

ASSEMBLY BILL NO. 235—ASSEMBLYWOMAN MONROE-MORENO

MARCH 2, 2023

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public works projects.
(BDR 28-176)

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

CONTAINS UNFUNDED MANDATE (§§ 2-4)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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 governmental administration; requiring the payment of prevailing wages to workers who perform custom fabrication on a public work or for certain performance contracts of local governments or state agencies; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that every contract to which a public body of this State is a party, requiring the employment of skilled mechanics, skilled workers, semiskilled mechanics, semiskilled workers or unskilled labor in the performance of a public work, must contain in express terms the hourly and daily rate of wages to be paid to each of the classes of mechanics and workers. The hourly and daily rate of wages must not be less than the prevailing wage in the region in which the public work is located, as determined by the Labor Commissioner. (NRS 338.020) **Section 2** of this bill provides that workers who perform custom fabrication on a public work must also be paid such a prevailing wage. **Section 1** of this bill: (1) defines the term "custom fabrication"; (2) defines the term "nonstandard good or material"; and (3) revises the definition of "worker" to include a worker who performs custom fabrication.

Existing law provides that performance contracts for certain operating cost-savings measures entered into by local governments and state agencies must contain in express terms the hourly and daily rate of wages to be paid to each class of mechanics and workers. Such wages must not be less than the prevailing wage in the region in which the local government or state agency is located. (NRS 332.390, 333A.120) Similar to **section 1, sections 3 and 4** of this bill, respectively, provide that workers who perform custom fabrication must also be paid such a prevailing wage.



Section 5 of this bill provides that the requirement to pay prevailing wage to workers who perform custom fabrication does not apply to a public works contract or performance contract awarded before January 1, 2024.

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.

4. "Contractor" means:

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

(b) A design-build team.

5. *"Custom fabrication" means the manufacture, assembly or other production of any nonstandard good or material that is manufactured, assembled or otherwise produced for a specific public work.*

6. "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.

~~16-1~~ 7. "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.

~~17-1~~ 8. "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.

~~18-1~~ **9.** “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.

~~19-1~~ **10.** “Discrete project” means one or more public works which are undertaken on a single construction site for a single public body. The term does not include one or more public works that are undertaken on multiple construction sites regardless of whether the public body which sponsors or finances the public works bundles the public works together.

~~10-1~~ **11.** “Division” means the State Public Works Division of the Department of Administration.

~~11-1~~ **12.** “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.

~~12-1~~ **13.** “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.

~~14.3~~ 14. "Governing body" means the board, council, commission or other body in which the general legislative and fiscal powers of a local government are vested.

~~14.4~~ 15. "Horizontal construction" means any construction, alteration, repair, renovation, demolition or remodeling necessary to complete a public work, including, without limitation, 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 any other 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.

~~14.5~~ 16. "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.

~~14.6~~ 17. *"Nonstandard good or material" includes, without limitation, any nonstandard good or material used in any of the following building systems:*

- (a) Plumbing or pipe fitting;*
- (b) Ventilation system;*
- (c) Air-conditioning system;*
- (d) Heating system;*
- (e) Sheet metal or any other sheet metal product; and*
- (f) Signage, including, without limitation, any illuminated or unilluminated sign.*

18. "Offense" means:

(a) Failing to:

- (1) Pay the prevailing wage required pursuant to this chapter;
- (2) Pay the contributions for unemployment compensation required pursuant to chapter 612 of NRS;



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

(4) Comply with subsection 5 or 6 of NRS 338.070.

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

~~17-1~~ 19. "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.

~~18-1~~ 20. "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.

~~19-1~~ 21. "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.

~~20-1~~ 22. "Specialty contractor" means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.

~~21-1~~ 23. "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.

~~{22-}~~ 24. "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.

~~{23-}~~ 25. "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.

~~{24-}~~ 26. "Supplier" means a person who provides materials, equipment or supplies for a construction project.

~~{25-}~~ 27. "Vertical construction" means any construction, alteration, repair, renovation, demolition or remodeling necessary to complete a public work for 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 other work or improvement appurtenant thereto.

~~{26-}~~ 28. "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 bona fide fringe benefits which are a benefit to the worker.

~~{27-}~~ 29. "Worker" means a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker, ~~for~~ unskilled worker **or worker who performs custom fabrication** 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 338.020 is hereby amended to read as follows:

338.020 1. Every contract to which a public body of this State is a party, requiring the employment of skilled mechanics, skilled workers, semiskilled mechanics, semiskilled workers, ~~for~~ unskilled labor **or workers who perform custom fabrication** in the performance of a public work, must contain in express terms the



hourly and daily rate of wages to be paid each of the classes of mechanics and workers. The hourly and daily rate of wages must:

(a) Not be less than the rate of such wages then prevailing in the region in which the public work is located, which prevailing rate of wages must have been determined in the manner provided in NRS 338.030; and

(b) Be posted on the site of the public work in a place generally visible to the workers.

2. When public work is performed by day labor, the prevailing wage for each class of mechanics and workers so employed applies and must be stated clearly to such mechanics and workers when employed.

3. Except as otherwise provided in subsection 4, a contractor or subcontractor shall pay to a mechanic or worker employed by the contractor or subcontractor on the public work not less than one and one-half times the prevailing rate of wages applicable to the class of the mechanic or worker for each hour the mechanic or worker works on the public work in excess of:

(a) Forty hours in any scheduled week of work by the mechanic or worker for the contractor or subcontractor, including, without limitation, hours worked for the contractor or subcontractor on work other than the public work; or

(b) Eight hours in any workday that the mechanic or worker was employed by the contractor or subcontractor, including, without limitation, hours worked for the contractor or subcontractor on work other than the public work, unless by mutual agreement the mechanic or worker works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

4. The provisions of subsection 3 do not apply to a mechanic or worker who is covered by a collective bargaining agreement that provides for the payment of wages at not less than one and one-half times the rate of wages set forth in the collective bargaining agreement for work in excess of:

(a) Forty hours in any scheduled week of work; or

(b) Eight hours in any workday unless the collective bargaining agreement provides that the mechanic or worker shall work a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

5. The prevailing wage and any wages paid for overtime pursuant to subsection 3 or 4 to each class of mechanics or workers must be in accordance with the jurisdictional classes recognized in the region where the work is performed.

6. Nothing in this section prevents an employer who is signatory to a collective bargaining agreement from assigning such work in accordance with established practice.



* A B 2 3 5 R 1 *

Sec. 3. 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, ~~for~~ unskilled labor *or workers who perform custom fabrication* to perform the performance contract, the performance contract must include a provision relating to the prevailing wage as required pursuant to NRS 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.

3. As used in this section:

(a) *“Custom fabrication” means the manufacture, assembly or other production of any nonstandard good or material that is manufactured, assembled or otherwise produced for a specific performance contract.*

(b) *“Nonstandard good or material” has the meaning ascribed to it in NRS 338.010.*

Sec. 4. NRS 333A.120 is hereby amended to read as follows:

333A.120 1. If a performance contract entered into pursuant to this chapter requires the employment of skilled mechanics, skilled workers, semiskilled mechanics, semiskilled workers, ~~for~~ unskilled labor *or workers who perform custom fabrication* to perform the performance contract, the performance contract must include a provision relating to the prevailing wage as required pursuant to NRS 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.

2. As used in this section:

(a) *“Custom fabrication” means the manufacture, assembly or other production of any nonstandard good or material that is*



manufactured, assembled or otherwise produced for a specific performance contract.

(b) “Nonstandard good or material” has the meaning ascribed to it in NRS 338.010.

Sec. 5. The amendatory provisions of this act do not apply to any contract to which the provisions of:

1. NRS 338.020 to 338.090, inclusive;

2. NRS 332.390; or

3. NRS 333A.120,

↪ apply that is awarded before January 1, 2024.

Sec. 6. The provisions of NRS 354.599 do not apply to any additional expenses of a local government that are related to the provisions of this act.

Sec. 7. 1. This section becomes effective upon passage and approval.

2. Sections 1 to 6, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2024, for all other purposes.

