

SENATE BILL NO. 226—SENATOR CANNIZZARO

MARCH 7, 2023

JOINT SPONSOR: ASSEMBLYMAN YEAGER

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public works.  
(BDR 28-494)

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

CONTAINS UNFUNDED MANDATE (§§ 3, 5, 9, 13, 14)  
(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 public works; providing a declaration of legislative intent regarding the payment of prevailing wages on public works projects; deeming certain projects to be financed in whole or in part from public money for purposes of determining whether a project is a public work; excluding certain public works projects from certain procedures for awarding contracts; revising certain definitions relating to public works; 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:**

- 1 Existing law provides that every contract to which a public body of this State is  
2 a party, requiring the employment of skilled mechanics, skilled workers,  
3 semiskilled mechanics, semiskilled workers or unskilled labor in the performance  
4 of a public work, must contain in express terms the hourly and daily rate of wages  
5 to be paid to each of the classes of mechanics and workers. The hourly and daily  
6 rate of wages must not be less than the prevailing wage in the region in which the  
7 public work is located, as determined by the Labor Commissioner. (NRS 338.020)  
8 **Section 9** of this bill provides that workers who perform custom fabrication on a



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public work must also be paid such a prevailing wage. **Section 5** of this bill 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 5, sections 13 and 14** of this bill, respectively, provide that workers who perform custom fabrication must also be paid such a prevailing wage.

**Section 2** of this bill makes a declaration of legislative intent finding that: (1) the payment of prevailing wages to workers on public works projects that are funded in whole or in part by public money is essential to the economic well-being of this State, increasing the number of skilled construction workers in this State, enhancing the workforce of the State and increasing redevelopment opportunities in the State; (2) to the extent practicable, the interpretation of the provisions of the Nevada Revised Statutes, and regulations adopted pursuant thereto, must be aligned with the provisions of the federal Davis-Bacon Act, 40 U.S.C. §§ 3141 et seq., to ensure uniformity and consistency on federal and state public works projects in this State; and (3) any interpretation of the Act applies to the interpretation of chapter 338 of NRS, and any regulations adopted pursuant thereto, unless the interpretation of the Act directly conflicts with a clear and specific requirement set forth in chapter 338 of NRS and any regulations adopted pursuant thereto. **Section 8** of this bill provides that any regulation adopted by the Labor Commissioner relating to public works must be consistent with the declaration of legislative intent set forth in **section 2**.

Existing law defines the term “public work” to mean any project for the new construction, repair or reconstruction of a project financed in whole or in part from public money for certain publicly owned works and property. (NRS 338.010) **Section 3** of this bill provides that for purposes of determining whether a project is a public work, it shall be deemed that a project is financed in whole or in part from public money if, without limitation: (1) a public body pays money or other compensation directly to or on behalf of the developer or contractor of the project or any subcontractor who performs any work on the project; (2) a public body pays, credits, reduces, forgives or waives any fee, cost, rent, insurance premium, bond premium, obligation or expense, including, without limitation, an incidental expense, in relation to the project that is normally required in the execution of a contract for a public work; (3) a public body loans money in relation to the project that is required to be repaid to the public body on a contingent basis; (4) any employee of a public body performs skilled work or labor in furtherance of the project; (5) in relation to the project, a public body sells, leases or otherwise transfers for less than fair market value any developed or undeveloped real property or any other property or asset; or (6) in relation to the project, a public body transfers property of the State or political subdivision for less than fair market value.

**Section 5** amends the definition of “public work” to include the construction, demolition, alteration, custom fabrication or repair work on any property or premises, regardless of whether financed in whole or in part from public money if, at the time the contract for the project is entered into: (1) the property or premises is owned by a public body; (2) the property or premises, in whole or in part, is leased by a public body or is subject to an agreement to be subsequently leased by a public body; (3) the property, or any horizontal construction or vertical construction relating thereto, is in an improvement district; (4) the project, or any horizontal construction or vertical construction relating thereto, is a redevelopment project; (5) the project qualifies for certain tax credits; (6) the property, or any horizontal



construction or vertical construction relating thereto, has been or will be conveyed, in whole or in part, to a public body pursuant to the terms of a development agreement with the public body; or (7) a public body retains any right, including, without limitation, a contingent right, to retake ownership of the property or premises after the commencement of work on the project. **Section 4** of this bill provides that certain procedures relating to awarding contracts for public works do not apply to such public works projects. **Section 5** also revises the definition of the terms "horizontal construction" and "vertical construction."

**Sections 10-12** of this bill make conforming changes to indicate the proper placement of **sections 2 and 3** within the Nevada Revised Statutes. **Section 7** of this bill makes conforming changes to indicate the proper placement of **section 4** within the Nevada Revised Statutes.

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

**Section 1.** Chapter 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

**Sec. 2.** *The Legislature hereby finds and declares that:*

*1. The payment of prevailing wages to workers on public works projects that are funded in whole or in part by public money is essential to:*

*(a) The economic well-being of this State;*

*(b) Increasing the number of skilled construction workers in this State;*

*(c) Enhancing the workforce in this State; and*

*(d) Increasing redevelopment opportunities in this State.*

*2. To the extent practicable, the interpretation of provisions of the Nevada Revised Statutes, and regulations adopted pursuant thereto, relating to public works and prevailing wages must be aligned with provisions of the federal Davis-Bacon Act, 40 U.S.C. §§ 3141 et seq., to ensure uniformity and consistency on federal and state public works projects in this State.*

*3. It is the intent of the Legislature that any interpretation of the federal Davis-Bacon Act, 40 U.S.C. §§ 3141 et seq., applies to the interpretation of provisions of this chapter, and any regulation adopted pursuant thereto, unless the interpretation of the federal Davis-Bacon Act, 40 U.S.C. §§ 3141 et seq., directly conflicts with a clear and specific requirement set forth in this chapter or a regulation adopted pursuant thereto.*

**Sec. 3.** *For purposes of determining whether a project is a public work, it shall be deemed that a project is financed in whole or in part from public money if, without limitation:*

*1. A public body pays money or other compensation directly to or on behalf of the developer or contractor of the project or any subcontractor who performs any work on the project;*



2. A public body pays, credits, reduces, forgives or waives any fee, cost, rent, insurance premium, bond premium, obligation or expense, including, without limitation, an incidental expense, in relation to the project that is normally required in the execution of a contract for a public work;

3. A public body loans money in relation to the project that is required to be repaid to the public body on a contingent basis;

4. Any employee of a public body performs skilled work or labor in furtherance of the project;

5. In relation to the project, a public body sells, leases or otherwise transfers for less than fair market value any developed or undeveloped real property or any other property or asset; or

6. In relation to the project, a public body transfers property for less than fair market value.

**Sec. 4. 1.** The general procedures for awarding contracts, as described in NRS 338.1373 to 338.139, inclusive, do not apply to a public work completed on a property or premises if, at the time of entering into the contract:

(a) The property or premises, in whole or in part, is leased by a public body or is subject to an agreement to be subsequently leased by a public body;

(b) The property, or any horizontal construction or vertical construction relating thereto, is in an improvement district, as defined in NRS 271.130;

(c) The project, or any horizontal construction or vertical construction relating thereto, is a redevelopment project, as defined in NRS 279.412, that is financed pursuant to chapter 279 of NRS;

(d) The project is a qualified project, as defined in NRS 360.888;

(e) The property, or any horizontal construction or vertical construction relating thereto, has been or will be conveyed, in whole or in part, to a public body pursuant to the terms of a development agreement with the public body; or

(f) A public body retains any right, including, without limitation, a contingent right, to retake ownership of the property or premises after the commencement of work on the project.

2. This section must not be construed to abrogate the requirement to pay prevailing wages on a public work described in subsection 1.

**Sec. 5.** 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,



1 award or administration of contracts for public works pursuant to  
2 this chapter.

3 2. “Bona fide fringe benefit” means a benefit in the form of a  
4 contribution that is made not less frequently than monthly to an  
5 independent third party pursuant to a fund, plan or program:

6 (a) Which is established for the sole and exclusive benefit of a  
7 worker and his or her family and dependents; and

8 (b) For which none of the assets will revert to, or otherwise be  
9 credited to, any contributing employer or sponsor of the fund, plan  
10 or program.

11 ➤ The term includes, without limitation, benefits for a worker that  
12 are determined pursuant to a collective bargaining agreement and  
13 included in the determination of the prevailing wage by the Labor  
14 Commissioner pursuant to NRS 338.030.

15 3. “Contract” means a written contract entered into between a  
16 contractor and a public body for the provision of labor, materials,  
17 equipment or supplies for a public work.

18 4. “Contractor” means:

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

21 (b) A design-build team.

22 5. “Day labor” means all cases where public bodies, their  
23 officers, agents or employees, hire, supervise and pay the wages  
24 thereof directly to a worker or workers employed by them on public  
25 works by the day and not under a contract in writing.

26 6. “Design-build contract” means a contract between a public  
27 body and a design-build team in which the design-build team agrees  
28 to design and construct a public work.

29 7. “Design-build team” means an entity that consists of:

30 (a) At least one person who is licensed as a general engineering  
31 contractor or a general building contractor pursuant to chapter 624  
32 of NRS; and

33 (b) For a public work that consists of:

34 (1) A building and its site, at least one person who holds a  
35 certificate of registration to practice architecture pursuant to chapter  
36 623 of NRS.

37 (2) Anything other than a building and its site, at least one  
38 person who holds a certificate of registration to practice architecture  
39 pursuant to chapter 623 of NRS or landscape architecture pursuant  
40 to chapter 623A of NRS or who is licensed as a professional  
41 engineer pursuant to chapter 625 of NRS.

42 8. “Design professional” means:

43 (a) A person who is licensed as a professional engineer pursuant  
44 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.

9. “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. “Division” means the State Public Works Division of the Department of Administration.

11. “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. “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.

13. “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. “Horizontal construction” means ~~any~~ the construction ~~for alteration, repair, renovation, demolition or remodeling necessary to complete a~~ of any fixed 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,



1 pier, and any other work incidental thereto. The term does not  
2 include vertical construction, the construction of any terminal or  
3 other building of an airport or airway, or the construction of any  
4 other building.

5 15. "Local government" means every political subdivision or  
6 other entity which has the right to levy or receive money from ad  
7 valorem or other taxes or any mandatory assessments, and includes,  
8 without limitation, counties, cities, towns, boards, school districts  
9 and other districts organized pursuant to chapters 244A, 318, 318A,  
10 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,  
11 inclusive, and any agency or department of a county or city which  
12 prepares a budget separate from that of the parent political  
13 subdivision. The term includes a person who has been designated by  
14 the governing body of a local government to serve as its authorized  
15 representative.

16 16. "Offense" means:

17 (a) Failing to:

18 (1) Pay the prevailing wage required pursuant to this chapter;

19 (2) Pay the contributions for unemployment compensation  
20 required pursuant to chapter 612 of NRS;

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

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

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

26 17. "Prime contractor" means a contractor who:

27 (a) Contracts to construct an entire project;

28 (b) Coordinates all work performed on the entire project;

29 (c) Uses his or her own workforce to perform all or a part of the  
30 public work; and

31 (d) Contracts for the services of any subcontractor or  
32 independent contractor or is responsible for payment to any  
33 contracted subcontractors or independent contractors.

34 ➡ The term includes, without limitation, a general contractor or a  
35 specialty contractor who is authorized to bid on a project pursuant to  
36 NRS 338.139 or 338.148.

37 18. "Public body" means the State, county, city, town, school  
38 district or any public agency of this State or its political subdivisions  
39 sponsoring or financing a public work.

40 19. "Public work" means any project ~~for the new construction,~~  
41 ~~repair or reconstruction of a project financed~~ :

42 (a) **Financed** in whole or in part from public money for:

43 ~~{(a)}~~ (1) Public buildings;

44 ~~{(b)}~~ (2) Jails and prisons;

45 ~~{(c)}~~ (3) Public roads;



1     ~~[(d)]~~ (4) Public highways;  
2     ~~[(e)]~~ (5) Public streets and alleys;  
3     ~~[(f)]~~ (6) Public utilities;  
4     ~~[(g)]~~ (7) Publicly owned water mains and sewers;  
5     ~~[(h)]~~ (8) Public parks and playgrounds;  
6     ~~[(i)]~~ (9) Public convention facilities which are financed at least  
7 in part ~~[with]~~ from public money; and

8     ~~[(j)]~~ (10) All ~~[other]~~ publicly owned works and property ~~[(j)]~~ and  
9 publicly leased property where construction, reconstruction,  
10 demolition, alteration, custom fabrication, repair, maintenance,  
11 painting or decorating is performed by skilled mechanics, skilled  
12 workers, semiskilled mechanics, semiskilled workers or unskilled  
13 labor.

14     (b) That includes construction, demolition, alteration, custom  
15 fabrication or repair work on any property or premises, regardless  
16 of whether financed in whole or in part from public money if, at  
17 the time the contract for the project is entered into:

18         (1) The property or premises is owned by a public body;

19         (2) The property or premises, in whole or in part, is leased  
20 by a public body or is subject to an agreement to be subsequently  
21 leased by a public body;

22         (3) The property, or any horizontal construction or vertical  
23 construction relating thereto, is in an improvement district, as that  
24 term is defined in NRS 271.130;

25         (4) The project, or any horizontal construction or vertical  
26 construction relating thereto, is a redevelopment project, as that  
27 term is defined in NRS 279.412, that is financed pursuant to  
28 chapter 279 of NRS;

29         (5) The project is a qualified project, as that term is defined  
30 in NRS 360.888;

31         (6) The property, or any horizontal construction or vertical  
32 construction relating thereto, has been or will be conveyed, in  
33 whole or in part, to a public body pursuant to the terms of a  
34 development agreement with the public body; or

35         (7) A public body retains any right, including, without  
36 limitation, a contingent right, to retake ownership of the property  
37 or premises after the commencement of work on the project.

38     20. “Specialty contractor” means a person who is licensed to  
39 conduct business as described in subsection 4 of NRS 624.215.

40     21. “Stand-alone underground utility project” means an  
41 underground utility project that is not integrated into a larger  
42 project, including, without limitation:

43         (a) An underground sewer line or an underground pipeline for  
44 the conveyance of water, including facilities appurtenant thereto;  
45 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. "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. "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. "Supplier" means a person who provides materials, equipment or supplies for a construction project.

25. "Vertical construction" means ~~any~~ *the* construction ~~of alteration, repair, renovation, demolition~~ or remodeling ~~necessary to complete a public work for~~ *of* 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. "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. "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. 6.** 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,



1 award or administration of contracts for public works pursuant to  
2 this chapter.

3 2. “Bona fide fringe benefit” means a benefit in the form of a  
4 contribution that is made not less frequently than monthly to an  
5 independent third party pursuant to a fund, plan or program:

6 (a) Which is established for the sole and exclusive benefit of a  
7 worker and his or her family and dependents; and

8 (b) For which none of the assets will revert to, or otherwise be  
9 credited to, any contributing employer or sponsor of the fund, plan  
10 or program.

11 ➤ The term includes, without limitation, benefits for a worker that  
12 are determined pursuant to a collective bargaining agreement and  
13 included in the determination of the prevailing wage by the Labor  
14 Commissioner pursuant to NRS 338.030.

15 3. “Contract” means a written contract entered into between a  
16 contractor and a public body for the provision of labor, materials,  
17 equipment or supplies for a public work.

18 4. “Contractor” means:

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

21 (b) A design-build team.

22 5. “Day labor” means all cases where public bodies, their  
23 officers, agents or employees, hire, supervise and pay the wages  
24 thereof directly to a worker or workers employed by them on public  
25 works by the day and not under a contract in writing.

26 6. “Design-build contract” means a contract between a public  
27 body and a design-build team in which the design-build team agrees  
28 to design and construct a public work.

29 7. “Design-build team” means an entity that consists of:

30 (a) At least one person who is licensed as a general engineering  
31 contractor or a general building contractor pursuant to chapter 624  
32 of NRS; and

33 (b) For a public work that consists of:

34 (1) A building and its site, at least one person who holds a  
35 certificate of registration to practice architecture pursuant to chapter  
36 623 of NRS.

37 (2) Anything other than a building and its site, at least one  
38 person who holds a certificate of registration to practice architecture  
39 pursuant to chapter 623 of NRS or landscape architecture pursuant  
40 to chapter 623A of NRS or who is licensed as a professional  
41 engineer pursuant to chapter 625 of NRS.

42 8. “Design professional” means:

43 (a) A person who is licensed as a professional engineer pursuant  
44 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.

9. "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. "Division" means the State Public Works Division of the Department of Administration.

11. "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. "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.

13. "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. "Horizontal construction" means the construction of any fixed 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,



1 the construction of any terminal or other building of an airport or  
2 airway, or the construction of any other building.

3 15. "Local government" means every political subdivision or  
4 other entity which has the right to levy or receive money from ad  
5 valorem or other taxes or any mandatory assessments, and includes,  
6 without limitation, counties, cities, towns, boards, school districts,  
7 and other districts organized pursuant to chapters 244A, 318, 318A,  
8 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,  
9 inclusive, and any agency or department of a county or city which  
10 prepares a budget separate from that of the parent political  
11 subdivision. The term includes a person who has been designated by  
12 the governing body of a local government to serve as its authorized  
13 representative.

14 16. "Offense" means:

15 (a) Failing to:

16 (1) Pay the prevailing wage required pursuant to this chapter;

17 (2) Pay the contributions for unemployment compensation  
18 required pursuant to chapter 612 of NRS;

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

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

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

24 17. "Prime contractor" means a contractor who:

25 (a) Contracts to construct an entire project;

26 (b) Coordinates all work performed on the entire project;

27 (c) Uses his or her own workforce to perform all or a part of the  
28 public work; and

29 (d) Contracts for the services of any subcontractor or  
30 independent contractor or is responsible for payment to any  
31 contracted subcontractors or independent contractors.

32 ➤ The term includes, without limitation, a general contractor or a  
33 specialty contractor who is authorized to bid on a project pursuant to  
34 NRS 338.139 or 338.148.

35 18. "Public body" means the State, county, city, town, school  
36 district or any public agency of this State or its political subdivisions  
37 sponsoring or financing a public work.

38 19. "Public work" means any project:

39 (a) Financed in whole or in part from public money for:

40 (1) Public buildings;

41 (2) Jails and prisons;

42 (3) Public roads;

43 (4) Public highways;

44 (5) Public streets and alleys;

45 (6) Public utilities;



1 (7) Publicly owned water mains and sewers;

2 (8) Public parks and playgrounds;

3 (9) Public convention facilities which are financed at least in  
4 part from public money; and

5 (10) All publicly owned works and property and publicly  
6 leased property where construction, reconstruction, demolition,  
7 alteration, custom fabrication, repair, maintenance, painting or  
8 decorating is performed by skilled mechanics, skilled workers,  
9 semiskilled mechanics, semiskilled workers or unskilled labor.

10 (b) That includes construction, demolition, alteration, custom  
11 fabrication or repair work on any property or premises, regardless of  
12 whether financed in whole or in part from public money if, at the  
13 time the contract for the project is entered into:

14 (1) The property or premises is owned by a public body;

15 (2) The property or premises, in whole or in part, is leased by  
16 a public body or is subject to an agreement to be subsequently  
17 leased by a public body;

18 (3) The property, or any horizontal construction or vertical  
19 construction relating thereto, is in an improvement district, as that  
20 term is defined in NRS 271.130;

21 (4) The project, or any horizontal construction or vertical  
22 construction relating thereto, is a redevelopment project, as that term  
23 is defined in NRS 279.412, that is financed pursuant to chapter 279  
24 of NRS;

25 (5) ~~["The project is a qualified project, as that term is defined~~  
26 ~~in NRS 360.888;~~

27 ~~— (6) ]~~ The property, or any horizontal construction or vertical  
28 construction relating thereto, has been or will be conveyed, in whole  
29 or in part, to a public body pursuant to the terms of a development  
30 agreement with the public body; or

31 ~~[(7) ]~~ (6) A public body retains any right, including, without  
32 limitation, a contingent right, to retake ownership of the property or  
33 premises after the commencement of work on the project.

34 20. "Specialty contractor" means a person who is licensed to  
35 conduct business as described in subsection 4 of NRS 624.215.

36 21. "Stand-alone underground utility project" means an  
37 underground utility project that is not integrated into a larger  
38 project, including, without limitation:

39 (a) An underground sewer line or an underground pipeline for  
40 the conveyance of water, including facilities appurtenant thereto;  
41 and

42 (b) A project for the construction or installation of a storm drain,  
43 including facilities appurtenant thereto,



1 ➤ that is not located at the site of a public work for the design and  
2 construction of which a public body is authorized to contract with a  
3 design-build team pursuant to subsection 2 of NRS 338.1711.

4 22. "Subcontract" means a written contract entered into  
5 between:

6 (a) A contractor and a subcontractor or supplier; or

7 (b) A subcontractor and another subcontractor or supplier,

8 ➤ for the provision of labor, materials, equipment or supplies for a  
9 construction project.

10 23. "Subcontractor" means a person who:

11 (a) Is licensed pursuant to the provisions of chapter 624 of NRS  
12 or performs such work that the person is not required to be licensed  
13 pursuant to chapter 624 of NRS; and

14 (b) Contracts with a contractor, another subcontractor or a  
15 supplier to provide labor, materials or services for a construction  
16 project.

17 24. "Supplier" means a person who provides materials,  
18 equipment or supplies for a construction project.

19 25. "Vertical construction" means the construction or  
20 remodeling of any building, structure or other improvement that is  
21 predominantly vertical, including, without limitation, a building,  
22 structure or improvement for the support, shelter and enclosure of  
23 persons, animals, chattels or movable property of any kind, and any  
24 other work or improvement appurtenant thereto.

25 26. "Wages" means:

26 (a) The basic hourly rate of pay; and

27 (b) The amount of pension, health and welfare, vacation and  
28 holiday pay, the cost of apprenticeship training or other bona fide  
29 fringe benefits which are a benefit to the worker.

30 27. "Worker" means a skilled mechanic, skilled worker,  
31 semiskilled mechanic, semiskilled worker, unskilled worker or  
32 worker who performs custom fabrication in the service of a  
33 contractor or subcontractor under any appointment or contract of  
34 hire or apprenticeship, express or implied, oral or written, whether  
35 lawfully or unlawfully employed. The term does not include a  
36 design professional.

37 **Sec. 7.** NRS 338.0115 is hereby amended to read as follows:

38 338.0115 1. Except as otherwise provided in subsection 2,  
39 the provisions of this chapter and chapters 332 and 339 of NRS do  
40 not apply to a contract under which a private developer, for the  
41 benefit of a private development, constructs a water or sewer line  
42 extension and any related appurtenances:

43 (a) Which qualify as a public work pursuant to NRS 338.010;  
44 and



(b) For which the developer will receive a monetary contribution or refund from a public body as reimbursement for a portion of the costs of the project.

2. If, pursuant to the provisions of such a contract, the developer is not responsible for paying all of the initial construction costs of the project, the provisions of NRS 338.0117, 338.013 to 338.090, inclusive, and 338.1373 to 338.148, inclusive, *and section 4 of this act* apply to the contract.

**Sec. 8.** NRS 338.012 is hereby amended to read as follows:

338.012 **1.** The Labor Commissioner may adopt such regulations as are necessary to enable the Labor Commissioner to carry out his or her duties pursuant to the provisions of this chapter.

**2. Any regulation adopted by the Labor Commissioner pursuant to this chapter must be consistent with the declaration of legislative intent set forth in section 2 of this act.**

**Sec. 9.** 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



1 limitation, hours worked for the contractor or subcontractor on work  
2 other than the public work, unless by mutual agreement the  
3 mechanic or worker works a scheduled 10 hours per day for 4  
4 calendar days within any scheduled week of work.

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

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

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

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

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


22 **Sec. 10.** NRS 338.050 is hereby amended to read as follows:

23 338.050 For the purpose of NRS 338.010 to 338.090, inclusive,  
24 *and sections 2 and 3 of this act*, except as otherwise provided by  
25 specific statute, every worker who performs work for a public work  
26 covered by a contract therefor is subject to all of the provisions of  
27 NRS 338.010 to 338.090, inclusive, *and sections 2 and 3 of this*  
28 *act*, regardless of any contractual relationship alleged to exist  
29 between such worker and his or her employer.

30 **Sec. 11.** NRS 338.070 is hereby amended to read as follows:

31 338.070 1. Any public body awarding a contract shall:

32 (a) Investigate possible violations of the provisions of NRS  
33 338.010 to 338.090, inclusive, *and sections 2 and 3 of this act*  
34 committed in the course of the execution of the contract, and  
35 determine whether a violation has been committed and inform the  
36 Labor Commissioner of any such violations; and

37 (b) When making payments to the contractor engaged on the  
38 public work of money becoming due under the contract, withhold  
39 and retain all sums forfeited pursuant to the provisions of NRS  
40 338.010 to 338.090, inclusive , *and sections 2 and 3 of this act*.

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

44 3. Except as otherwise provided in subsection 7, it is lawful for  
45 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 **[H], and sections 2 and 3 of this act.** 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. 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 this subsection.

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.

**Sec. 12.** NRS 338.090 is hereby amended to read as follows:

338.090 1. Except as otherwise provided in subsection 5, any person, including the officers, agents or employees of a public body, who violates any provision of NRS 338.010 to 338.090, inclusive, *and sections 2 and 3 of this act* or any regulation adopted pursuant thereto, is guilty of a misdemeanor.

2. The Labor Commissioner, in addition to any other remedy or penalty provided in this chapter:

(a) Shall, except as otherwise provided in subsection 4, assess a person who, after an opportunity for a hearing, is found to have failed to pay the prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive, an amount equal to the difference between the prevailing wages required to be paid and the wages that the contractor or subcontractor actually paid; and

(b) May, in addition to any other administrative penalty, impose an administrative penalty not to exceed the costs incurred by the Labor Commissioner to investigate and prosecute the matter.

3. If the Labor Commissioner finds that a person has failed to pay the prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive, the public body may, in addition to any other remedy or penalty provided in this chapter, require the person to pay the actual costs incurred by the public body to investigate the matter.

4. The Labor Commissioner is not required to assess a person an amount equal to the difference between the prevailing wages required to be paid and the wages that the contractor or subcontractor actually paid if the contractor or subcontractor has already paid that amount to a worker pursuant to paragraph (c) of subsection 4 of NRS 338.035.

5. The provisions of subsection 1 do not apply to a subcontractor specified in NRS 338.072.

**Sec. 13.** 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.

**Sec. 14.** NRS 333A.120 is hereby amended to read as follows:

333A.120 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.

**Sec. 15.** Section 4 of this act is hereby amended to read as follows:

Sec. 4. 1. The general procedures for awarding contracts, as described in NRS 338.1373 to 338.139, inclusive, do not apply to a public work completed on a property or premises if, at the time of entering into the contract:

(a) The property or premises, in whole or in part, is leased by a public body or is subject to an agreement to be subsequently leased by a public body;

(b) The property, or any horizontal construction or vertical construction relating thereto, is in an improvement district, as defined in NRS 271.130;

(c) The project, or any horizontal construction or vertical construction relating thereto, is a redevelopment project, as



defined in NRS 279.412, that is financed pursuant to chapter 279 of NRS;

(d) ~~[(The project is a qualified project, as defined in NRS 360.888;~~

~~—(e)]~~ The property, or any horizontal construction or vertical construction relating thereto, has been or will be conveyed, in whole or in part, to a public body pursuant to the terms of a development agreement with the public body; or

~~[(e)]~~ (e) A public body retains any right, including, without limitation, a contingent right, to retake ownership of the property or premises after the commencement of work on the project.

2. This section must not be construed to abrogate the requirement to pay prevailing wages on a public work described in subsection 1.

**Sec. 16.** 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. 17.** 1. This section and section 16 of this act become effective upon passage and approval.

2. Sections 1 to 5, inclusive, and 7 to 14, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting any 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.

3. Sections 6 and 15 of this act become effective on July 1, 2032.

