

ASSEMBLY BILL NO. 432—ASSEMBLYMEN BROWN, KNECHT,
HARDY, ANDONOV, GOICOECHEA, GRADY, HETRICK,
MARVEL AND SHERER

MARCH 17, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions concerning certain penalties
against and withholdings of money from contractors
and subcontractors on public works. (BDR 28-932)

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

~

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 provisions governing
the penalty for the failure of a contractor or subcontractor
engaged on a public work to report each workman
employed on the public work to the public body that
awarded the contract; prohibiting a contractor on a public
work from withholding certain money from a
subcontractor under certain circumstances; 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 338.060 is hereby amended to read as follows:
2 338.060 1. A contractor engaged on *a* public ~~works~~ *work*
3 shall forfeit, as a penalty to the public body ~~in~~ *on* behalf of which
4 the contract has been made and awarded to the contractor, not less
5 than \$20 nor more than \$50 for each calendar day or portion thereof
6 that each workman employed on the public work ~~is~~
7 ~~—(a) Is~~ *is* paid less than the designated rate for any work done
8 under the contract, by the contractor or any subcontractor under
9 him.
10 ~~(b) Is~~



1 2. *Except as otherwise provided in subsection 3, 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*
4 *to the contractor, not less than \$20 nor more than \$50 for each*
5 *calendar day or portion thereof that each workman employed on*
6 *the public work is not reported to the public body awarding the*
7 *contract by the contractor or any of his subcontractors as required*
8 *pursuant to subsection 5 of NRS 338.070 ~~[-The]~~, up to a maximum*
9 *of:*

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

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

14 3. *A public body shall not withhold any penalties from a*
15 *contractor pursuant to subsection 2 if the public body failed to*
16 *include the stipulation required pursuant to subsection 4 in the*
17 *contract for the public work.*

18 4. A public body awarding ~~the~~ a contract for a public work
19 shall cause a stipulation ~~to this effect~~ setting forth the penalties
20 specified in subsections 1 and 2 to be inserted in the contract.

21 ~~2.~~ 5. The Labor Commissioner shall, by regulation, establish
22 a sliding scale based on the size of the contractor's business to
23 determine the amount of the penalty to be imposed pursuant to
24 subsection 1.

25 ~~3.~~ 6. If a penalty is imposed pursuant to this section, the costs
26 of the proceeding, including investigative costs and attorney's fees,
27 may be recovered by the Labor Commissioner.

28 **Sec. 2.** NRS 338.070 is hereby amended to read as follows:

29 338.070 1. Any public body and its officers or agents
30 awarding a contract shall:

31 (a) Investigate possible violations of the provisions of NRS
32 338.010 to 338.090, inclusive, committed in the course of the
33 execution of the contract, and determine whether a violation has
34 been committed and inform the Labor Commissioner of any such
35 violations; and

36 (b) When making payments to the contractor of money
37 becoming due under the contract, withhold and retain all sums
38 forfeited pursuant to the provisions of NRS 338.010 to 338.090,
39 inclusive.

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

43 3. ~~It~~ *Except as otherwise provided in subsection 6, it* is
44 lawful for any contractor to withhold from any subcontractor under
45 him sufficient sums to cover any penalties withheld from him by the



1 awarding body on account of the failure of the subcontractor to
2 comply with the terms of NRS 338.010 to 338.090, inclusive. If
3 payment has already been made to the subcontractor, the contractor
4 may recover from him the amount of the penalty or forfeiture in a
5 suit at law.

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

10 5. The record *maintained pursuant to subsection 4* must be
11 open at all reasonable hours to the inspection of the public body
12 awarding the contract, and its officers and agents. The contractor or
13 subcontractor shall ensure that a copy of the record for each
14 calendar month is received by the public body awarding the contract
15 no later than ~~10~~ 15 days after the end of the month. The copy must
16 be open to public inspection as provided in NRS 239.010. The
17 record in the possession of the public body awarding the contract
18 may be discarded by the public body 2 years after final payment is
19 made by the public body for the public work.

20 6. *A contractor shall not withhold from a subcontractor*
21 *under him the sums necessary to cover any penalties withheld*
22 *from the contractor by the public body awarding the contract*
23 *because the public body did not receive a copy of the record*
24 *maintained by the subcontractor pursuant to subsection 4 for a*
25 *calendar month by the time specified in subsection 5 if:*

26 (a) *The subcontractor provided to the contractor a copy of the*
27 *record no later than 10 days after the end of the month for*
28 *submission to the public body by the contractor; and*

29 (b) *The contractor failed to submit the copy of the record to the*
30 *public body by the time specified in subsection 5.*

31 *Nothing in this subsection prohibits a subcontractor from*
32 *submitting a copy of a record for a calendar month directly to the*
33 *public body by the time specified in subsection 5.*

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

