

ASSEMBLY BILL NO. 172—ASSEMBLYMEN O’NEILL,
OSCARSON; KIRNER AND STEWART

FEBRUARY 17, 2015

JOINT SPONSORS: SENATORS GOICOECHEA;
AND SETTELMAYER

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works.
(BDR 28-565)

FISCAL NOTE: Effect on Local Government: No.
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 the manner in which the prevailing wage is determined; requiring the Labor Commissioner to determine the prevailing wage to be a certain percentage for certain public works of school districts and the Nevada System of Higher Education; raising the estimated thresholds at or above which prevailing wage requirements apply to certain public work construction projects; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires that mechanics and workers employed on certain public
2 works be paid at least the wage prevailing for the type of work that the mechanic or
3 worker performs in the locale in which the public work is located. (NRS 338.020)
4 **Section 2.3** of this bill prescribes the manner in which the Labor Commissioner
5 must determine the prevailing wage for such a public work.
6 Senate Bill No. 119 of this legislative session exempted public works of school
7 districts and the Nevada System of Higher Education from the requirement to pay
8 prevailing wage. **Section 6.7** of this bill repeals those provisions of Senate Bill No.
9 119, thereby making school districts and the Nevada System of Higher Education
10 subject to that requirement. **Section 2.3** of this bill provides that the Labor
11 Commissioner must set the prevailing wage on these public works at 90 percent of
12 the rate of prevailing wage on other public works.



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13 Under existing law, any contract for a public work whose cost is \$100,000 or
14 more is subject to the prevailing wage requirements. (NRS 338.080) **Section 3** of
15 this bill raises the threshold for the applicability of prevailing wage requirements
16 from \$100,000 to \$250,000. **Section 3** also exempts charter schools from prevailing
17 wage requirements.

18 **Section 5** of this bill provides that the amendatory provisions of this bill do not
19 apply to a public work awarded before the effective date of this bill.

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

1 **Section 1.** (Deleted by amendment.)

2 **Sec. 2.** (Deleted by amendment.)

3 **Sec. 2.3.** NRS 338.030 is hereby amended to read as follows:

4 338.030 1. The public body awarding any contract for public
5 work, or otherwise undertaking any public work, shall ascertain
6 from the Labor Commissioner the prevailing wage in the county in
7 which the public work is to be performed for each craft or type of
8 work.

9 2. ~~To establish a~~ *The* prevailing wage in each county,
10 including Carson City, ~~the~~ *must be established as follows:*

11 (a) *The* Labor Commissioner shall, annually, survey contractors
12 who have performed work in the county.

13 (b) *Based on the survey conducted pursuant to paragraph (a),*
14 *where the rate of wages is the same for more than 50 percent of*
15 *the total hours worked by each craft or type of work in that county*
16 *on construction similar to the proposed construction, that rate will*
17 *be determined as the prevailing wage.*

18 (c) *Where no such rate can be determined, the prevailing wage*
19 *for a craft or type of work will be determined as the average rate of*
20 *wages paid per hour based on the number of hours worked per*
21 *rate, to that craft or type of work.*

22 (d) *The Labor Commissioner shall determine the prevailing*
23 *wage to be 90 percent of the rate determined pursuant to*
24 *paragraphs (a), (b) and (c) for:*

25 (1) *Any contract for a public work or any other*
26 *construction, alteration, repair, remodeling or reconstruction of*
27 *an improvement or property to which a school district or the*
28 *Nevada System of Higher Education is a party; and*

29 (2) *A public work of, or constructed by, a school district or*
30 *the Nevada System of Higher Education, or any other*
31 *construction, alteration, repair, remodeling or reconstruction of*
32 *an improvement or property of or constructed by a school district*
33 *or the Nevada System of Higher Education.*

34 3. Within 30 days after the determination is issued:



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1 (a) A public body or person entitled under subsection ~~§~~ 6 to be
2 heard may submit an objection to the Labor Commissioner with
3 evidence to substantiate that a different wage prevails; and

4 (b) Any person may submit information to the Labor
5 Commissioner that would support a change in the prevailing wage
6 of a craft or type of work by 50 cents or more per hour in any
7 county.

8 ~~§~~ 4. The Labor Commissioner shall hold a hearing in the
9 locality in which the work is to be executed if the Labor
10 Commissioner:

11 (a) Is in doubt as to the prevailing wage; or

12 (b) Receives an objection or information pursuant to subsection
13 ~~§~~ 3.

14 → The Labor Commissioner may hold only one hearing a year on
15 the prevailing wage of any craft or type of work in any county.

16 ~~§~~ 5. Notice of the hearing must be advertised in a newspaper
17 nearest to the locality of the work once a week for 2 weeks before
18 the time of the hearing.

19 ~~§~~ 6. At the hearing, any public body, the crafts affiliated
20 with the State Federation of Labor or other recognized national
21 labor organizations, and the contractors of the locality or their
22 representatives must be heard. From the evidence presented, the
23 Labor Commissioner shall determine the prevailing wage.

24 ~~§~~ 7. The wages so determined must be filed by the Labor
25 Commissioner and must be available to any public body which
26 awards a contract for any public work.

27 ~~§~~ 8. Nothing contained in NRS 338.020 to 338.090,
28 inclusive, may be construed to authorize the fixing of any wage
29 below any rate which may now or hereafter be established as a
30 minimum wage for any person employed upon any public work, or
31 employed by any officer or agent of any public body.

32 **Sec. 2.7.** NRS 338.075 is hereby amended to read as follows:

33 338.075 The provisions of NRS 338.020 to 338.090, inclusive,
34 apply to any contract for construction work of the Nevada System of
35 Higher Education for which the estimated cost exceeds ~~§~~ \$100,000
36 \$250,000 even if the construction work does not qualify as a public
37 work, as defined in subsection 17 of NRS 338.010.

38 **Sec. 3.** NRS 338.080 is hereby amended to read as follows:

39 338.080 None of the provisions of NRS 338.020 to 338.090,
40 inclusive, apply to:

41 1. Any work, construction, alteration, repair or other
42 employment performed, undertaken or carried out, by or for any
43 railroad company or any person operating the same, whether such
44 work, construction, alteration or repair is incident to or in



1 conjunction with a contract to which a public body is a party, or
2 otherwise.

3 2. Apprentices recorded under the provisions of chapter 610 of
4 NRS.

5 3. Any contract for a public work whose cost is less than
6 ~~§100,000.~~ **\$250,000.** A unit of the project must not be separated
7 from the total project, even if that unit is to be completed at a later
8 time, in order to lower the cost of the project below ~~§100,000.~~
9 **\$250,000.**

10 4. *Any contract for a public work or any other construction,*
11 *alteration, repair, remodeling or reconstruction of an*
12 *improvement or property to which a charter school is a party,*
13 *notwithstanding any other provision of law.*

14 5. *A public work of, or constructed by, a charter school, or*
15 *any other construction, alteration, repair, remodeling or*
16 *reconstruction of an improvement or property of or constructed by*
17 *a charter school, notwithstanding any other provision of law.*

18 **Sec. 3.3.** (Deleted by amendment.)

19 **Sec. 3.5.** (Deleted by amendment.)

20 **Sec. 3.6.** (Deleted by amendment.)

21 **Sec. 3.7.** (Deleted by amendment.)

22 **Sec. 3.8.** (Deleted by amendment.)

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

24 **Sec. 4.5.** (Deleted by amendment.)

25 **Sec. 5.** 1. The amendatory provisions of this act do not apply
26 to a public work or other project of construction, repair or
27 reconstruction that is awarded before the effective date of this act.

28 2. As used in this section, "public work" has the meaning
29 ascribed to it in NRS 338.010.

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

31 **Sec. 6.3.** The Labor Commissioner shall, as soon as
32 practicable on or after the effective date of this act, adopt
33 regulations to carry out the provisions of this act. The Labor
34 Commissioner shall prepare, distribute and administer the current
35 prevailing wage survey and all subsequent surveys conducted to
36 establish a prevailing wage in each county in strict compliance with
37 the amendatory provisions of this act.

38 **Sec. 6.7.** Sections 1 and 3 to 6, inclusive, of Senate Bill No.
39 119 (Chapter 5, Statutes of Nevada 2015, at page 27) are hereby
40 repealed.

41 **Sec. 7.** This act becomes effective upon passage and approval.



TEXT OF REPEALED SECTIONS

Section 1 of Senate Bill No. 119 (Chapter 5, Statutes of Nevada 2015, at page 27) is hereby repealed.

Section 1. NRS 338.080 is hereby amended to read as follows:

338.080 None of the provisions of NRS 338.020 to 338.090, inclusive, apply to:

1. Any work, construction, alteration, repair or other employment performed, undertaken or carried out, by or for any railroad company or any person operating the same, whether such work, construction, alteration or repair is incident to or in conjunction with a contract to which a public body is a party, or otherwise.

2. Apprentices recorded under the provisions of chapter 610 of NRS.

3. Any contract for a public work whose cost is less than \$100,000. A unit of the project must not be separated from the total project, even if that unit is to be completed at a later time, in order to lower the cost of the project below \$100,000.

4. Any contract for a public work or any other construction, alteration, repair, remodeling or reconstruction of an improvement or property to which a school district, a charter school or the Nevada System of Higher Education is a party, notwithstanding any other provision of law.

5. A public work of, or constructed by, a school district, a charter school or the Nevada System of Higher Education or any other construction, alteration, repair, remodeling or reconstruction of an improvement or property of or constructed by one of these entities, notwithstanding any other provision of law.

Sections 3 to 6, inclusive, of Senate Bill No. 119 (Chapter 5, Statutes of Nevada 2015, at page 27) are hereby repealed.

Sec. 3. NRS 353.545 is hereby amended to read as follows:

353.545 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 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 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 lease-purchase and installment-purchase agreements to:

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

(b) ~~†Avoid†~~ *Except as otherwise provided in subsection 5 of NRS 353.590, avoid* or circumvent any requirement regarding the payment of prevailing wages for public works.

4. When using 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. ~~††~~ *Except as otherwise provided in subsection 5 of NRS 353.590, if* a lease-purchase or installment-purchase agreement 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. 4. NRS 353.590 is hereby amended to read as follows:

353.590 If an agreement pursuant to NRS 353.500 to 353.630, inclusive, involves the construction, alteration, repair or remodeling of an improvement:



1. Except as otherwise provided in this section, the construction, alteration, repair or remodeling of the improvement may be conducted as specified in the agreement without complying with the provisions of:

- (a) Any law requiring competitive bidding; or
- (b) Chapter 341 of NRS.

2. ~~The~~ *Except as otherwise provided in subsection 5, the* person or entity that enters into the agreement for the actual construction, alteration, repair or remodeling of the improvement shall include in the 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.

3. ~~The~~ *Except as otherwise provided in subsection 5, the* State or a state agency, 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 State or a state agency had undertaken the project or had awarded the contract.

4. The provisions of:

- (a) Paragraph (b) of subsection 9 of NRS 341.100; and
- (b) NRS 341.105,

↪ apply to the construction, alteration, repair or remodeling of the improvement.

5. For projects of or for the Nevada System of Higher Education where it is anticipated that payments under the agreement will be made with state appropriations, the Nevada System of Higher Education, 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 are not required to comply with the provisions of NRS 338.013 to 338.090, inclusive.

Sec. 5. 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 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 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 lease-purchase and installment-purchase agreements to:

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

(b) ~~Avoid~~ *Except as otherwise provided in subsection 5 of NRS 353.590, avoid* or circumvent any requirement regarding the payment of prevailing wages for public works.

4. When using 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. ~~##~~ *Except as otherwise provided in subsection 5 of NRS 353.590, 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. 6. NRS 338.075 is hereby repealed.

