

CHAPTER.....

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; imposing a penalty against a contractor or subcontractor for willfully including inaccurate or incomplete information in a report required to be submitted to the public body that awarded the contract for the public work; authorizing the Labor Commissioner to waive or reduce certain penalties imposed on contractors and subcontractors for good cause shown; and providing other matters properly relating thereto.

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

Section 1. NRS 338.060 is hereby amended to read as follows:

1. ~~[A]~~ *Except as otherwise provided in subsection 8, a contractor engaged on a public ~~[works]~~ work shall forfeit, as a penalty to the public body ~~[in]~~ on behalf of which the contract has been made and awarded to the contractor, not less than \$20 nor more than \$50 for each calendar day or portion thereof that each workman employed on the public work ~~[~~—(a) ~~is]~~ is paid less than the designated rate for any work done under the contract, by the contractor or any subcontractor under him.*

~~[(b) ~~is]~~~~

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

3. *Except as otherwise provided in subsection 8, a contractor engaged on a public work shall forfeit, as a penalty to the public body on behalf of which the contract has been made and awarded to the contractor, not less than \$20 nor more than \$50 for each calendar day or portion thereof that each workman employed on*

the public work is not reported to the public body awarding the contract *by the contractor or any of his subcontractors* as required pursuant to *subsection 5 of* NRS 338.070 ~~[The]~~, *up to a maximum of:*

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

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

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

5. A public body awarding ~~[the]~~ a contract *for a public work* shall cause a stipulation ~~[to this effect]~~ *setting forth the penalties specified in subsections 1 to 4, inclusive,* to be inserted in the contract.

~~[2.]~~ 6. The Labor Commissioner shall, by regulation, establish a sliding scale based on the size of the contractor's business to determine the amount of the penalty to be imposed pursuant to ~~[subsection 1.~~

~~—3.]~~ *subsections 1 and 2.*

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

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

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

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

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

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

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

3. ~~[It]~~ *Except as otherwise provided in subsection 6, it* is lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the failure of the subcontractor to comply with the terms of NRS 338.010 to 338.090, inclusive. If

payment has already been made to the subcontractor, the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

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

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

6. *A contractor shall not withhold from a subcontractor under him the sums necessary to cover any penalties provided pursuant to subsection 3 of NRS 338.060 that may be withheld from the contractor by the public body awarding the contract because the public body did not receive a copy of the record maintained by the subcontractor pursuant to subsection 4 for a calendar month by the time specified in subsection 5 if:*

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

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

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

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

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

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

Sec. 3. This act becomes effective upon passage and approval.