

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; 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; 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~~ :
5 *(a) Not* less than \$20 nor more than \$50 for each calendar day or
6 portion thereof that each workman employed on the public work ~~:~~



* A B 4 3 2 R 1 *

1 ~~(a) Is~~ is paid less than the designated rate for any work done
2 under the contract, by the contractor or any subcontractor under him

3 ~~f~~
4 ~~(b) Is~~; or

5 (b) Not less than \$20 nor more than \$50 for each calendar day
6 or portion thereof for each workman employed on the public work
7 for which the contractor willfully included inaccurate or
8 incomplete information in the monthly record required to be
9 submitted to the public body pursuant to subsection 5 of NRS
10 338.070.

11 2. A contractor who violates the provisions of paragraphs (a)
12 and (b) of subsection 1 for the same workman must forfeit as
13 penalty the amount imposed by paragraph (a) or (b), but not both
14 paragraphs.

15 3. A contractor engaged on a public work shall forfeit, as a
16 penalty to the public body on behalf of which the contract has
17 been made and awarded to the contractor, not less than \$20 nor
18 more than \$50 for each calendar day or portion thereof that each
19 workman employed on the public work is not reported to the public
20 body awarding the contract by the contractor or any of his
21 subcontractors as required pursuant to subsection 5 of NRS
22 338.070 ~~[The]~~, up to a maximum of:

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

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

27 4. A public body awarding ~~the~~ a contract for a public work
28 shall cause a stipulation ~~to this effect~~ setting forth the penalties
29 specified in subsections 1, 2 and 3 to be inserted in the contract.

30 ~~2~~ 5. The Labor Commissioner shall, by regulation, establish
31 a sliding scale based on the size of the contractor's business to
32 determine the amount of the penalty to be imposed pursuant to
33 subsection 1.

34 ~~3~~ 6. If a penalty is imposed pursuant to this section, the costs
35 of the proceeding, including investigative costs and attorney's fees,
36 may be recovered by the Labor Commissioner.

37 **Sec. 2.** NRS 338.070 is hereby amended to read as follows:
38 338.070 1. Any public body and its officers or agents
39 awarding a contract shall:

40 (a) Investigate possible violations of the provisions of NRS
41 338.010 to 338.090, inclusive, committed in the course of the
42 execution of the contract, and determine whether a violation has
43 been committed and inform the Labor Commissioner of any such
44 violations; and



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

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

8 3. ~~It~~ *Except as otherwise provided in subsection 6, it* is
9 lawful for any contractor to withhold from any subcontractor under
10 him sufficient sums to cover any penalties withheld from him by the
11 awarding body on account of the failure of the subcontractor to
12 comply with the terms of NRS 338.010 to 338.090, inclusive. If
13 payment has already been made to the subcontractor, the contractor
14 may recover from him the amount of the penalty or forfeiture in a
15 suit at law.

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

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

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

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

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

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

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



- 1 *Nothing in this subsection prohibits a subcontractor from*
- 2 *submitting a copy of a record for a calendar month directly to the*
- 3 *public body by the time specified in subsection 5.*
- 4 **7.** Any contractor or subcontractor, or agent or representative
- 5 thereof, performing work for a public work who neglects to comply
- 6 with the provisions of this section is guilty of a misdemeanor.

Ⓢ

