
Assembly Committee on Government Affairs
This measure may be considered for action during today's work session.
April 11, 2013

ASSEMBLY BILL 218

Revises provisions relating to public works. (BDR 28-981)

Sponsored by: Assembly Committee on Government Affairs
Date Heard: March 12, 2013
Fiscal Impact: Effect on Local Government: May Have Fiscal Impact.
Effect on the State: Yes.

Assembly Bill 218 defines “bona fide fringe benefit” for the purposes of the State laws applicable to public works as a benefit in the form of a contribution that is made not less frequently than monthly to an independent third party pursuant to a fund, plan, or program:

- (1) Which is established for the sole and exclusive benefit of a worker and his or her family and dependents; and
- (2) For which none of the assets will revert to, or otherwise be credited to, any contributing employer or sponsor of the fund, plan, or program.

The term includes, without limitation, benefits for a worker that are determined pursuant to a collective bargaining agreement.

A contractor or subcontractor engaged on a public work may discharge any part of his or her obligation to pay prevailing wages to a worker by providing bona fide fringe benefits in the name of the worker if certain conditions are met. One of those conditions is that the bona fide fringe benefits are paid equally for all hours worked in a calendar year by the worker for the contractor or subcontractor. The Labor Commission must, after providing notice and an opportunity for a hearing: (1) impose an administrative penalty against a contractor or subcontractor who violates the provisions of that section; (2) require the contractor or subcontractor to make the affected worker whole by paying to the worker as wages any amounts disallowed as bona fide fringe benefits; (3) report the violation to the Attorney General; and (4) notify certain governmental and other entities of the violation.

Discharging an obligation to pay wages in a manner that violates certain State laws relevant to public works, including these provisions relevant to bona fide fringe benefits, is an “offense” for which the Labor Commissioner may impose an administrative penalty.

Amendments: Two amendments were provided for A.B. 218:

- (1) The bill’s sponsor provided the attached mock-up for consideration by the Committee. The proposed amendment changes the existing statutory definition of “wages” found in Section 22 of *Nevada Revised Statutes* 338.010, and it amends

Subsection 5 of Section 4 of the bill as shown while adding two new subsections to Section 4 as shown.

- (2) See attached proposed amendment by John Madole, Nevada Chapter, Associated General Contractors that proposes to delete all sections of the bill except Sections 1 and 9, leaving only the definition of “bona fide fringe benefit.”

Amendment AB 218

Language in blue italics is original language to be added by the bill, language in green underlined is language that is being proposed by this amendment, ~~language in red strike through is language in the original bill that is proposed to be deleted~~, ~~language in blue strike through is language proposed to be added in the original bill being deleted by this amendment~~, language in purple underline is language in the original bill that was proposed to be deleted being retained by this amendment ~~language in purple strike through is language in the original bill proposed to be deleted in this amendment~~

22. "Wages" means:

- (a) The basic hourly rate of pay; and
- (b) The amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training ~~or other similar programs~~ or other bona fide fringe benefits which are a benefit to the worker.

NRS 338.035 Discharge of part of obligation of contractor or subcontractor engaged on public work to pay wages by making certain contributions in name of worker.

1. The obligation of a contractor engaged on a public work or a subcontractor engaged on a public work to pay wages in accordance with the determination of the Labor Commissioner may be discharged in part by ~~making contributions to a third person pursuant to a fund, plan or program~~ providing bona fide fringe benefits in the name of the worker.

2. A contractor or subcontractor may, pursuant to subsection 1, discharge any part of his or her obligation to pay wages in accordance with the determination of the Labor Commissioner only to the extent that the bona fide fringe benefits provided in the name of the worker are annualized.

3. A contractor or subcontractor who, pursuant to subsection 1, discharges any part of his or her obligation to pay wages in accordance with the determination of the Labor Commissioner shall provide to the Labor Commissioner and the public body that awarded the contract for the public work any information requested by the Labor Commissioner or the public body, as applicable, to verify compliance with this section.

4. In addition to any other penalty provided in this chapter, after providing the contractor or subcontractor notice and an opportunity for hearing, the Labor Commissioner shall, if the Labor Commissioner finds that the contractor or subcontractor has violated a provision of this section:

(a) For the first violation, impose against the contractor or subcontractor an administrative penalty of not less than \$2,500 or more than \$5,000;

(b) For the second or any subsequent violation within 5 years after the date of imposition of an administrative penalty pursuant to paragraph (a), impose against the contractor or subcontractor an administrative penalty of not less than \$5,000;

(c) Require the contractor or subcontractor to make the affected worker whole by paying to the worker as wages any amounts disallowed as bona fide fringe benefits in a manner prescribed by the Labor Commissioner;

(d) Report the violation to the Attorney General, and the Attorney General may prosecute the contractor or subcontractor in accordance with law; and

(e) In addition to notifying the State Contractors' Board pursuant to NRS 338.017, notify the provider of workers' compensation for the contractor or subcontractor, the Employment Security Division of the Department of Employment Training and Rehabilitation and the public body that awarded the contract for the public work of the violation.

5. The provisions of this section do not apply:

(a) ~~with~~ With regard to a worker whose benefits are determined pursuant to a collective bargaining agreement - ;

(b) With regard to bona fide defined contribution retirement plans provided the amount contributed to a defined contribution plan is affordable.

6. As used in this section "affordable" means the amount of contributions that do not exceed 25% of the hourly wage paid to the worker on the public work.

7. As used in this section "defined contribution" has the meaning ascribed to it in 29 U.S.C. 1002 (34)

€ 7. As used in this section, "annualized" means an amount paid equally for all hours worked in a calendar year by the worker by the contractor or subcontractor who is providing bona fide fringe benefits.

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

Delete Sections 2 through 8.

Section 1. NRS 338.010 is hereby amended to read as follows: 338.010 As used in this chapter:

1. “Authorized representative” means a person designated by a public body to be responsible for the development, solicitation, award or administration of contracts for public works pursuant to this chapter.

2. *“Bona fide fringe benefit” means a benefit in the form of a contribution that is made not less frequently than monthly to an independent third party pursuant to a fund, plan or program:*

(a) Which is established for the sole and exclusive benefit of a worker and his or her family and dependents; and

(b) For which none of the assets will revert to, or otherwise be credited to, any contributing employer or sponsor of the fund, plan or program. The term includes, without limitation, benefits for a worker that are determined pursuant to a collective bargaining agreement.

3. “Contract” means a written contract entered into between a contractor and a public body for the provision of labor, materials, equipment or supplies for a public work.

[3.] 4. “Contractor” means:

(a) A person who is licensed pursuant to the provisions of chapter 624 of NRS.

(b) A design-build team.

[4.] 5. “Day labor” means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a worker or workers employed by them on public works by the day and not under a contract in writing.

[5.] 6. “Design-build contract” means a contract between a public body and a design-build team in which the design-build team agrees to design and construct a public work.

[6.] 7. “Design-build team” means an entity that consists of:

(a) At least one person who is licensed as a general engineering contractor or a general building contractor pursuant to chapter 624 of NRS; and

(b) For a public work that consists of:

(1) A building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS.

(2) Anything other than a building and its site, at least one person who holds a certificate

of registration to practice architecture pursuant to chapter 623 of NRS or landscape architecture pursuant to chapter 623A of NRS or who is licensed as a professional engineer pursuant to chapter 625 of NRS.

[7.] 8. “Design professional” means:

- (a) A person who is licensed as a professional engineer pursuant to chapter 625 of NRS;
- (b) A person who is licensed as a professional land surveyor pursuant to chapter 625 of NRS;
- (c) A person who holds a certificate of registration to engage in the practice of architecture, interior design or residential design pursuant to chapter 623 of NRS;
- (d) A person who holds a certificate of registration to engage in the practice of landscape architecture pursuant to chapter 623A of NRS; or
- (e) A business entity that engages in the practice of professional engineering, land surveying, architecture or landscape architecture.

[8.] 9. “Division” means the State Public Works Division of the Department of Administration.

[9.] 10. “Eligible bidder” means a person who is:

- (a) Found to be a responsible and responsive contractor by a local government or its authorized representative which requests bids for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373; or
- (b) Determined by a public body or its authorized representative which awarded a contract for a public work pursuant to NRS 338.1375 to 338.139, inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or 338.1382.

[10.] 11. “General contractor” means a person who is licensed to conduct business in one, or both, of the following branches of the contracting business:

- (a) General engineering contracting, as described in subsection 2 of NRS 624.215.
- (b) General building contracting, as described in subsection 3 of NRS 624.215.

[11.] 12. “Governing body” means the board, council, commission or other body in which the general legislative and fiscal powers of a local government are vested.

[12.] 13. “Local government” means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318, 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision. The term includes a person who has been designated by the governing body of a local government to serve as its authorized representative.

[13.] 14. “Offense” means **[failing]** :

(a) Failing to:

- [(a)] (1)** Pay the prevailing wage required pursuant to this chapter;
- [(b)] (2)** Pay the contributions for unemployment compensation required pursuant to chapter 612 of NRS;
- [(c)] (3)** Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS; or
- [(d)] (4)** Comply with subsection 4 or 5 of NRS 338.070.

[14.] (b) ~~Discharging an obligation to pay wages in a manner~~

~~27 that violates the provisions of NRS 338.035.~~

15. “Prime contractor” means a contractor who:

- (a) Contracts to construct an entire project;
- (b) Coordinates all work performed on the entire project;
- (c) Uses his or her own workforce to perform all or a part of the public work; and
- (d) Contracts for the services of any subcontractor or independent contractor or is responsible for payment to any contracted subcontractors or independent contractors. The term includes, without limitation, a general contractor or a specialty contractor who is authorized to bid on a project pursuant to NRS 338.139 or 338.148.

[15.] 16. “Public body” means the State, county, city, town, school district or any public agency of this State or its political subdivisions sponsoring or financing a public work.

[16.] 17. “Public work” means any project for the new construction, repair or reconstruction of:

(a) A project financed in whole or in part from public money for:

- (1) Public buildings;
- (2) Jails and prisons;
- (3) Public roads;
- (4) Public highways;
- (5) Public streets and alleys;
- (6) Public utilities;
- (7) Publicly owned water mains and sewers;
- (8) Public parks and playgrounds;
- (9) Public convention facilities which are financed at least in part with public money; and
- (10) All other publicly owned works and property.

(b) A building for the Nevada System of Higher Education of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by this State or from federal money.

[17.] 18. “Specialty contractor” means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.

[18.] 19. “Stand-alone underground utility project” means an

18 underground utility project that is not integrated into a larger project, including, without limitation:

- (a) An underground sewer line or an underground pipeline for the conveyance of water, including facilities appurtenant thereto; and
- (b) A project for the construction or installation of a storm drain, including facilities appurtenant thereto, that is not located at the site of a public work for the design and construction of which a public body is authorized to contract with a design-build team pursuant to subsection 2 of NRS 338.1711.

[19.] 20. “Subcontract” means a written contract entered into between:

- (a) A contractor and a subcontractor or supplier; or
- (b) A subcontractor and another subcontractor or supplier, for the provision of labor, materials, equipment or supplies for a construction project.

[20.] 21. “Subcontractor” means a person who:

- (a) Is licensed pursuant to the provisions of chapter 624 of NRS or performs such work that the person is not required to be licensed pursuant to chapter 624 of NRS; and
- (b) Contracts with a contractor, another subcontractor or a supplier to provide labor,

materials or services for a construction project.

[21.] 22. "Supplier" means a person who provides materials, equipment or supplies for a construction project.

[22.] 23. "Wages" means:

(a) The basic hourly rate of pay; and

(b) The amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training or other similar programs or other bona fide fringe benefits which are a benefit to the worker.

[23.] 24. "Worker" means a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker or unskilled worker in the service of a contractor or subcontractor under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. The term does not include a design professional.

Sec. 9. This act becomes effective on July 1, 2013.