

Senate Bill No. 231—Senators Brooks, Cannizzaro, Parks; Cancela, Denis, D. Harris, Ohrenschall, Ratti, Scheible and Woodhouse

## CHAPTER.....

AN ACT relating to construction; 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:

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.

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

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

**Sections 1 and 2.** (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:

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

(1) Whether the worker wishes to specify voluntarily his or her gender; and

(2) Whether the worker wishes to specify voluntarily his or her ethnicity; and

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

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

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

↪ A contractor or subcontractor shall not compel or coerce a worker to specify his or her gender or ethnicity and shall not penalize or otherwise take any adverse action against a worker who declines to specify his or her gender or ethnicity. Before inquiring as to whether a worker wishes to specify voluntarily his or her gender or ethnicity,



the applicable contractor or subcontractor must inform the worker that such information, if provided, will be open to public inspection as set forth in subsection 6.

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

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

(1) The name of the worker;

(2) The occupation of the worker;

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

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

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

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

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

(1) The name of the worker;

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

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

6. The records maintained pursuant to subsection 5 must be open at all reasonable hours to the inspection of the public body awarding the contract. The contractor engaged on the public work or subcontractor engaged on the public work shall ensure that a copy of each record for each calendar month is received by the public body awarding the contract no later than 15 days after the end of the month. The copy of the record maintained pursuant to paragraph (a) of subsection 5 must be open to public inspection as provided in NRS 239.010. The copy of the record maintained pursuant to paragraph (b) of subsection 5 is confidential and not open to public inspection. The records in the possession of the public body



awarding the contract may be discarded by the public body 2 years after final payment is made by the public body for the public work.

7. A contractor engaged on a public work shall not withhold from a 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.*

**Secs. 3-6.** (Deleted by amendment.)

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

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

