

SENATE BILL NO. 226—SENATOR CANNIZZARO

MARCH 7, 2023

JOINT SPONSOR: ASSEMBLYMAN YEAGER

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing governmental financial administration. (BDR 28-494)

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

CONTAINS UNFUNDED MANDATE (§ 12.7)
(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 financial administration; providing a declaration of legislative intent regarding the payment of prevailing wages on public works projects; establishing certain requirements relating to certain organizations that partner with certain public bodies for the construction of hospitals, medical education buildings or medical research buildings; requiring the payment of prevailing wages on certain leases and lease-purchase and installment-purchase agreements entered into by local governments; 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 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



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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; and (2) careful scrutiny of novel leasing and financial arrangements entered into and incentives offered by a public body is necessary to ensure workers are paid the prevailing wage. **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 sets forth certain requirements relating to state financial administration and local financial administration. (Chapters 353 and 354 of NRS) **Sections 10.5 and 12.3** of this bill authorize an organization to partner with a state agency or local government and provide private financing only for the construction of a hospital, medical education building or medical research building in this State if the organization: (1) qualifies as a tax-exempt organization and a supporting organization under certain provisions of the Internal Revenue Code; and (2) is organized and operated to support a state agency or local government in the construction of hospitals or such medical buildings.

Existing law makes the prevailing wage requirements applicable to certain, specific construction projects. (NRS 244.286, 244A.058, 244A.763, 268.568, 271.710, 271.800, 278C.240, 279.500, 318.140, 318.144, 321.416, 332.390, 333A.120, 349.670, 349.956, 349.981, 388A.635, 408.3886, 543.545, 701B.265, 701B.625) **Sections 10.5 and 12.3** require the payment of prevailing wages on projects developed by such organizations. **Sections 10.5 and 12.3** also provide that projects developed by such organizations are exempt from certain provisions of existing law governing the award of contracts and the oversight and involvement of the State Public Works Division of the Department of Administration. **Sections 10.5 and 12.3** require subcontracts for such projects to be competitively bid and authorize an eligible subcontractor who bids on such a project to receive certain bidding preferences. Lastly, **sections 10.5 and 12.3** require a contract or agreement entered into with a prime contractor for such a project to include provisions requiring: (1) at least 15 percent of the subcontracts for the project to be awarded to local small businesses; and (2) the use of apprentices in accordance with certain provisions of existing law.

Existing law sets forth a legislative declaration regarding the importance of the use of lease-purchase agreements and installment-purchase agreements by local governments, including the use of such agreements for the construction, alteration, repair or remodeling of an improvement. (NRS 354.740) **Sections 12.7 and 12.9** of this bill move this language regarding the use of such agreements for the construction, alteration, repair or remodeling of an improvement from the legislative declaration. **Section 12.7** provides that if a local government uses such agreements or leases for the construction, alteration, repair or remodeling of an improvement: (1) the person or entity that executes one or more contracts or agreements for the work must include provisions in the contract or agreement requiring the payment of prevailing wages; and (2) the local government, the contractor and any subcontractor must pay prevailing wages. **Section 12.5** of this bill defines "agreement" for the purposes of these provisions.

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

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

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

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

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

9 *2. To ensure the intentions set forth in subsection 1 are*
10 *upheld, careful scrutiny of novel leasing and financing*
11 *arrangements entered into or incentives offered by public bodies*
12 *for the construction of public works is necessary to ensure that*
13 *workers on public works projects are paid prevailing wages.*

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

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

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

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

18 **Sec. 7.** (Deleted by amendment.)

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

20 338.012 *1. The Labor Commissioner may adopt such*
21 *regulations as are necessary to enable the Labor Commissioner to*
22 *carry out his or her duties pursuant to the provisions of this chapter.*

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

26 **Sec. 9.** (Deleted by amendment.)

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

28 338.050 For the purpose of NRS 338.010 to 338.090, inclusive,
29 *and section 2 of this act*, except as otherwise provided by specific
30 statute, every worker who performs work for a public work covered
31 by a contract therefor is subject to all of the provisions of NRS
32 338.010 to 338.090, inclusive, *and section 2 of this act*, regardless
33 of any contractual relationship alleged to exist between such worker
34 and his or her employer.

35 **Sec. 10.5.** Chapter 353 of NRS is hereby amended by adding
36 thereto a new section to read as follows:

37 *1. An organization may partner with a state agency and*
38 *provide private financing only for the construction of a hospital,*
39 *medical education building or medical research building in this*
40 *State if the organization:*

41 *(a) Qualifies as a tax-exempt organization pursuant to 26*
42 *U.S.C. § 501(c) and a supporting organization pursuant to 26*
43 *U.S.C. § 509(a)(3); and*



(b) *Is organized and operated to support the state agency in the construction of a hospital, medical education building or medical research building in this State.*

2. *An organization that meets the criteria set forth in subsection 1:*

(a) *Is exempt from the provisions of NRS 338.1375 to 338.139, inclusive, in selecting a contractor for a project developed by the organization;*

(b) *Shall comply with the provisions of NRS 338.013 to 338.090, inclusive; and*

(c) *Is exempt from the provisions of chapter 341 of NRS and not subject to the oversight or involvement of the State Public Works Division of the Department of Administration, except for any authority of the Deputy Administrator of the Public Works - Compliance and Code Enforcement Section exercised pursuant to subsection 2 of NRS 341.145.*

3. *All subcontracts for a project developed by an organization that meets the criteria set forth in subsection 1 must be competitively bid pursuant to NRS 338.1685 to 338.16995, inclusive. An eligible subcontractor who bids on such a project is entitled to receive a preference in bidding pursuant to subsection 3 or 4 NRS 338.1389.*

4. *Any contract or agreement entered into with a prime contractor for a project developed by an organization that meets the criteria set forth in subsection 1 must, without limitation, include provisions requiring:*

(a) *That at least 15 percent of the subcontracts for the project will be awarded to local small businesses; and*

(b) *The prime contractor to comply with the requirements of NRS 338.01165 for the use of apprentices.*

5. *As used in this section, "state agency" means an agency, board, bureau, commission, department, division, elected officer or any other unit of the Executive Department of the State Government. The term includes the Nevada System of High Education.*

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 12.2. Chapter 354 of NRS is hereby amended by adding thereto the provisions set forth as sections 12.3, 12.5 and 12.7 of this act.

Sec. 12.3. 1. *An organization may partner with a local government and provide private financing only for the construction of a hospital, medical education building or medical research building in this State if the organization:*



(a) *Qualifies as a tax-exempt organization pursuant to U.S.C. § 501(c) and a supporting organization pursuant to U.S.C. § 509(a)(3); and*

(b) *Is organized and operated to support the local government in the construction of a hospital, medical education building or medical research building in this State.*

2. *An organization that meets the criteria set forth in subsection 1:*

(a) *Is exempt from the provisions of NRS 338.1375 to 338.139, inclusive, in selecting a contractor for a project developed by the organization;*

(b) *Shall comply with the provisions of NRS 338.013 to 338.090, inclusive; and*

(c) *Is exempt from the provisions of chapter 341 of NRS and not subject to the oversight or involvement of the State Public Works Division of the Department of Administration, except for any authority of the Deputy Administrator of the Public Works - Compliance and Code Enforcement Section exercised pursuant to subsection 2 of NRS 341.145.*

3. *All subcontracts for a project developed by an organization that meets the criteria set forth in subsection 1 must be competitively bid pursuant to NRS 338.1685 to 338.16995, inclusive. An eligible subcontractor who bids on such a project is entitled to receive a preference in bidding pursuant to subsection 3 or 4 NRS 338.1389.*

4. *Any contract or agreement entered into with a prime contractor for a project developed by an organization that meets the criteria set forth in subsection 1 must, without limitation, include provisions requiring:*

(a) *That at least 15 percent of the subcontracts for the project will be awarded to local small businesses; and*

(b) *The prime contractor to comply with the requirements of NRS 338.01165 for the use of apprentices.*

Sec. 12.5. *As used in NRS 354.740 and section 12.7 of this act, "agreement" means an agreement to purchase property in the form of a lease or an agreement to pay in installments, pursuant to which a local government may pay the purchase price of real or personal property over a period of time which extends beyond the biennium in which the agreement is executed, including, without limitation:*

1. *An agreement pursuant to which a local government may acquire the property that is the subject of the agreement at the end of the term of the agreement or at the end of the term of a renewal of the agreement upon payment of no additional consideration or nominal additional consideration; and*



2. An agreement that, for the purposes of federal income tax, is treated as an agreement for conditional sale.

Sec. 12.7. *If a local government enters into a lease, lease-purchase or installment-purchase agreement which involves the construction, alteration, repair or remodeling of an improvement:*

1. The person or entity that executes one or more contracts or agreements for the actual construction, alteration, repair or remodeling of the improvement shall include in such a contract or agreement the contractual provisions and stipulations that are required to be included in a contract for a public work pursuant to the provisions of NRS 338.013 to 338.090, inclusive.

2. The local government, the contractor who is awarded the contract or entered into the agreement to perform the construction, alteration, repair or remodeling of the improvement and any subcontractor on the project 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 project or had awarded the contract.

Sec. 12.9. NRS 354.740 is hereby amended to read as follows:

354.740 The Legislature hereby finds and declares that:

1. The authority provided by other specific statutes for the government of this State and the political subdivisions of this State to use *leases and* lease-purchase and installment-purchase agreements provides an important and valuable option for these governmental entities and, when this authority is used properly, provides great benefit to the residents of this State.

2. The statutory provisions governing the use of *leases and* lease-purchase and installment-purchase agreements should be interpreted to allow the process of entering into and carrying out these agreements to be as streamlined and efficient as possible.

3. The government of this State and the political subdivisions of this State should not use *leases and* lease-purchase and installment-purchase agreements to:

(a) Engage in or allow bid-shopping; or

(b) Avoid or circumvent any requirement regarding the payment of prevailing wages for public works.

4. When using *leases and* lease-purchase and installment-purchase agreements, the government of this State and the political subdivisions of this State should provide for the preferential hiring of Nevada residents to the extent otherwise required by law.

~~{5. If a lease purchase or installment purchase agreement pursuant to this section involves the construction, alteration, repair or remodeling of an improvement:~~

~~—(a) The person or entity that executes one or more contracts or agreements for the actual construction, alteration, repair or~~



remodeling of the improvement shall include in such a contract or agreement the contractual provisions and stipulations that are required to be included in a contract for a public work pursuant to the provisions of NRS 338.013 to 338.090, inclusive.

(b) The government of this State or a political subdivision of this State, the contractor who is awarded the contract or entered into the agreement to perform the construction, alteration, repair or remodeling of the improvement and any subcontractor on the project shall comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same manner as if the government of this State or a political subdivision of this State had undertaken the project or had awarded the contract.]

Sec. 13. (Deleted by amendment.)

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

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. 16.5. The amendatory provisions of this act do not apply to any contract, lease or other agreement entered into before the effective date of this act.

Sec. 17. This act becomes effective upon passage and approval.

