

ASSEMBLY BILL NO. 281—ASSEMBLYMEN HOGAN, MUNFORD;
AIZLEY, BUSTAMANTE ADAMS, DALY, HORNE,
KIRKPATRICK, MARTIN, NEAL, OHRENSCHALL, PIERCE,
SPRINKLE, STEWART AND SWANK

MARCH 15, 2013

JOINT SPONSORS: SENATORS PARKS, MANENDO, SEGERBLOM,
ATKINSON, FORD; DENIS AND KIHUEN

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to recordkeeping on
public works projects. (BDR 28-1070)

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

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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; revising provisions requiring that
certain records pertaining to workers be kept by a
contractor and a subcontractor on a public works project;
and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law requires a contractor and a subcontractor engaged on a public
2 work to keep or cause to be kept certain records about the workers who are
3 employed by the contractor and subcontractor in connection with the public work,
4 including, for example, the name, occupation and wages of each worker. Such
5 records must be open at all reasonable hours to the inspection of the public body
6 that awarded the contract and are considered public records of the public entity.
7 (NRS 239.010, 338.070) This bill requires that such records also include the gender
8 and ethnicity of each such worker, but only if the worker agrees to supply such
9 information voluntarily.



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

- 1 **Section 1.** NRS 338.010 is hereby amended to read as follows:
2 338.010 As used in this chapter:
3 1. “Authorized representative” means a person designated by a
4 public body to be responsible for the development, solicitation,
5 award or administration of contracts for public works pursuant to
6 this chapter.
7 2. “Contract” means a written contract entered into between a
8 contractor and a public body for the provision of labor, materials,
9 equipment or supplies for a public work.
10 3. “Contractor” means:
11 (a) A person who is licensed pursuant to the provisions of
12 chapter 624 of NRS.
13 (b) A design-build team.
14 4. “Day labor” means all cases where public bodies, their
15 officers, agents or employees, hire, supervise and pay the wages
16 thereof directly to a worker or workers employed by them on public
17 works by the day and not under a contract in writing.
18 5. “Design-build contract” means a contract between a public
19 body and a design-build team in which the design-build team agrees
20 to design and construct a public work.
21 6. “Design-build team” means an entity that consists of:
22 (a) At least one person who is licensed as a general engineering
23 contractor or a general building contractor pursuant to chapter 624
24 of NRS; and
25 (b) For a public work that consists of:
26 (1) A building and its site, at least one person who holds a
27 certificate of registration to practice architecture pursuant to chapter
28 623 of NRS.
29 (2) Anything other than a building and its site, at least one
30 person who holds a certificate of registration to practice architecture
31 pursuant to chapter 623 of NRS or landscape architecture pursuant
32 to chapter 623A of NRS or who is licensed as a professional
33 engineer pursuant to chapter 625 of NRS.
34 7. “Design professional” means:
35 (a) A person who is licensed as a professional engineer pursuant
36 to chapter 625 of NRS;
37 (b) A person who is licensed as a professional land surveyor
38 pursuant to chapter 625 of NRS;
39 (c) A person who holds a certificate of registration to engage in
40 the practice of architecture, interior design or residential design
41 pursuant to chapter 623 of NRS;



1 (d) A person who holds a certificate of registration to engage in
2 the practice of landscape architecture pursuant to chapter 623A of
3 NRS; or

4 (e) A business entity that engages in the practice of professional
5 engineering, land surveying, architecture or landscape architecture.

6 8. "Division" means the State Public Works Division of the
7 Department of Administration.

8 9. "Eligible bidder" means a person who is:

9 (a) Found to be a responsible and responsive contractor by a
10 local government or its authorized representative which requests
11 bids for a public work in accordance with paragraph (b) of
12 subsection 1 of NRS 338.1373; or

13 (b) Determined by a public body or its authorized representative
14 which awarded a contract for a public work pursuant to NRS
15 338.1375 to 338.139, inclusive, to be qualified to bid on that
16 contract pursuant to NRS 338.1379 or 338.1382.

17 10. "General contractor" means a person who is licensed to
18 conduct business in one, or both, of the following branches of the
19 contracting business:

20 (a) General engineering contracting, as described in subsection 2
21 of NRS 624.215.

22 (b) General building contracting, as described in subsection 3 of
23 NRS 624.215.

24 11. "Governing body" means the board, council, commission
25 or other body in which the general legislative and fiscal powers of a
26 local government are vested.

27 12. "Local government" means every political subdivision or
28 other entity which has the right to levy or receive money from ad
29 valorem or other taxes or any mandatory assessments, and includes,
30 without limitation, counties, cities, towns, boards, school districts
31 and other districts organized pursuant to chapters 244A, 309, 318,
32 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,
33 inclusive, and any agency or department of a county or city which
34 prepares a budget separate from that of the parent political
35 subdivision. The term includes a person who has been designated by
36 the governing body of a local government to serve as its authorized
37 representative.

38 13. "Offense" means failing to:

39 (a) Pay the prevailing wage required pursuant to this chapter;

40 (b) Pay the contributions for unemployment compensation
41 required pursuant to chapter 612 of NRS;

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

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

45 14. "Prime contractor" means a contractor who:



- 1 (a) Contracts to construct an entire project;
- 2 (b) Coordinates all work performed on the entire project;
- 3 (c) Uses his or her own workforce to perform all or a part of the
- 4 public work; and
- 5 (d) Contracts for the services of any subcontractor or
- 6 independent contractor or is responsible for payment to any
- 7 contracted subcontractors or independent contractors.
- 8 ➔ The term includes, without limitation, a general contractor or a
- 9 specialty contractor who is authorized to bid on a project pursuant to
- 10 NRS 338.139 or 338.148.

11 15. "Public body" means the State, county, city, town, school

12 district or any public agency of this State or its political subdivisions

13 sponsoring or financing a public work.

14 16. "Public work" means any project for the new construction,

15 repair or reconstruction of:

16 (a) A project financed in whole or in part from public money

17 for:

- 18 (1) Public buildings;
- 19 (2) Jails and prisons;
- 20 (3) Public roads;
- 21 (4) Public highways;
- 22 (5) Public streets and alleys;
- 23 (6) Public utilities;
- 24 (7) Publicly owned water mains and sewers;
- 25 (8) Public parks and playgrounds;
- 26 (9) Public convention facilities which are financed at least in
- 27 part with public money; and
- 28 (10) All other publicly owned works and property.

29 (b) A building for the Nevada System of Higher Education of

30 which 25 percent or more of the costs of the building as a whole are

31 paid from money appropriated by this State or from federal money.

32 17. "Specialty contractor" means a person who is licensed to

33 conduct business as described in subsection 4 of NRS 624.215.

34 18. "Stand-alone underground utility project" means an

35 underground utility project that is not integrated into a larger

36 project, including, without limitation:

37 (a) An underground sewer line or an underground pipeline for

38 the conveyance of water, including facilities appurtenant thereto;

39 and

40 (b) A project for the construction or installation of a storm drain,

41 including facilities appurtenant thereto,

42 ➔ that is not located at the site of a public work for the design and

43 construction of which a public body is authorized to contract with a

44 design-build team pursuant to subsection 2 of NRS 338.1711.



1 19. "Subcontract" means a written contract entered into
2 between:

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

4 (b) A subcontractor and another subcontractor or supplier,
5 for the provision of labor, materials, equipment or supplies for a
6 construction project.

7 20. "Subcontractor" means a person who:

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

11 (b) Contracts with a contractor, another subcontractor or a
12 supplier to provide labor, materials or services for a construction
13 project.

14 21. "Supplier" means a person who provides materials,
15 equipment or supplies for a construction project.

16 22. "Wages" means:

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

18 (b) The amount of pension, health and welfare, vacation and
19 holiday pay, the cost of apprenticeship training or other similar
20 programs or other bona fide fringe benefits which are a benefit to
21 the worker.

22 23. "Worker" means a skilled mechanic, skilled worker,
23 semiskilled mechanic, semiskilled worker or unskilled worker in the
24 service of a contractor or subcontractor under any appointment or
25 contract of hire or apprenticeship, express or implied, oral or
26 written, whether lawfully or unlawfully employed. The term does
27 not include a design professional.

28 **Sec. 2.** NRS 338.060 is hereby amended to read as follows:

29 338.060 1. Except as otherwise provided in subsection 8, a
30 contractor engaged on a public work shall forfeit, as a penalty to the
31 public body on behalf of which the contract has been made and
32 awarded to the contractor, not less than \$20 nor more than \$50 for
33 each calendar day or portion thereof that each worker employed on
34 the public work is paid less than the designated rate for any work
35 done under the contract, by the contractor or any subcontractor
36 engaged on the public work.

37 2. Except as otherwise provided in subsection 8, a contractor
38 engaged on a public work shall forfeit, as a penalty to the public
39 body on behalf of which the contract has been made and awarded to
40 the contractor, not less than \$20 nor more than \$50 for each calendar
41 day or portion thereof for each worker employed on the public work
42 for which the contractor or subcontractor willfully included
43 inaccurate or incomplete information in the monthly record required
44 to be submitted to the public body pursuant to subsection ~~5~~ 6 of
45 NRS 338.070.



1 3. Except as otherwise provided in subsection 8, a contractor
2 engaged on a public work shall forfeit, as a penalty to the public
3 body on behalf of which the contract has been made and awarded to
4 the contractor, not less than \$20 nor more than \$50 for each calendar
5 day or portion thereof that each worker employed on the public
6 work is not reported to the public body awarding the contract by the
7 contractor or any subcontractor engaged on the public work as
8 required pursuant to subsection ~~6~~ 6 of NRS 338.070, up to a
9 maximum of:

10 (a) For the first failure to comply during the term of the contract
11 for the public work, \$1,000; and

12 (b) For each subsequent failure to comply during the term of the
13 contract for the public work, \$5,000.

14 4. Except as otherwise provided in subsection 8, if a violation
15 of more than one provision of subsections 1, 2 and 3 involves the
16 same worker, the contractor shall forfeit the penalty set forth in each
17 subsection that was violated.

18 5. A public body awarding a contract for a public work shall
19 cause a stipulation setting forth the penalties specified in subsections
20 1 to 4, inclusive, to be inserted in the contract.

21 6. The Labor Commissioner shall, by regulation, establish a
22 sliding scale based on the size of the business of a contractor
23 engaged on a public work to determine the amount of the penalty to
24 be imposed pursuant to subsections 1 and 2.

25 7. If a penalty is imposed pursuant to this section, the costs of
26 the proceeding, including investigative costs and attorney's fees,
27 may be recovered by the Labor Commissioner and the public body.

28 8. The Labor Commissioner may, for good cause shown, waive
29 or reduce any penalty imposed pursuant to this section.

30 **Sec. 3.** 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, committed in the course of the
34 execution of the contract, and determine whether a violation has
35 been committed and inform the Labor Commissioner of any such
36 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.

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 ~~6~~ 7, it is
45 lawful for any contractor engaged on a public work to withhold



1 from any subcontractor engaged on the public work sufficient sums
2 to cover any penalties withheld from the contractor by the awarding
3 public body on account of the failure of the subcontractor to comply
4 with the terms of NRS 338.010 to 338.090, inclusive. If payment
5 has already been made to the subcontractor, the contractor may
6 recover from the subcontractor the amount of the penalty or
7 forfeiture in a suit at law.

8 4. *A contractor engaged on a public work and each*
9 *subcontractor engaged on the public work shall:*

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

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

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

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

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

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

23 *↳ A contractor or subcontractor shall not compel or coerce a*
24 *worker to specify his or her gender or ethnicity and shall not*
25 *penalize or otherwise take any adverse action against a worker*
26 *who declines to specify his or her gender or ethnicity. Before*
27 *inquiring as to whether a worker wishes to specify voluntarily his*
28 *or her gender or ethnicity, the applicable contractor or*
29 *subcontractor must inform the worker that such information, if*
30 *provided, will be open to public inspection as set forth in*
31 *subsection 6.*

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

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

37 (1) The name of the worker;

38 (2) The occupation of the worker;

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

43 (4) *The ethnicity of the worker, if the worker voluntarily*
44 *agreed to specify that information pursuant to subsection 4, or an*



1 *entry indicating that the worker declined to specify such*
2 *information;*

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

6 ~~(4)~~ (6) The actual per diem, wages and benefits paid to the
7 worker; and

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

11 (1) The name of the worker;

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

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

16 ~~(5)~~ 6. The records maintained pursuant to subsection ~~(4)~~ 5
17 must be open at all reasonable hours to the inspection of the public
18 body awarding the contract. The contractor engaged on the public
19 work or subcontractor engaged on the public work shall ensure that
20 a copy of each record for each calendar month is received by the
21 public body awarding the contract no later than 15 days after the end
22 of the month. The copy of the record maintained pursuant to
23 paragraph (a) of subsection ~~(4)~~ 5 must be open to public inspection
24 as provided in NRS 239.010. The copy of the record maintained
25 pursuant to paragraph (b) of subsection ~~(4)~~ 5 is confidential and not
26 open to public inspection. The records in the possession of the
27 public body awarding the contract may be discarded by the public
28 body 2 years after final payment is made by the public body for the
29 public work.

30 ~~(6)~~ 7. A contractor engaged on a public work shall not
31 withhold from a subcontractor engaged on the public work the sums
32 necessary to cover any penalties provided pursuant to subsection 3
33 of NRS 338.060 that may be withheld from the contractor by the
34 public body awarding the contract because the public body did not
35 receive a copy of the record maintained by the subcontractor
36 pursuant to subsection ~~(4)~~ 5 for a calendar month by the time
37 specified in subsection ~~(5)~~ 6 if:

38 (a) The subcontractor provided to the contractor, for submission
39 to the public body by the contractor, a copy of the record not later
40 than the later of:

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

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

43 and

44 (b) The contractor failed to submit the copy of the record to the
45 public body by the time specified in subsection ~~(5)~~ 6.



1 ↳ Nothing in this subsection prohibits a subcontractor from
2 submitting a copy of a record for a calendar month directly to the
3 public body by the time specified in subsection ~~45.1~~ 6.
4 ~~47.1~~ 8. Any contractor or subcontractor, or agent or
5 representative thereof, performing work for a public work who
6 neglects to comply with the provisions of this section is guilty of a
7 misdemeanor.

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