

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; 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:**

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.

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.



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

26 Under existing law, charter schools are exempt from the requirement in existing  
27 law to pay prevailing wage rates on their public works and certain other  
28 construction projects. (NRS 338.080) **Section 4** eliminates this exemption and  
29 therefore requires charter schools to pay prevailing wage rates on their public  
30 works and other construction projects.

31 Existing law, with certain exceptions, prohibits a public body, in any  
32 solicitation, contract or other document related to a contract for a public work,  
33 from: (1) requiring or prohibiting a bidder, contractor or subcontractor from  
34 entering into or adhering to any agreement with one or more labor organizations in  
35 regard to the public work; or (2) discriminating against a bidder, contractor or  
36 subcontractor for entering or not entering into, or adhering or refusing to adhere to,  
37 any agreement with one or more labor organizations in regard to the public work.  
38 Existing law further prohibits a public body, with certain exceptions, from  
39 awarding a grant, tax abatement, tax credit or tax exemption that is conditioned  
40 upon a requirement that the awardee include in a contract for a project that is the  
41 subject of the grant, tax abatement, tax credit or tax exemption a term that: (1)  
42 requires or prohibits a bidder, contractor or subcontractor from entering into or  
43 adhering to any agreement with one or more labor organizations in regard to the  
44 project; or (2) discriminates against a bidder, contractor or subcontractor for  
45 entering or not entering into, or adhering or refusing to adhere to, any agreement  
46 with one or more labor organizations in regard to the project. (NRS 338.1405)  
47 **Section 7** of this bill eliminates these prohibitions.

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

1 **Section 1.** NRS 338.018 is hereby amended to read as follows:  
2 338.018 The provisions of NRS 338.013 to 338.018, inclusive,  
3 apply to any contract for construction work of the Nevada System of  
4 Higher Education for which the estimated cost exceeds ~~[\$250,000]~~  
5 ~~\$100,000~~ even if the construction work does not qualify as a public  
6 work, as defined in ~~[subsection 17 of]~~ NRS 338.010.

7 **Sec. 2.** NRS 338.030 is hereby amended to read as follows:  
8 338.030 1. The public body awarding any contract for public  
9 work, or otherwise undertaking any public work, shall ascertain  
10 from the Labor Commissioner the prevailing wage in the county in  
11 which the public work is to be performed for each craft or type of  
12 work.

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

15 ~~—(a) The]~~ *the* Labor Commissioner shall, annually, survey  
16 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.

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

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

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

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

1. 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.**

**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:



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

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

5 **Sec. 6.** The provisions of NRS 338.030, as amended by  
6 section 2 of this act, apply to any rates of prevailing wages  
7 determined by the Labor Commissioner pursuant to that section on  
8 or after July 1, 2019.

9 **Sec. 7.** NRS 338.1405 is hereby repealed.

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

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### TEXT OF REPEALED SECTION

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#### **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.

