
ASSEMBLY BILL No. 141—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE DEPARTMENT OF BUSINESS
AND INDUSTRY, LABOR COMMISSIONER)

FEBRUARY 14, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes concerning enforcement of provisions requiring payment of prevailing rate of wages on public works. (BDR 28-464)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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; making various changes concerning the enforcement of the provisions requiring the payment of the prevailing rate of wages on public works; and providing other matters properly relating thereto.

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

- 1 **Section 1.** NRS 338.016 is hereby amended to read as follows:
2 338.016 1. If, after *an opportunity for* a hearing, an
3 administrative penalty is imposed against a contractor on a public
4 work for the commission of an offense:
5 (a) An eligible bidder, or any person who entered into a contract
6 with the eligible bidder before bids for the contract for the public
7 work were let, may commence a civil action against the contractor
8 to recover damages suffered as a proximate result of the eligible
9 bidder not being awarded the contract for the public work.
10 (b) There is a rebuttable presumption that the contractor was
11 awarded the contract for the public work because his bid on the
12 contract was based, in part, on his intent to commit the offense and,
13 as a result, was lower than it otherwise would have been.



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1 2. The court may award costs and reasonable attorney's fees to
2 the prevailing party in any action brought pursuant to this section.
3 **Sec. 2.** 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 prevailing wage in each county, including
10 Carson City, the Labor Commissioner shall, annually, survey
11 contractors who have performed work in the county. Within 30 days
12 after the determination is issued:
13 (a) A public body or person entitled under subsection 5 to be
14 heard may submit an objection to the Labor Commissioner with
15 evidence to substantiate that a different wage prevails; and
16 (b) Any person may submit information to the Labor
17 Commissioner that would ~~support~~ *substantiate* a change in the
18 prevailing wage of a craft or type of work by 50 cents or more per
19 hour in any county.
20 3. The Labor Commissioner shall hold a hearing in the locality
21 in which the work is to be executed if he:
22 (a) Is in doubt as to the prevailing wage; or
23 (b) Receives an objection or information pursuant to
24 subsection 2.
25 The Labor Commissioner may hold only one hearing a year on the
26 prevailing wage of any craft or type of work in any county.
27 4. Notice of the hearing must be advertised in a newspaper
28 nearest to the locality of the work once a week for 2 weeks before
29 the time of the hearing.
30 5. At the hearing, any public body, the crafts affiliated with the
31 State Federation of Labor or other recognized national labor
32 organizations, and the contractors of the locality or their
33 representatives must be heard. From the evidence presented ~~and~~ *and*
34 *any matters officially noticed*, the Labor Commissioner shall
35 determine the prevailing wage.
36 6. The wages so determined must be filed by the Labor
37 Commissioner and must be available to any public body which
38 awards a contract for any public work.
39 7. Nothing contained in NRS 338.020 to 338.090, inclusive,
40 may be construed to authorize the fixing of any wage below any rate
41 which may now or hereafter be established as a minimum wage for
42 any person employed upon any public work, or employed by any
43 officer or agent of any political subdivision of the State of Nevada.



1 **Sec. 3.** NRS 338.070 is hereby amended to read as follows:

2 338.070 1. Any public body and its officers or agents
3 awarding a contract shall:

4 (a) Investigate possible violations of the provisions of NRS
5 338.010 to 338.090, inclusive, committed in the course of the
6 execution of the contract, and determine whether a violation has
7 been committed and inform the Labor Commissioner of any such
8 violations; and

9 (b) When making payments to the contractor of money
10 becoming due under the contract, withhold and retain all sums
11 forfeited pursuant to the provisions of NRS 338.010 to 338.090,
12 inclusive.

13 2. No sum may be withheld, retained or forfeited, except from
14 the final payment, without a full investigation being made by the
15 awarding body or its agents.

16 3. It is lawful for any contractor to withhold from any
17 subcontractor under him sufficient sums to cover any penalties
18 withheld from him by the awarding body on account of the failure
19 of the subcontractor to comply with the terms of NRS 338.010 to
20 338.090, inclusive. If payment has already been made to the
21 subcontractor, the contractor may recover from him the amount of
22 the penalty or forfeiture in a suit at law.

23 4. The contractor and each subcontractor shall keep or cause to
24 be kept an accurate record showing the name, the occupation and
25 the actual per diem, wages and benefits paid to each workman
26 employed by him in connection with the public work.

27 5. The record must be open at all reasonable hours to the
28 inspection of the public body awarding the contract, and its officers
29 and agents. The contractor or subcontractor shall ensure that a copy
30 of the record for each calendar month is received by the public body
31 awarding the contract no later than ~~10~~ 15 days after the end of the
32 month. The copy must be open to public inspection as provided in
33 NRS 239.010. The record in the possession of the public body
34 awarding the contract may be discarded by the public body 2 years
35 after final payment is made by the public body for the public work.

36 6. Any contractor or subcontractor, or agent or representative
37 thereof, performing work for a public work who neglects to comply
38 with the provisions of this section is guilty of a misdemeanor.

39 **Sec. 4.** NRS 338.090 is hereby amended to read as follows:

40 338.090 1. Any person, including the officers, agents or
41 employees of a public body, who violates any of the provisions of
42 NRS 338.010 to 338.090, inclusive, or any regulation adopted
43 pursuant thereto, is guilty of a misdemeanor.

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



1 (a) Shall assess a person who, after *an opportunity for* a
2 hearing, is found to have failed to pay the prevailing wage required
3 pursuant to NRS 338.020 to 338.090, inclusive, an amount equal to
4 the difference between the prevailing wages required to be paid and
5 the wages he actually paid; and

6 (b) May, in addition, impose an administrative fine not to
7 exceed the costs he incurred to investigate and prosecute the matter.

8 **Sec. 5.** NRS 338.515 is hereby amended to read as follows:

9 338.515 1. Except as otherwise provided in NRS 338.525, a
10 public body and its officers or agents awarding a contract for a
11 public work shall pay or cause to be paid to a contractor the progress
12 payments due under the contract within 30 days after the date the
13 public body receives the progress bill or within a shorter period if
14 the provisions of the contract so provide. Not more than 90 percent
15 of the amount of any progress payment may be paid until 50 percent
16 of the work required by the contract has been performed. Thereafter
17 the public body may pay any of the remaining progress payments
18 without withholding additional retainage if, in the opinion of the
19 public body, satisfactory progress is being made in the work.

20 2. Except as otherwise provided in NRS 338.525, a public
21 body shall identify in the contract and pay or cause to be paid to a
22 contractor the actual cost of the supplies, materials and equipment
23 that:

24 (a) Are identified in the contract;

25 (b) Have been delivered and stored at a location, and in the time
26 and manner, specified in a contract by the contractor or a
27 subcontractor or supplier for use in the construction, repair or
28 reconstruction of the public work; and

29 (c) Are in short supply or were specially made for the public
30 work,
31 within 30 days after the public body receives a progress bill from
32 the contractor for those supplies, materials or equipment.

33 3. A public body shall pay or cause to be paid to the contractor
34 at the end of each quarter interest for the quarter on any amount
35 withheld by the public body pursuant to NRS 338.400 to 338.645,
36 inclusive, at a rate equal to the rate quoted by at least three financial
37 institutions as the highest rate paid on a certificate of deposit whose
38 duration is approximately 90 days on the first day of the quarter. If
39 the amount due to a contractor pursuant to this subsection for any
40 quarter is less than \$500, the public body may hold the interest until:

41 (a) The end of a subsequent quarter after which the amount of
42 interest due is \$500 or more;

43 (b) The end of the fourth consecutive quarter for which no
44 interest has been paid to the contractor; or



1 (c) The amount withheld under the contract is due pursuant to
2 NRS 338.520,
3 whichever occurs first.

4 4. If the Labor Commissioner has reason to believe that an
5 employee ~~has a valid and enforceable claim for wages against~~ *is*
6 *owed wages by* a contractor, he may require the public body to
7 withhold from any payment due the contractor under this section ,
8 and pay the Labor Commissioner instead, an amount equal to the
9 amount ~~claimed by~~ *that the Labor Commissioner believes is owed*
10 *to* the employee. This amount must be paid to the employee if the
11 ~~claim~~ *matter* is resolved in his favor, otherwise it must be returned
12 to the public body for payment to the contractor.

13 **Sec. 6.** This act becomes effective upon passage and approval.

