

(Reprinted with amendments adopted on April 16, 2019)

FIRST REPRINT

S.B. 231

SENATE BILL NO. 231—SENATORS BROOKS, CANNIZZARO, PARKS;  
CANCELA, DENIS, D. 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.

~

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 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



\* S B 2 3 1 R 1 \*

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.** (Deleted by amendment.)

**Sec. 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



1 awarding the contract. The contractor engaged on the public work or  
2 subcontractor engaged on the public work shall ensure that a copy of  
3 each record for each calendar month is received by the public body  
4 awarding the contract no later than 15 days after the end of the  
5 month. The copy of the record maintained pursuant to paragraph (a)  
6 of subsection 5 must be open to public inspection as provided in  
7 NRS 239.010. The copy of the record maintained pursuant to  
8 paragraph (b) of subsection 5 is confidential and not open to public  
9 inspection. The records in the possession of the public body  
10 awarding the contract may be discarded by the public body 2 years  
11 after final payment is made by the public body for the public work.

12 7. A contractor engaged on a public work shall not withhold  
13 from a subcontractor engaged on the public work the sums  
14 necessary to cover any penalties provided pursuant to subsection 3  
15 of NRS 338.060 that may be withheld from the contractor by the  
16 public body awarding the contract because the public body did not  
17 receive a copy of the record maintained by the subcontractor  
18 pursuant to subsection 5 for a calendar month by the time specified  
19 in subsection 6 if:

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

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

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

25 and

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

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

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

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

39 **Sec. 3.** (Deleted by amendment.)

40 **Sec. 4.** (Deleted by amendment.)

41 **Sec. 5.** (Deleted by amendment.)

42 **Sec. 6.** (Deleted by amendment.)

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

44 **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.

