

ASSEMBLY BILL NO. 218—COMMITTEE
ON GOVERNMENT AFFAIRS

MARCH 7, 2013

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works.
(BDR 28-981)

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; defining the term “bona fide fringe benefit” for certain provisions applicable to the payment of wages for public works; revising the requirements pursuant to which a contractor or subcontractor engaged on a public work may discharge his or her obligation to pay prevailing wages to workers; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law sets forth general provisions applicable to public works, including
2 provisions requiring the payment of prevailing wages for public works projects.
3 (NRS 338.010-338.090) Existing law also authorizes the Labor Commissioner: (1)
4 to provide certain remedies for violations of those provisions; and (2) after
5 providing notice and an opportunity for a hearing, to impose an administrative
6 penalty against a person who violates those provisions. (NRS 338.015, 338.017,
7 338.090) Further, under existing law, a contractor or subcontractor engaged on a
8 public work is authorized to discharge his or her obligation to pay prevailing wages
9 to workers in part by making certain contributions in the name of the worker.
10 (NRS 338.035)

11 **Section 4** of this bill sets forth the requirements pursuant to which a contractor
12 or subcontractor engaged on a public work may discharge any part of his or her
13 obligation to pay prevailing wages to a worker by providing bona fide fringe
14 benefits in the name of the worker. Those requirements include, among other
15 things, that the bona fide fringe benefits are paid equally for all hours worked in a
16 calendar year by the worker for the contractor or subcontractor. **Section 1** of this
17 bill defines “bona fide fringe benefit” for the purposes of the provisions applicable
18 to public works. **Section 4** also requires the Labor Commissioner, after providing
19 notice and an opportunity for a hearing, to: (1) impose an administrative penalty
20 against a contractor or subcontractor who violates the provisions of that section;



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21 (2) require the contractor or subcontractor to make the affected worker whole by
22 paying to the worker as wages any amounts disallowed as bona fide fringe benefits;
23 (3) report the violation to the Attorney General; and (4) notify certain governmental
24 and other entities of the violation.

25 Existing law provides that if an administrative penalty is imposed against a
26 person for the commission of an offense as defined in relation to public works: (1)
27 the person and any corporate officer of the person are prohibited from receiving a
28 contract for a public work for specified periods depending on the number of
29 offenses; and (2) the Labor Commissioner is required to notify the State
30 Contractors' Board with regard to each contractor who is prohibited from being
31 awarded such a contract. (NRS 338.010, 338.017) **Section 1** of this bill makes this
32 provision of existing law applicable to discharging an obligation to pay wages in a
33 manner that violates the provisions of **section 4** by adding that violation to the
34 definition of an "offense" in **section 1**.

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. *"Bona fide fringe benefit" means a benefit in the form of a*
8 *contribution that is made not less frequently than monthly to an*
9 *independent third party pursuant to a fund, plan or program:*

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

12 (b) *For which none of the assets will revert to, or otherwise be*
13 *credited to, any contributing employer or sponsor of the fund, plan*
14 *or program.*

15 *↪ The term includes, without limitation, benefits for a worker that*
16 *are determined pursuant to a collective bargaining agreement and*
17 *included in the determination of the prevailing wage by the Labor*
18 *Commissioner pursuant to NRS 338.030.*

19 3. "Contract" means a written contract entered into between a
20 contractor and a public body for the provision of labor, materials,
21 equipment or supplies for a public work.

22 ~~3-1~~ 4. "Contractor" means:

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

25 (b) A design-build team.

26 ~~1-1~~ 5. "Day labor" means all cases where public bodies, their
27 officers, agents or employees, hire, supervise and pay the wages
28 thereof directly to a worker or workers employed by them on public
29 works by the day and not under a contract in writing.



1 ~~15-1~~ 6. “Design-build contract” means a contract between a
2 public body and a design-build team in which the design-build team
3 agrees to design and construct a public work.

4 ~~16-1~~ 7. “Design-build team” means an entity that consists of:

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

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

9 (1) A building and its site, at least one person who holds a
10 certificate of registration to practice architecture pursuant to chapter
11 623 of NRS.

12 (2) Anything other than a building and its site, at least one
13 person who holds a certificate of registration to practice architecture
14 pursuant to chapter 623 of NRS or landscape architecture pursuant
15 to chapter 623A of NRS or who is licensed as a professional
16 engineer pursuant to chapter 625 of NRS.

17 ~~17-1~~ 8. “Design professional” means:

18 (a) A person who is licensed as a professional engineer pursuant
19 to chapter 625 of NRS;

20 (b) A person who is licensed as a professional land surveyor
21 pursuant to chapter 625 of NRS;

22 (c) A person who holds a certificate of registration to engage in
23 the practice of architecture, interior design or residential design
24 pursuant to chapter 623 of NRS;

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

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

30 ~~18-1~~ 9. “Division” means the State Public Works Division of
31 the Department of Administration.

32 ~~19-1~~ 10. “Eligible bidder” means a person who is:

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

37 (b) Determined by a public body or its authorized representative
38 which awarded a contract for a public work pursuant to NRS
39 338.1375 to 338.139, inclusive, to be qualified to bid on that
40 contract pursuant to NRS 338.1379 or 338.1382.

41 ~~10-1~~ 11. “General contractor” means a person who is licensed
42 to conduct business in one, or both, of the following branches of the
43 contracting business:

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



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

3 ~~11.1~~ 12. "Governing body" means the board, council,
4 commission or other body in which the general legislative and fiscal
5 powers of a local government are vested.

6 ~~11.2~~ 13. "Local government" means every political
7 subdivision or other entity which has the right to levy or receive
8 money from ad valorem or other taxes or any mandatory
9 assessments, and includes, without limitation, counties, cities,
10 towns, boards, school districts and other districts organized pursuant
11 to chapters 244A, 309, 318, 379, 474, 538, 541, 543 and 555 of
12 NRS, NRS 450.550 to 450.750, inclusive, and any agency or
13 department of a county or city which prepares a budget separate
14 from that of the parent political subdivision. The term includes a
15 person who has been designated by the governing body of a local
16 government to serve as its authorized representative.

17 ~~11.3~~ 14. "Offense" means ~~failing~~:

18 (a) *Failing* to:

19 ~~11.4~~ (1) Pay the prevailing wage required pursuant to this
20 chapter;

21 ~~11.5~~ (2) Pay the contributions for unemployment compensation
22 required pursuant to chapter 612 of NRS;

23 ~~11.6~~ (3) Provide and secure compensation for employees
24 required pursuant to chapters 616A to 617, inclusive, of NRS; or

25 ~~11.7~~ (4) Comply with subsection 4 or 5 of NRS 338.070.

26 ~~11.8~~ (b) *Discharging an obligation to pay wages in a manner*
27 *that violates the provisions of NRS 338.035.*

28 15. "Prime contractor" means a contractor who:

29 (a) Contracts to construct an entire project;

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

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

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

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

39 ~~11.9~~ 16. "Public body" means the State, county, city, town,
40 school district or any public agency of this State or its political
41 subdivisions sponsoring or financing a public work.

42 ~~11.10~~ 17. "Public work" means any project for the new
43 construction, repair or reconstruction of:

44 (a) A project financed in whole or in part from public money
45 for:



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

12 (b) A building for the Nevada System of Higher Education of
13 which 25 percent or more of the costs of the building as a whole are
14 paid from money appropriated by this State or from federal money.

15 ~~17-1~~ 18. “Specialty contractor” means a person who is licensed
16 to conduct business as described in subsection 4 of NRS 624.215.

17 ~~18-1~~ 19. “Stand-alone underground utility project” means an
18 underground utility project that is not integrated into a larger
19 project, including, without limitation:

20 (a) An underground sewer line or an underground pipeline for
21 the conveyance of water, including facilities appurtenant thereto;
22 and

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

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

28 ~~19-1~~ 20. “Subcontract” means a written contract entered into
29 between:

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

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

32 ➔ for the provision of labor, materials, equipment or supplies for a
33 construction project.

34 ~~20-1~~ 21. “Subcontractor” means a person who:

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

38 (b) Contracts with a contractor, another subcontractor or a
39 supplier to provide labor, materials or services for a construction
40 project.

41 ~~21-1~~ 22. “Supplier” means a person who provides materials,
42 equipment or supplies for a construction project.

43 ~~22-1~~ 23. “Wages” means:

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



1 (b) The amount of pension, health and welfare, vacation and
2 holiday pay, the cost of apprenticeship training ~~for other similar~~
3 ~~programs~~ or other bona fide fringe benefits which are a benefit to
4 the worker.

5 ~~23.~~ 24. "Worker" means a skilled mechanic, skilled worker,
6 semiskilled mechanic, semiskilled worker or unskilled worker in the
7 service of a contractor or subcontractor under any appointment or
8 contract of hire or apprenticeship, express or implied, oral or
9 written, whether lawfully or unlawfully employed. The term does
10 not include a design professional.

11 **Sec. 2.** NRS 338.015 is hereby amended to read as follows:

12 338.015 1. The Labor Commissioner shall enforce the
13 provisions of NRS 338.010 to 338.130, inclusive.

14 2. ~~It~~ *Except as otherwise provided in NRS 338.035 and in*
15 *addition to any other remedy or penalty provided in this chapter, if*
16 *any person, including, without limitation, a public body, violates*
17 *any provision of NRS 338.010 to 338.130, inclusive, or any*
18 *regulation adopted pursuant thereto, the Labor Commissioner may,*
19 *after providing the person with notice and an opportunity for a*
20 *hearing, impose against the person an administrative penalty of not*
21 *more than \$5,000 for each such violation.*

22 3. The Labor Commissioner may, by regulation, establish a
23 sliding scale based on the severity of the violation to determine the
24 amount of the administrative penalty to be imposed against the
25 person pursuant to this section.

26 4. The Labor Commissioner shall report the violation to the
27 Attorney General, and the Attorney General may prosecute the
28 person in accordance with law.

29 **Sec. 3.** NRS 338.018 is hereby amended to read as follows:

30 338.018 The provisions of NRS 338.013 to 338.018, inclusive,
31 apply to any contract for construction work of the Nevada System of
32 Higher Education for which the estimated cost exceeds \$100,000
33 even if the construction work does not qualify as a public work, as
34 defined in subsection ~~16~~ 17 of NRS 338.010.

35 **Sec. 4.** NRS 338.035 is hereby amended to read as follows:

36 338.035 1. The obligation of a contractor engaged on a
37 public work or a subcontractor engaged on a public work to pay
38 wages in accordance with the determination of the Labor
39 Commissioner may be discharged in part by ~~making contributions~~
40 ~~to a third person pursuant to a fund, plan or program~~ *providing*
41 *bona fide fringe benefits* in the name of the worker.

42 2. *A contractor or subcontractor may, pursuant to subsection*
43 *1, discharge any part of his or her obligation to pay wages in*
44 *accordance with the determination of the Labor Commissioner*



1 *only to the extent that the bona fide fringe benefits provided in the*
2 *name of the worker are annualized.*

3 *3. A contractor or subcontractor who, pursuant to subsection*
4 *1, discharges any part of his or her obligation to pay wages in*
5 *accordance with the determination of the Labor Commissioner*
6 *shall provide to the Labor Commissioner and the public body that*
7 *awarded the contract for the public work any information*
8 *requested by the Labor Commissioner or the public body, as*
9 *applicable, to verify compliance with this section.*

10 *4. In addition to any other remedy or penalty provided in this*
11 *chapter, after providing the contractor or subcontractor with*
12 *notice and an opportunity for a hearing, the Labor Commissioner*
13 *shall, if the Labor Commissioner finds that the contractor or*
14 *subcontractor has violated a provision of this section:*

15 *(a) For the first violation, impose against the contractor or*
16 *subcontractor an administrative penalty of not less than \$2,500 or*
17 *more than \$5,000;*

18 *(b) For the second or any subsequent violation within 5 years*
19 *after the date of imposition of an administrative penalty pursuant*
20 *to paragraph (a), impose against the contractor or subcontractor*
21 *an administrative penalty of not less than \$5,000;*

22 *(c) Require the contractor or subcontractor to make the*
23 *affected worker whole by paying to the worker as wages any*
24 *amounts disallowed as bona fide fringe benefits in a manner*
25 *prescribed by the Labor Commissioner;*

26 *(d) Report the violation to the Attorney General, and the*
27 *Attorney General may prosecute the contractor or subcontractor*
28 *in accordance with law; and*

29 *(e) In addition to notifying the State Contractors' Board*
30 *pursuant to NRS 338.017, notify the provider of workers'*
31 *compensation for the contractor or subcontractor, the*
32 *Employment Security Division of the Department of Employment,*
33 *Training and Rehabilitation and the public body that awarded the*
34 *contract for the public work of the violation.*

35 *5. The provisions of this section do not apply with regard to:*

36 *(a) A worker whose benefits are determined pursuant to a*
37 *collective bargaining agreement; or*

38 *(b) Contributions made in the name of the worker by a*
39 *contractor or subcontractor to a defined contribution plan to the*
40 *extent that the amount contributed does not exceed 25 percent of*
41 *the hourly rate of wages paid to the worker on the public work.*

42 *6. As used in this section:*

43 *(a) "Annualized" means an amount paid equally for all hours*
44 *worked in a calendar year by the worker for the contractor or*
45 *subcontractor who is providing bona fide fringe benefits.*



1 ***(b) "Defined contribution plan" has the meaning ascribed to it***
2 ***in 29 U.S.C. § 1002(34).***

3 **Sec. 5.** NRS 338.075 is hereby amended to read as follows:

4 338.075 The provisions of NRS 338.020 to 338.090, inclusive,
5 apply to any contract for construction work of the Nevada System of
6 Higher Education for which the estimated cost exceeds \$100,000
7 even if the construction work does not qualify as a public work, as
8 defined in subsection ~~H6~~ 17 of NRS 338.010.

9 **Sec. 6.** NRS 338.090 is hereby amended to read as follows:

10 338.090 1. Any person, including the officers, agents or
11 employees of a public body, who violates any provision of NRS
12 338.010 to 338.090, inclusive, or any regulation adopted pursuant
13 thereto, is guilty of a misdemeanor.

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

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

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

25 3. If the Labor Commissioner finds that a person has failed to
26 pay the prevailing wage required pursuant to NRS 338.020 to
27 338.090, inclusive, the public body may, in addition to any other
28 remedy or penalty provided in this chapter, require the person to pay
29 the actual costs incurred by the public body to investigate the
30 matter.

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

37 **Sec. 7.** NRS 338.1908 is hereby amended to read as follows:

38 338.1908 1. The governing body of each local government
39 shall, by July 28, 2009, develop a plan to retrofit public buildings,
40 facilities and structures, including, without limitation, traffic-control
41 systems, and to otherwise use sources of renewable energy to serve
42 those buildings, facilities and structures. Such a plan must:

43 (a) Include a list of specific projects. The projects must be
44 prioritized and selected on the basis of the following criteria:

45 (1) The length of time necessary to commence the project.



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1 (2) The number of workers estimated to be employed on the
2 project.

3 (3) The effectiveness of the project in reducing energy
4 consumption.

5 (4) The estimated cost of the project.

6 (5) Whether the project is able to be powered by or otherwise
7 use sources of renewable energy.

8 (6) Whether the project has qualified for participation in one
9 or more of the following programs:

10 (I) The Solar Energy Systems Incentive Program created
11 by NRS 701B.240;

12 (II) The Renewable Energy School Pilot Program created
13 by NRS 701B.350;

14 (III) The Wind Energy Systems Demonstration Program
15 created by NRS 701B.580; or

16 (IV) The Waterpower Energy Systems Demonstration
17 Program created by NRS 701B.820.

18 (b) Include a list of potential funding sources for use in
19 implementing the projects, including, without limitation, money
20 available through the Energy Efficiency and Conservation Block
21 Grant Program as set forth in 42 U.S.C. § 17152 and grants, gifts,
22 donations or other sources of money from public and private
23 sources.

24 2. The governing body of each local government shall transmit
25 the plan developed pursuant to subsection 1 to the Director of the
26 Office of Energy and to any other entity designated for that purpose
27 by the Legislature.

28 3. As used in this section:

29 (a) "Local government" means each city or county that meets
30 the definition of "eligible unit of local government" as set forth in
31 42 U.S.C. § 17151 and each unit of local government, as defined in
32 subsection ~~H2~~ 13 of NRS 338.010, that does not meet the
33 definition of "eligible entity" as set forth in 42 U.S.C. § 17151.

34 (b) "Renewable energy" means a source of energy that occurs
35 naturally or is regenerated naturally, including, without limitation:

36 (1) Biomass;

37 (2) Fuel cells;

38 (3) Geothermal energy;

39 (4) Solar energy;

40 (5) Waterpower; and

41 (6) Wind.

42 ➔ The term does not include coal, natural gas, oil, propane or any
43 other fossil fuel, or nuclear energy.



1 (c) "Retrofit" means to alter, improve, modify, remodel or
2 renovate a building, facility or structure to make that building,
3 facility or structure more energy-efficient.

4 **Sec. 8.** Section 9.5 of the Reno-Tahoe Airport Authority Act,
5 being chapter 369, Statutes of Nevada 2005, at page 1386, is hereby
6 amended to read as follows:

7 Sec. 9.5. 1. Except as otherwise determined by the
8 Board or provided in subsection 2, the provisions of any law
9 requiring public bidding or otherwise imposing requirements
10 on any public contract, project, acquisition, works or
11 improvements, including, without limitation, the provisions
12 of chapters 332, 338 and 339 of NRS, do not apply to any
13 contract entered into by the Board if the Board:

14 (a) Complies with the provisions of subsection 3; and

15 (b) Finances the contract, project, acquisition, works or
16 improvement by means of:

17 (1) Revenue bonds issued by the Authority; or

18 (2) An installment obligation of the Authority in a
19 transaction in which:

20 (I) The Authority acquires real or personal property
21 and another person acquires or retains a security interest in
22 that or other property; and

23 (II) The obligation by its terms is extinguished by
24 failure of the Board to appropriate money for the ensuing
25 fiscal year for payment of the amounts then due.

26 2. A contract entered into by the Board pursuant to this
27 section must:

28 (a) Contain a provision stating that the requirements of
29 NRS 338.010 to 338.090, inclusive, apply to any construction
30 work performed pursuant to the contract; and

31 (b) If the contract is with a design professional who is not
32 a member of a design-build team, comply with the provisions
33 of NRS 338.155. As used in this paragraph, "design
34 professional" has the meaning ascribed to it in subsection ~~7~~
35 **8** of NRS 338.010.

36 3. For contracts entered into pursuant to this section that
37 are exempt from the provisions of chapters 332, 338 and 339
38 of NRS pursuant to subsection 1, the Board shall adopt
39 regulations pursuant to subsection 4 which establish:

40 (a) One or more competitive procurement processes for
41 letting such a contract; and

42 (b) A method by which a bid on such a contract will be
43 adjusted to give a 5 percent preference to a contractor who
44 would qualify for a preference pursuant to NRS 338.147, if:



1 (1) The estimated cost of the contract exceeds
2 \$250,000; and

3 (2) Price is a factor in determining the successful bid
4 on the contract.

5 4. The Board:

6 (a) Shall, before adopting, amending or repealing a
7 permanent or temporary regulation pursuant to subsection 3,
8 give at least 30 days' notice of its intended action. The notice
9 must:

10 (1) Include:

11 (I) A statement of the need for and purpose of the
12 proposed regulation.

13 (II) Either the terms or substance of the proposed
14 regulation or a description of the subjects and issues involved.

15 (III) The estimated cost to the Board for
16 enforcement of the proposed regulation.

17 (IV) The time when, the place where and the
18 manner in which interested persons may present their views
19 regarding the proposed regulation.

20 (V) A statement indicating whether the regulation
21 establishes a new fee or increases an existing fee.

22 (2) State each address at which the text of the
23 proposed regulation may be inspected and copied.

24 (3) Be mailed to all persons who have requested in
25 writing that they be placed upon a mailing list, which must be
26 kept by the Authority for that purpose.

27 (b) May adopt, if it has adopted a temporary regulation
28 after notice and the opportunity for a hearing as provided in
29 this subsection, after providing a second notice and the
30 opportunity for a hearing, a permanent regulation.

31 (c) Shall, in addition to distributing the notice to each
32 recipient of the Board's regulations, solicit comment
33 generally from the public and from businesses to be affected
34 by the proposed regulation.

35 (d) Shall, before conducting a workshop pursuant to
36 paragraph (g), determine whether the proposed regulation is
37 likely to impose a direct and significant economic burden
38 upon a small business or directly restrict the formation,
39 operation or expansion of a small business. If the Board
40 determines that such an impact is likely to occur, the Board
41 shall:

42 (1) Insofar as practicable, consult with owners and
43 officers of small businesses that are likely to be affected by
44 the proposed regulation.



1 (2) Consider methods to reduce the impact of the
2 proposed regulation on small businesses.

3 (3) Prepare a small business impact statement and
4 make copies of the statement available to the public at the
5 workshop conducted pursuant to paragraph (g) and the public
6 hearing held pursuant to paragraph (h).

7 (e) Shall ensure that a small business impact statement
8 prepared pursuant to subparagraph (3) of paragraph (d) sets
9 forth the following information:

10 (1) A description of the manner in which comment
11 was solicited from affected small businesses, a summary of
12 their response and an explanation of the manner in which
13 other interested persons may obtain a copy of the summary.

14 (2) The estimated economic effect of the proposed
15 regulation on the small businesses which it is to regulate,
16 including, without limitation:

17 (I) Both adverse and beneficial effects; and

18 (II) Both direct and indirect effects.

19 (3) A description of the methods that the Board
20 considered to reduce the impact of the proposed regulation on
21 small businesses and a statement regarding whether the Board
22 actually used any of those methods.

23 (4) The estimated cost to the Board for enforcement of
24 the proposed regulation.

25 (5) If the proposed regulation provides a new fee or
26 increases an existing fee, the total annual amount the Board
27 expects to collect and the manner in which the money will be
28 used.

29 (f) Shall afford a reasonable opportunity for all interested
30 persons to submit data, views or arguments upon the
31 proposed regulation, orally or in writing.

32 (g) Shall, before holding a public hearing pursuant to
33 paragraph (h), conduct at least one workshop to solicit
34 comments from interested persons on the proposed
35 regulation. Not less than 15 days before the workshop, the
36 Board shall provide notice of the time and place set for the
37 workshop:

38 (1) In writing to each person who has requested to be
39 placed on a mailing list; and

40 (2) In any other manner reasonably calculated to
41 provide such notice to the general public and any business
42 that may be affected by a proposed regulation which
43 addresses the general topics to be considered at the workshop.

44 (h) Shall set a time and place for an oral public hearing,
45 but if no one appears who will be directly affected by the



1 proposed regulation and requests an oral hearing, the Board
2 may proceed immediately to act upon any written
3 submissions. The Board shall consider fully all written and
4 oral submissions respecting the proposed regulation.

5 (i) Shall keep, retain and make available for public
6 inspection written minutes of each public hearing held
7 pursuant to paragraph (h) in the manner provided in
8 subsections 1 and 2 of NRS 241.035.

9 (j) May record each public hearing held pursuant to
10 paragraph (h) and make those recordings available for public
11 inspection in the manner provided in subsection 4 of
12 NRS 241.035.

13 (k) Shall ensure that a small business which is aggrieved
14 by a regulation adopted pursuant to this subsection may
15 object to all or a part of the regulation by filing a petition with
16 the Board within 90 days after the date on which the
17 regulation was adopted. Such petition may be based on the
18 following:

19 (1) The Board failed to prepare a small business
20 impact statement as required pursuant to subparagraph (3) of
21 paragraph (d); or

22 (2) The small business impact statement prepared by
23 the Board did not consider or significantly underestimated the
24 economic effect of the regulation on small businesses.

25 ➤ After receiving a petition pursuant to this paragraph, the
26 Board shall determine whether the petition has merit. If the
27 Board determines that the petition has merit, the Board may,
28 pursuant to this subsection, take action to amend the
29 regulation to which the small business objected.

30 5. The determinations made by the Board pursuant to
31 this section are conclusive unless it is shown that the Board
32 acted with fraud or a gross abuse of discretion.

33 **Sec. 9.** This act becomes effective on July 1, 2013.

