

Amendment No. 361

Senate Amendment to Senate Bill No. 231	(BDR 28-910)
Proposed by: Senate Committee on Government Affairs	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

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

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



SENATE BILL NO. 231—SENATORS BROOKS, CANNIZZARO, PARKS; ATKINSON, CANCELA, DENIS, HARRIS, OHRENSCHALL, RATTI, SCHEIBLE AND WOODHOUSE

FEBRUARY 19, 2019

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to certain construction. (BDR 28-910)

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

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

AN ACT relating to construction; ~~revising provisions governing the payment of prevailing wages;~~ revising provisions governing certain records pertaining to workers of a contractor and a subcontractor on a public works project; 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:

~~1 Under existing law, with certain exceptions, the prevailing wage in a county for each craft or type of work, as determined by the Labor Commissioner, is required to be paid on a project in the county involving new construction, repair or reconstruction that is financed in whole or in part with public money and for which the estimated cost is \$250,000 or more. (NRS 338.010, 338.020-338.080) Sections 1, 3 and 4 of this bill decrease the minimum threshold for the applicability of the prevailing wage requirements from \$250,000 to \$100,000.~~

~~2 To determine the prevailing wages in each county under existing law, the Labor Commissioner is required to annually survey contractors who have performed work in the county. If, based on the survey, the rate of wages is the same for more than 50 percent of the total hours worked by a specific craft or type of work on similar construction, the Labor Commissioner is required to determine that rate as the prevailing wage. Where no such rate can be determined, the Labor Commissioner is required to determine the rate as the average rate of wages paid per hour based on the number of hours worked per rate. (NRS 338.030) Section 2 of this bill eliminates these provisions to now require the Labor Commissioner to determine the prevailing wage by conducting an annual survey of contractors who have performed work in the county according to each craft or type of work performed.~~

~~3 Additionally, under existing law, school districts and the Nevada System of Higher Education are required to pay on their public works and certain other construction projects 90 percent of the prevailing wage rates that are otherwise required to be paid by other public bodies. (NRS 338.030) Section 2 eliminates this exception and therefore requires school districts and the Nevada System of Higher Education to pay the same prevailing wage rates on their public works and other construction projects as other public bodies are required to pay.~~

~~4 Under existing law, charter schools are exempt from the requirement in existing law to pay prevailing wage rates on their public works and certain other construction projects. (NRS~~

~~338.080) Section 4 eliminates this exemption and therefore requires charter schools to pay prevailing wage rates on their public works and other construction projects.]~~

Existing law requires a contractor and each subcontractor engaged on a public work in this State to keep or cause to be kept certain records about the workers who are employed by the contractor or subcontractor in connection with the public work, including the name, occupation and wages of each worker. Existing law also requires the contractor or subcontractor to provide such records monthly to the public body that awarded the contract. (NRS 338.070) Section 2.5 of this bill requires the Labor Commissioner to adopt regulations authorizing a contractor or subcontractor to file the copies of such records with the public body electronically and prescribing the process to do so.

Existing law, with certain exceptions, prohibits a public body, in any solicitation, contract or other document related to a contract for a public work, 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 the 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 7** of this bill eliminates these prohibitions.

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

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

~~338.018 The provisions of NRS 338.013 to 338.019, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds \$250,000] \$100,000 even if the construction work does not qualify as a public work, as defined in [subsection 17 of] NRS 338.010.] (Deleted by amendment.)~~

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

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

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

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

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

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

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

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

~~(2) A public work of, or constructed by, a school district or the Nevada System of Higher Education, or any other construction, alteration, repair, remodeling or reconstruction of an improvement or property of or constructed by a school district or the Nevada System of Higher Education.]~~

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

~~(a) A public body or person entitled under subsection 6 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. 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. 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.] (Deleted by amendment.)~~

Sec. 2.5. NRS 338.070 is hereby amended to read as follows:

338.070 1. Any public body awarding a contract shall:

(a) Investigate possible violations of the provisions of NRS 338.010 to 338.090, inclusive, committed in the course of the execution of the contract, and determine whether a violation has been committed and inform the Labor Commissioner of any such violations; and

(b) When making payments to the contractor engaged on the public work of money becoming due under the contract, withhold and retain all sums forfeited pursuant to the provisions of NRS 338.010 to 338.090, inclusive.

2. No sum may be withheld, retained or forfeited, except from the final payment, without a full investigation being made by the awarding public body.

3. Except as otherwise provided in subsection 7, it is lawful for any contractor engaged on a public work to withhold from any subcontractor engaged on the public work sufficient sums to cover any penalties withheld from the contractor by the awarding public body on account of the failure of the subcontractor to comply with the terms of NRS 338.010 to 338.090, inclusive. If payment has already been made to the subcontractor, the contractor may recover from the subcontractor the amount of the penalty or forfeiture in a suit at law.

4. A contractor engaged on a public work and each subcontractor engaged on the public work shall:

1 (a) Inquire of each worker employed by the contractor or subcontractor in
2 connection with the public work:

3 (1) Whether the worker wishes to specify voluntarily his or her gender; and
4 (2) Whether the worker wishes to specify voluntarily his or her ethnicity;
5 and

6 (b) For each response the contractor or subcontractor receives pursuant to
7 paragraph (a):

8 (1) If the worker chose voluntarily to specify his or her gender or ethnicity,
9 or both, record the worker's responses; and

10 (2) If the worker declined to specify his or her gender or ethnicity, or both,
11 record that the worker declined to specify such information.

12 ➤ A contractor or subcontractor shall not compel or coerce a worker to specify his
13 or her gender or ethnicity and shall not penalize or otherwise take any adverse
14 action against a worker who declines to specify his or her gender or ethnicity.
15 Before inquiring as to whether a worker wishes to specify voluntarily his or her
16 gender or ethnicity, the applicable contractor or subcontractor must inform the
17 worker that such information, if provided, will be open to public inspection as set
18 forth in subsection 6.

19 5. A contractor engaged on a public work and each subcontractor engaged on
20 the public work shall keep or cause to be kept:

21 (a) An accurate record showing, for each worker employed by the contractor or
22 subcontractor in connection with the public work:

23 (1) The name of the worker;

24 (2) The occupation of the worker;

25 (3) The gender of the worker, if the worker voluntarily agreed to specify
26 that information pursuant to subsection 4, or an entry indicating that the worker
27 declined to specify such information;

28 (4) The ethnicity of the worker, if the worker voluntarily agreed to specify
29 that information pursuant to subsection 4, or an entry indicating that the worker
30 declined to specify such information;

31 (5) If the worker has a driver's license or identification card, an indication
32 of the state or other jurisdiction that issued the license or card; and

33 (6) The actual per diem, wages and benefits paid to the worker; and

34 (b) An additional accurate record showing, for each worker employed by the
35 contractor or subcontractor in connection with the public work who has a driver's
36 license or identification card:

37 (1) The name of the worker;

38 (2) The driver's license number or identification card number of the
39 worker; and

40 (3) The state or other jurisdiction that issued the license or card.

41 6. The records maintained pursuant to subsection 5 must be open at all
42 reasonable hours to the inspection of the public body awarding the contract. The
43 contractor engaged on the public work or subcontractor engaged on the public work
44 shall ensure that a copy of each record for each calendar month is received by the
45 public body awarding the contract no later than 15 days after the end of the month.
46 The copy of the record maintained pursuant to paragraph (a) of subsection 5 must
47 be open to public inspection as provided in NRS 239.010. The copy of the record
48 maintained pursuant to paragraph (b) of subsection 5 is confidential and not open to
49 public inspection. The records in the possession of the public body awarding the
50 contract may be discarded by the public body 2 years after final payment is made
51 by the public body for the public work.

52 7. A contractor engaged on a public work shall not withhold from a
53 subcontractor engaged on the public work the sums necessary to cover any

penalties provided pursuant to subsection 3 of NRS 338.060 that may be withheld from the contractor by the public body awarding the contract because the public body did not receive a copy of the record maintained by the subcontractor pursuant to subsection 5 for a calendar month by the time specified in subsection 6 if:

(a) The subcontractor provided to the contractor, for submission to the public body by the contractor, a copy of the record not later than the later of:

(1) Ten days after the end of the month; or

(2) A date agreed upon by the contractor and subcontractor; and

(b) The contractor failed to submit the copy of the record to the public body by the time specified in subsection 6.

Nothing in this subsection prohibits a subcontractor from submitting a copy of a record for a calendar month directly to the public body by the time specified in subsection 6.

8. Any contractor or subcontractor, or agent or representative thereof, performing work for a public work who neglects to comply with the provisions of this section is guilty of a misdemeanor.

9. The Labor Commissioner shall adopt regulations authorizing and prescribing the procedures for the electronic filing of the copies of the records required to be provided monthly by a contractor or subcontractor to a public body pursuant to subsection 6.

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

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

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

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

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

~~2. Apprentices recorded under the provisions of chapter 610 of NRS.~~

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

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

~~5. A public work of, or constructed by, a charter school, or any other construction, alteration, repair, remodeling or reconstruction of an improvement or property of or constructed by a charter school, notwithstanding any other provision of law.] \$100,000.] (Deleted by amendment.)~~

Sec. 5. ~~[1. The provisions of NRS 338.018, 338.030, 338.075 and 338.080, as amended by sections 1, 2, 3 and 4, respectively 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.] (Deleted by amendment.)~~

~~Sec. 6. [The provisions of NRS 338.020, as amended by section 2 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.] (Deleted by amendment.)~~

Sec. 7. NRS 338.1405 is hereby repealed.

Sec. 8. This act becomes effective on July 1, 2019.

TEXT OF REPEALED SECTION

338.1405 Requirements regarding agreements with labor organizations prohibited; exceptions.

1. The Legislature hereby finds and declares that the provisions of this section prohibiting requirements for certain terms in contracts entered into by a public body for a public work or entered into by the awardee of a grant, tax abatement, tax credit or tax exemption from a public body are:

(a) Intended to provide:

(1) More economical, nondiscriminatory, neutral and efficient contracts for public works by public bodies in this State as market participants; and

(2) Fair and open competition in awarding contracts, grants, tax abatements, tax credits and tax exemptions.

(b) The best method for effectuating the intent of paragraph (a).

2. Except as otherwise provided in subsection 5 or 6, a public body, in any advertisement, solicitation, specification, contract or any other document related to a contract for a public work, shall not:

(a) Require or prohibit an eligible bidder, contractor or subcontractor from entering into or adhering to an agreement with one or more labor organizations in regard to the public work or any construction project integrated into the public work.

(b) Discriminate against an eligible bidder, contractor or subcontractor for becoming or remaining or refusing to become or remain a signatory to, or for adhering or refusing to adhere to, an agreement with one or more labor organizations in regard to the public work or any construction project integrated into the public work.

3. Except as otherwise provided in subsection 5 or 6, a public body shall not award a grant, tax abatement, tax credit or tax exemption that is conditioned upon a requirement that the awardee include a term described in paragraph (a) or (b) of subsection 2 in a contract for any construction, improvement, maintenance or renovation to real property that is the subject of the grant, tax abatement, tax credit or tax exemption.

4. The provisions of subsections 2 and 3 do not:

(a) Prohibit a public body from awarding a contract for a public work or a grant, tax abatement, tax credit or tax exemption to an owner who is not a public body, an eligible bidder, a contractor or a subcontractor who enters into, who is a party to or who adheres to an agreement with a labor organization if:

(1) Entering into, being or becoming a party to or adhering to an agreement with a labor organization is not a condition for awarding the contract, grant, tax abatement, tax credit or tax exemption; and

(2) The public body does not discriminate against an owner who is not a public body, an eligible bidder, a contractor or a subcontractor in the awarding of

the contract, grant, tax abatement, tax credit or tax exemption based upon the status of entering into, being or becoming a party to or adhering to an agreement with a labor organization;

(b) Prohibit an eligible bidder, contractor or subcontractor from voluntarily entering into or complying with an agreement entered into with one or more labor organizations in regard to a contract:

(1) With a public body for a public work; or

(2) Funded in whole or in part by a grant, tax abatement, tax credit or tax exemption from a public body;

(c) Prohibit employers or other parties from entering into agreements or engaging in any other activity protected by the Labor Management Relations Act of 1947, 29 U.S.C. §§ 151 et seq.;

(d) Interfere with labor relations of parties that are left unregulated by the Labor Management Relations Act of 1947, 29 U.S.C. §§ 151 et seq.; or

(e) Affect any provision of NRS 338.020 to 338.090, inclusive.

5. A public body may exempt a particular public work or a grant, tax abatement, tax credit or tax exemption from the provisions of subsection 2 if the public body makes a finding, after notice and a hearing, that a special circumstance requires such an exemption to avert an imminent threat to the public health or safety. A finding of a special circumstance pursuant to this subsection must not be based on the possibility or presence of a labor dispute concerning:

(a) The use of a contractor or subcontractor who is not a signatory to or does not adhere to an agreement with one or more labor organizations; or

(b) Employees on the public work who are not members of or affiliated with a labor organization.

6. A public body may exempt a particular public work or a grant, tax abatement, tax credit or tax exemption from the provisions of subsection 2 if the public body makes a finding, after notice and a hearing, that the public work or construction, improvement, maintenance or renovation to real property that is the subject of the grant, tax abatement, tax credit or tax exemption, as applicable, is a part of critical infrastructure for:

(a) An airport, including, without limitation, a runway, taxiway, air traffic control tower or project to improve airport security; or

(b) A water system.

7. As used in this section, "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.