconsistent with any other law, it being intended that those sections provide a separate method of accomplishing its objectives, and not an exclusive one.

8. The Director or a person designated by the Director may take any actions and execute and deliver any instruments, contracts, certificates and other documents, including the bonds, necessary or appropriate for the sale and issuance of the bonds or accomplishing



the purposes of NRS 349.400 to 349.670, inclusive, without the assistance or intervention of any other officer.

Sec. 22. NRS 349.956 is hereby amended to read as follows:

349.956 A water project is not subject to any requirements relating to public buildings, structures, ground works or improvements imposed by the statutes of this state or any other similar requirements which may be lawfully waived by this section, and any requirement of competitive bidding or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property is not applicable to any action taken pursuant to NRS 349.935 to 349.961, inclusive, except that the provisions of NRS ~~[338.010]~~ **338.013** to 338.090, inclusive, apply to any contract for new construction, repair or reconstruction for which tentative approval for financing is granted on or after January 1, 1992, by the Director or a municipality for work to be done in a water project. ***The Director or municipality, the lessee, purchaser or other obligor, any contractor who is awarded a contract or enters into an agreement to perform the construction, repair or reconstruction for a water project, and any subcontractor who performs any portion of such construction, repair or reconstruction shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if a public body had undertaken the water project or had awarded the contract.***

Sec. 23. NRS 388A.635 is hereby amended to read as follows:

388A.635 1. NRS 388A.550 to 388A.695, inclusive, without reference to other statutes of this State, constitute full authority for the exercise of powers granted in those sections, including, without limitation, the authorization and issuance of bonds.

2. No other act or law with regard to the authorization or issuance of bonds that provides for an election, requires an approval, or in any way impedes or restricts the carrying out of the acts authorized by NRS 388A.550 to 388A.695, inclusive, to be done, applies to any proceedings taken or acts done pursuant to those sections, except for laws to which reference is expressly made in those sections or by necessary implication of those sections.

3. The provisions of no other law, either general or local, except as provided in NRS 388A.550 to 388A.695, inclusive, apply to the doing of the things authorized in those sections to be done, and no board, agency, bureau, commission or official not designated in those sections has any authority or jurisdiction over the doing of any of the acts authorized in those sections to be done, except as otherwise provided in those sections.



4. A project is not subject to any requirements relating to public buildings, structures, ground works or improvements imposed by the statutes of this State or any other similar requirements which may be lawfully waived by this section, and any requirement of competitive bidding or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property is not applicable to any action taken pursuant to NRS 388A.550 to 388A.695, inclusive ~~H~~, *except that the provisions of NRS 338.013 to 338.090, inclusive, apply to any contract for new construction, repair or reconstruction for which tentative approval for financing is granted on or after July 1, 2019, by the Director of the Department of Business and Industry. The Director, the lessee, purchaser or other obligor, any contractor who is awarded a contract or enters into an agreement to perform the construction, repair or reconstruction for the project, and any subcontractor who performs any portion of such construction, repair or reconstruction shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if a public body had undertaken the project or had awarded the contract.*

5. Any bank or trust company located within or without this State may be appointed and act as a trustee with respect to bonds issued and projects financed pursuant to NRS 388A.550 to 388A.695, inclusive, without the necessity of associating with any other person or entity as cofiduciary, but such an association is not prohibited.

6. The powers conferred by NRS 388A.550 to 388A.695, inclusive, are in addition and supplemental to, and not in substitution for, and the limitations imposed by those sections do not affect, the powers conferred by any other law.

7. No part of NRS 388A.550 to 388A.695, inclusive, repeals or affects any other law or part thereof, except to the extent that those sections are inconsistent with any other law, it being intended that those sections provide a separate method of accomplishing its objectives, and not an exclusive one.

8. The Director of the Department of Business and Industry or a person designated by the Director of the Department of Business and Industry may take any actions and execute and deliver any instruments, contracts, certificates and other documents, including the bonds, necessary or appropriate for the sale and issuance of the bonds or accomplishing the purposes of NRS 388A.550 to 388A.695, inclusive, without the assistance or intervention of any other officer.



Sec. 24. NRS 408.3886 is hereby amended to read as follows:

408.3886 1. After selecting the finalists pursuant to NRS 408.3885, the Department shall provide to each finalist a request for final proposals for the project. The request for final proposals must:

(a) Set forth the factors that the Department will use to select a design-build team to design and construct the project, including the relative weight to be assigned to each factor; and

(b) Set forth the date by which final proposals must be submitted to the Department.

2. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the Department shall assign, without limitation, a relative weight of 5 percent to the design-build team's possession of both a certificate of eligibility to receive a preference in bidding on public works by the prime contractor on the design-build team, if the design-build team submits a signed affidavit that meets the requirements of subsection 1 of NRS 338.0117, and a certificate of eligibility to receive a preference when competing for public works by all persons who hold a certificate of registration to practice architecture or a license as a professional engineer on the design-build team, and a relative weight of at least 30 percent for the proposed cost of design and construction of the project. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular project because of the provisions of this subsection relating to a preference in bidding on public works or a preference when competing for public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that project.

3. A final proposal submitted by a design-build team pursuant to this section must be prepared thoroughly, be responsive to the criteria that the Department will use to select a design-build team to design and construct the project described in subsection 1 and comply with the provisions of NRS 338.141.

4. After receiving the final proposals for the project, the Department shall:

(a) Select the most cost-effective and responsive final proposal, using the criteria set forth pursuant to subsections 1 and 2;

(b) Reject all the final proposals; or

(c) Request best and final offers from all finalists in accordance with subsection 5.

5. If the Department determines that no final proposal received is cost-effective or responsive and the Department further



determines that requesting best and final offers pursuant to this subsection will likely result in the submission of a satisfactory offer, the Department may prepare and provide to each finalist a request for best and final offers for the project. In conjunction with preparing a request for best and final offers pursuant to this subsection, the Department may alter the scope of the project, revise the estimates of the costs of designing and constructing the project, and revise the selection factors and relative weights described in paragraph (a) of subsection 1. A request for best and final offers prepared pursuant to this subsection must set forth the date by which best and final offers must be submitted to the Department. After receiving the best and final offers, the Department shall:

(a) Select the most cost-effective and responsive best and final offer, using the criteria set forth in the request for best and final offers; or

(b) Reject all the best and final offers.

6. If the Department selects a final proposal pursuant to paragraph (a) of subsection 4 or selects a best and final offer pursuant to paragraph (a) of subsection 5, the Department shall hold a public meeting to:

(a) Review and ratify the selection.

(b) Partially reimburse the unsuccessful finalists if partial reimbursement was provided for in the request for preliminary proposals pursuant to paragraph (f) of subsection 3 of NRS 408.3883. The amount of reimbursement must not exceed, for each unsuccessful finalist, 3 percent of the total amount to be paid to the design-build team as set forth in the design-build contract.

(c) Make available to the public a summary setting forth the factors used by the Department to select the successful design-build team and the ranking of the design-build teams who submitted final proposals and, if applicable, best and final offers. The Department shall not release to a third party, or otherwise make public, financial or proprietary information submitted by a design-build team.

7. A contract awarded pursuant to this section:

(a) Must comply with the provisions of NRS ~~338.020~~ **338.013** to 338.090, inclusive; and

(b) Must specify:

(1) An amount that is the maximum amount that the Department will pay for the performance of all the work required by the contract, excluding any amount related to costs that may be incurred as a result of unexpected conditions or occurrences as authorized by the contract;



(2) An amount that is the maximum amount that the Department will pay for the performance of the professional services required by the contract; and

(3) A date by which performance of the work required by the contract must be completed.

8. *The Department, the design-build team, any contractor who is awarded a contract or enters into an agreement to perform work on the project, and any subcontractor who performs work on the project shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the Department had undertaken the project or had awarded the contract.*

9. A design-build team to whom a contract is awarded pursuant to this section shall:

(a) Assume overall responsibility for ensuring that the design and construction of the project is completed in a satisfactory manner; and

(b) Use the workforce of the prime contractor on the design-build team to construct at least 15 percent of the project.

Sec. 25. NRS 543.545 is hereby amended to read as follows:

543.545 **1.** Except as otherwise provided in ~~[subsection 3,]~~ *this section*, the provisions of any law requiring public bidding or otherwise imposing requirements on any public contract, project, works or improvements, including, without limitation, the provisions of chapters 332, 338 and 339 of NRS, do not apply to any contract entered into by a flood control district for the construction of a flood control facility pursuant to the master plan, if a majority of the construction costs are paid by a private developer and the written agreement:

~~[1.]~~ **(a)** Complies with the requirements of subsection 1 of NRS 543.360;

~~[2.]~~ **(b)** Clearly sets forth the computation of the construction costs, and includes the terms and conditions of the contract; and

~~[3.]~~ **(c)** Contains a provision stating that the requirements of NRS ~~[338.010]~~ **338.013** to 338.090, inclusive, apply to any construction work performed pursuant to the contract.

2. *The board, the developer, any contractor who is awarded a contract or enters into an agreement to perform the construction work, and any subcontractor who performs any portion of the construction work shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the board had undertaken the construction work or had awarded the contract.*



Sec. 26. NRS 701B.265 is hereby amended to read as follows:

701B.265 1. The installation of a solar energy system on property owned or occupied by a public body pursuant to NRS 701B.010 to 701B.290, inclusive, shall be deemed to be a public work for the purposes of chapters 338 and 341 of NRS, regardless of whether the installation of the solar energy system is financed in whole or in part by public money. *The public body, the utility, any contractor who is awarded a contract or entered into an agreement to perform the installation and any subcontractor who performs any portion of the installation shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the public body had undertaken the installation or had awarded the contract.*

2. The amount of any incentive issued by a utility relating to the installation of a solar energy system on property owned or occupied by a public body may not be used to reduce the cost of the project to an amount which would exempt the project from the requirements of NRS ~~338.020~~ 338.013 to 338.090, inclusive.

3. As used in this section, "public body" means the State or a county, city, town, school district or any public agency of this State or its political subdivisions.

Sec. 27. NRS 701B.625 is hereby amended to read as follows:

701B.625 1. The installation of a wind energy system on property owned or occupied by a public body pursuant to NRS 701B.400 to 701B.650, inclusive, shall be deemed to be a public work for the purposes of chapters 338 and 341 of NRS, regardless of whether the installation of the wind energy system is financed in whole or in part by public money. *The public body, the utility, any contractor who is awarded a contract or entered into an agreement to perform the installation and any subcontractor who performs any portion of the installation shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the public body had undertaken the installation or had awarded the contract.*

2. The amount of any incentive issued by a utility relating to the installation of a wind energy system on property owned or occupied by a public body may not be used to reduce the cost of the project to an amount which would exempt the project from the requirements of NRS ~~338.020~~ 338.013 to 338.090, inclusive.

3. As used in this section, "public body" means the State or a county, city, town, school district or any public agency of this State or its political subdivisions.



Sec. 28. Section 9.5 of the Reno-Tahoe Airport Authority Act, being chapter 474, Statutes of Nevada 1977, as amended by chapter 98, Statutes of Nevada 2013, at page 335, is hereby amended to read as follows:

Sec. 9.5. 1. Except as otherwise determined by the Board or provided in subsection 2, the provisions of any law requiring public bidding or otherwise imposing requirements on any public contract, project, acquisition, works or improvements, including, without limitation, the provisions of chapters 332, 338 and 339 of NRS, do not apply to any contract entered into by the Board if the Board:

- (a) Complies with the provisions of subsection 3; and
- (b) Finances the contract, project, acquisition, works or improvement by means of:

- (1) Revenue bonds issued by the Authority; or
- (2) An installment obligation of the Authority in a transaction in which:

(I) The Authority acquires real or personal property and another person acquires or retains a security interest in that or other property; and

(II) The obligation by its terms is extinguished by failure of the Board to appropriate money for the ensuing fiscal year for payment of the amounts then due.

2. A contract entered into by the Board pursuant to this section must:

(a) Contain a provision stating that the requirements of NRS ~~[338.010]~~ **338.013** to 338.090, inclusive, apply to any construction work performed pursuant to the contract; and

(b) If the contract is with a design professional who is not a member of a design-build team, comply with the provisions of NRS 338.155. As used in this paragraph, "design professional" has the meaning ascribed to it in ~~[subsection 7 of]~~ NRS 338.010.

3. For contracts entered into pursuant to this section that are exempt from the provisions of chapters 332, 338 and 339 of NRS pursuant to subsection 1, the Board shall adopt regulations pursuant to subsection ~~[4]~~ **5** which establish:

(a) One or more competitive procurement processes for letting such a contract; and

(b) A method by which a bid on such a contract will be adjusted to give a 5 percent preference to a contractor who would qualify for a preference pursuant to NRS 338.147, if:



(1) The estimated cost of the contract exceeds \$250,000; and

(2) Price is a factor in determining the successful bid on the contract.

4. *The Board, any contractor who is awarded a contract or enters into an agreement to perform the construction work, and any subcontractor who performs any portion of the construction work shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the Board had undertaken the construction work or had awarded the contract.*

5. The Board:

(a) Shall, before adopting, amending or repealing a permanent or temporary regulation pursuant to subsection 3, give at least 30 days' notice of its intended action. The notice must:

(1) Include:

(I) A statement of the need for and purpose of the proposed regulation.

(II) Either the terms or substance of the proposed regulation or a description of the subjects and issues involved.

(III) The estimated cost to the Board for enforcement of the proposed regulation.

(IV) The time when, the place where and the manner in which interested persons may present their views regarding the proposed regulation.

(V) A statement indicating whether the regulation establishes a new fee or increases an existing fee.

(2) State each address at which the text of the proposed regulation may be inspected and copied.

(3) Be mailed to all persons who have requested in writing that they be placed upon a mailing list, which must be kept by the Authority for that purpose.

(b) May adopt, if it has adopted a temporary regulation after notice and the opportunity for a hearing as provided in this subsection, after providing a second notice and the opportunity for a hearing, a permanent regulation.

(c) Shall, in addition to distributing the notice to each recipient of the Board's regulations, solicit comment generally from the public and from businesses to be affected by the proposed regulation.

(d) Shall, before conducting a workshop pursuant to paragraph (g), determine whether the proposed regulation is



likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business. If the Board determines that such an impact is likely to occur, the Board shall:

(1) Insofar as practicable, consult with owners and officers of small businesses that are likely to be affected by the proposed regulation.

(2) Consider methods to reduce the impact of the proposed regulation on small businesses.

(3) Prepare a small business impact statement and make copies of the statement available to the public at the workshop conducted pursuant to paragraph (g) and the public hearing held pursuant to paragraph (h).

(e) Shall ensure that a small business impact statement prepared pursuant to subparagraph (3) of paragraph (d) sets forth the following information:

(1) A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.

(2) The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:

(I) Both adverse and beneficial effects; and

(II) Both direct and indirect effects.

(3) A description of the methods that the Board considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the Board actually used any of those methods.

(4) The estimated cost to the Board for enforcement of the proposed regulation.

(5) If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the Board expects to collect and the manner in which the money will be used.

(f) Shall afford a reasonable opportunity for all interested persons to submit data, views or arguments upon the proposed regulation, orally or in writing.

(g) Shall, before holding a public hearing pursuant to paragraph (h), conduct at least one workshop to solicit comments from interested persons on the proposed regulation. Not less than 15 days before the workshop, the



Board shall provide notice of the time and place set for the workshop:

(1) In writing to each person who has requested to be placed on a mailing list; and

(2) In any other manner reasonably calculated to provide such notice to the general public and any business that may be affected by a proposed regulation which addresses the general topics to be considered at the workshop.

(h) Shall set a time and place for an oral public hearing, but if no one appears who will be directly affected by the proposed regulation and requests an oral hearing, the Board may proceed immediately to act upon any written submissions. The Board shall consider fully all written and oral submissions respecting the proposed regulation.

(i) Shall keep, retain and make available for public inspection written minutes of each public hearing held pursuant to paragraph (h) in the manner provided in subsections 1 and 2 of NRS 241.035.

(j) May record each public hearing held pursuant to paragraph (h) and make those recordings available for public inspection in the manner provided in subsection 4 of NRS 241.035.

(k) Shall ensure that a small business which is aggrieved by a regulation adopted pursuant to this subsection may object to all or a part of the regulation by filing a petition with the Board within 90 days after the date on which the regulation was adopted. Such petition may be based on the following:

(1) The Board failed to prepare a small business impact statement as required pursuant to subparagraph (3) of paragraph (d); or

(2) The small business impact statement prepared by the Board did not consider or significantly underestimated the economic effect of the regulation on small businesses.

➔ After receiving a petition pursuant to this paragraph, the Board shall determine whether the petition has merit. If the Board determines that the petition has merit, the Board may, pursuant to this subsection, take action to amend the regulation to which the small business objected.

~~5.1~~ **6.** The determinations made by the Board pursuant to this section are conclusive unless it is shown that the Board acted with fraud or a gross abuse of discretion.



Sec. 29. The provisions of NRS 338.030, as amended by section 4 of this act, apply to any rates of prevailing wages determined by the Labor Commissioner pursuant to that section on or after July 1, 2019.

Sec. 30. 1. The amendatory provisions of this act do not apply to a contract for a public work or other project of construction, alteration, repair, remodeling or reconstruction of an improvement or property of a public body that is awarded before July 1, 2019.

2. As used in this section:

(a) "Public body" has the meaning ascribed to it in NRS 338.010.

(b) "Public work" has the meaning ascribed to it in NRS 338.010.

Sec. 31. NRS 338.1405 is hereby repealed.

Sec. 32. 1. This act becomes effective on July 1, 2019.

2. Sections 26 and 27 of this act expire by limitation on December 31, 2025.

