

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.

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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; 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:

- 1 **Section 1.** NRS 338.060 is hereby amended to read as follows:
2 1. ~~[A]~~ *Except as otherwise provided in subsection 8, a*
3 contractor engaged on *a* public ~~[works]~~ *work* shall forfeit, as a
4 penalty to the public body ~~[in]~~ *on* behalf of which the contract has



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1 been made and awarded to the contractor, not less than \$20 nor
2 more than \$50 for each calendar day or portion thereof that each
3 workman employed on the public work ~~is~~
4 ~~—(a) is~~ is paid less than the designated rate for any work done
5 under the contract, by the contractor or any subcontractor under
6 him.

7 ~~[(b) is]~~

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

17 3. Except as otherwise provided in subsection 8, a contractor
18 engaged on a public work shall forfeit, as a penalty to the public
19 body on behalf of which the contract has been made and awarded
20 to the contractor, not less than \$20 nor more than \$50 for each
21 calendar day or portion thereof that each workman employed on
22 the public work is not reported to the public body awarding the
23 contract by the contractor or any of his subcontractors as required
24 pursuant to subsection 5 of NRS 338.070 ~~[-The]~~, up to a
25 maximum of:

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

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

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

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

38 ~~[(2)]~~ 6. The Labor Commissioner shall, by regulation, establish
39 a sliding scale based on the size of the contractor's business to
40 determine the amount of the penalty to be imposed pursuant to
41 ~~[subsection 1-~~

42 ~~—3.]~~ subsections 1 and 2.

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



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

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

4 338.070 1. Any public body and its officers or agents
5 awarding a contract shall:

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

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

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

18 3. ~~It~~ **Except as otherwise provided in subsection 6, it** is
19 lawful for any contractor to withhold from any subcontractor under
20 him sufficient sums to cover any penalties withheld from him by the
21 awarding body on account of the failure of the subcontractor to
22 comply with the terms of NRS 338.010 to 338.090, inclusive. If
23 payment has already been made to the subcontractor, the contractor
24 may recover from him the amount of the penalty or forfeiture in a
25 suit at law.

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

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

40 6. **A contractor shall not withhold from a subcontractor**
41 **under him the sums necessary to cover any penalties provided**
42 **pursuant to subsection 3 of NRS 338.060 that may be withheld**
43 **from the contractor by the public body awarding the contract**
44 **because the public body did not receive a copy of the record**



1 *maintained by the subcontractor pursuant to subsection 4 for a*
2 *calendar month by the time specified in subsection 5 if:*

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

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

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

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

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

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

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

