
Senate Committee on Government Affairs

This measure may be considered for action during today's work session.

SENATE BILL 226

Revises provisions governing public works. (BDR 28-494)

Sponsored By: Senator Cannizzaro and Assemblyman Yeager
Date Heard: March 29, 2023
Fiscal Notes: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.
CONTAINS UNFUNDED MANDATE

Senate Bill 226 makes a declaration of legislative intent regarding the payment of prevailing wages to workers on public works projects that are funded in whole or in part by public money. Any regulation adopted by the Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry, relating to public works must be consistent with the declaration of legislative intent. The bill also revises the requirements to determine whether a project is a public work.

Finally, the measure amends the definition of a "public work" under certain circumstances to include the construction, demolition, alteration, custom fabrication, or repair work on any property or premises, regardless of whether it is financed in whole or in part from public money.

Amendments: There is one amendment proposed for this measure.

Vince Saavedra, Executive Secretary-Treasurer, Southern Nevada Building Trades Unions, proposes to amend the bill to do the following:

1. Revise the declaration in Section 2 to clarify the intent regarding novel leasing and financing arrangements or incentives provided by local governments or governing bodies of local governments for development of construction projects;
2. Delete Sections 3 and 4;
3. Retain the definition of "horizontal construction" and "vertical construction" in subsection 14 and 25 of Section 5, respectively;
4. Clarify that prevailing wages apply on subsection 3 of Section 7 on certain types of projects as if the public body had undertaken the project or had awarded the contract;
5. Exclude certain types of construction of affordable housing in subsection 4 of Section 7 from prevailing wage provisions; and
6. Define "affordable housing" in subsection 5 of Section 7.

Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of *green bold underlining* is language proposed to be added 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 double underlining is deleted language in the original bill proposed to be retained in this amendment:

Section 1. Chapter 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, ~~3 and 4~~ of this act.

Sec. 2. *The Legislature hereby finds and declares that:*

1. The payment of prevailing wages to workers on public works projects that are funded in whole or in part by public money is essential to:

(a) The economic well-being of this State;

(b) Increasing the number of skilled construction workers in this State;

~~*(c) Enhancing the workforce in this State; and*~~

~~*(d) Increasing redevelopment opportunities in this State.*~~

2. In order to ensure the intent stated within Section 1 is upheld, careful scrutiny of novel leasing and financing arrangements or incentives provided by local governments or governing bodies of local governments for development of construction projects is required to ensure that the laws governing the payment of prevailing wages to workers are not circumvented.

~~*2. To the extent practicable, the interpretation of provisions of the Nevada Revised Statutes, and regulations adopted pursuant thereto, relating to public works and prevailing wages must be aligned with provisions of the federal Davis-Bacon Act, 40 U.S.C.*~~

~~*§§ 3141 et seq., to ensure uniformity and consistency on federal and state public works projects in this State.*~~

~~*3. It is the intent of the Legislature that any interpretation of the federal Davis-Bacon Act, 40 U.S.C. §§ 3141 et seq., applies to the interpretation of provisions of this chapter, and any regulation adopted pursuant thereto, unless the interpretation of the federal Davis-Bacon Act, 40 U.S.C. §§ 3141 et seq., directly conflicts with a clear and specific requirement set forth in this chapter or a regulation adopted pursuant thereto.*~~

Sec. 3. ~~*For purposes of determining whether a project is a public work, it shall be deemed that a project is financed in whole or in part from public money if, without limitation:*~~

~~*(a) A public body pays money or other compensation directly to or on behalf of the developer or contractor of the project or any subcontractor who performs any work on the project;*~~

~~*3. A public body pays, credits, reduces, forgives or waives any fee, cost, rent, insurance premium, bond premium, obligation or expense, including, without limitation, an incidental expense, in relation to the project that is normally required in the execution of a contract for a public work;*~~

~~*4. A public body loans money in relation to the project that is required to be repaid to the public body on a contingent basis;*~~

~~5. Any employee of a public body performs skilled work or labor in furtherance of the project;~~

~~6. In relation to the project, a public body sells, leases or otherwise transfers for less than fair market value any developed or undeveloped real property or any other property or asset; or~~

~~7. In relation to the project, a public body transfers property for less than fair market value.~~

~~Sec. 4. 1. The general procedures for awarding contracts, as described in NRS 338.1373 to 338.139, inclusive, do not apply to a public work completed on a property or premises if, at the time of entering into the contract:~~

~~(a) The property or premises, in whole or in part, is leased by a public body or is subject to an agreement to be subsequently leased by a public body;~~

~~(b) The property, or any horizontal construction or vertical construction relating thereto, is in an improvement district, as defined in NRS 271.130;~~

~~(c) The project, or any horizontal construction or vertical construction relating thereto, is a redevelopment project, as defined in NRS 279.412, that is financed pursuant to chapter 279 of NRS;~~

~~(d) The project is a qualified project, as defined in NRS 360.888;~~

~~(e) The property, or any horizontal construction or vertical construction relating thereto, has been or will be conveyed, in whole or in part, to a public body pursuant to the terms of a development agreement with the public body; or~~

~~(f) A public body retains any right, including, without limitation, a contingent right, to retake ownership of the property or premises after the commencement of work on the project.~~

~~2. This section must not be construed to abrogate the requirement to pay prevailing wages on a public work described in subsection 1.~~

Sec. 5. 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.

(b) “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: Which is established for the sole and exclusive benefit of a worker and his or her family and dependents; and 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 and included in the determination of the prevailing wage by the Labor Commissioner pursuant to NRS 338.030.

4. “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.

5. “Contractor” means:
 - (a) A person who is licensed pursuant to the provisions of chapter 624 of NRS.
 - (b) A design-build team.
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.
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.
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.
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.
9. “Discrete project” means one or more public works which are undertaken on a single construction site for a single public body. The term does not include one or more public works that are undertaken on multiple construction sites regardless of whether the public body which sponsors or finances the public works bundles the public works together.
10. “Division” means the State Public Works Division of the Department of Administration.
11. “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.

12. "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.

13. "Governing body" means the board, council, commission or other body in which the general legislative and fiscal powers of a local government are vested.

14. "Horizontal construction" means [any] ~~the~~ construction [, alteration, repair, renovation, demolition or remodeling necessary to complete a] ~~of any fixed~~ public work, including, without limitation, any irrigation, drainage, water supply, flood control, harbor, railroad, highway, tunnel, airport or airway, sewer, sewage disposal plant or water treatment facility and any ancillary vertical components thereof, bridge, inland waterway, pipeline for the transmission of petroleum or any other liquid or gaseous substance, pier, and any other work incidental thereto. The term does not include vertical construction, the construction of any terminal or other building of an airport or airway, or the construction of any other building.

15. "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, 318, 318A, 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.

16. "Offense" means:

(a) Failing to:

(1) Pay the prevailing wage required pursuant to this chapter;

(2) Pay the contributions for unemployment compensation required pursuant to chapter 612 of NRS;

(3) Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS; or

(4) Comply with subsection 5 or 6 of NRS 338.070.

(b) Discharging an obligation to pay wages in a manner that violates the provisions of NRS 338.035.

17. “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.

18. “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.

19. “Public work” means any project ~~for the new construction, repair or reconstruction of a project financed~~ :

(a) *Financed* in whole or in part from public money for:

~~(a)~~ (1) Public buildings; ~~(b)~~ (2) Jails and prisons; ~~(c)~~ (3) Public roads;

~~(d)~~ (4) Public highways;

~~(e)~~ (5) Public streets and alleys;

~~(f)~~ (6) Public utilities;

~~(g)~~ (7) Publicly owned water mains and sewers;

~~(h)~~ (8) Public parks and playgrounds;

~~(i)~~ (9) Public convention facilities which are financed at least in part ~~with~~ from public money; and

~~(j)~~ (10) All other publicly owned works and property ~~and publicly leased property where construction, reconstruction, demolition, alteration, custom fabrication, repair, maintenance, painting or decorating is performed by skilled mechanics, skilled workers, semiskilled mechanics, semiskilled workers or unskilled labor.~~

~~(b) That includes construction, demolition, alteration, custom fabrication or repair work on any property or premises, regardless of whether financed in whole or in part from public money if, at the time the contract for the project is entered into:~~

~~(1) The property or premises is owned by a public body;~~

~~(2) The property or premises, in whole or in part, is leased by a public body or is subject to an agreement to be subsequently leased by a public body;~~

~~(3) The property, or any horizontal construction or vertical construction relating thereto, is in an improvement district, as that term is defined in NRS 271.130;~~

~~(4) The project, or any horizontal construction or vertical construction relating thereto, is a redevelopment project, as that term is defined in NRS 279.412, that is financed pursuant to chapter 279 of NRS;~~

~~(5) The project is a qualified project, as that term is defined in NRS 360.888;~~

~~(6) The property, or any horizontal construction or vertical construction relating thereto, has been or will be conveyed, in whole or in part, to a public body pursuant to the terms of a development agreement with the public body; or~~

~~(7) A public body retains any right, including, without limitation, a contingent right, to retake ownership of the property or premises after the commencement of work on the project.~~

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

21. “Stand-alone underground utility project” means an 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.

22. “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.

23. “Subcontractor” means a person who:

(e) 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

(f) Contracts with a contractor, another subcontractor or a supplier to provide labor, materials or services for a construction project.

24. “Supplier” means a person who provides materials, equipment or supplies for a construction project.

25. “Vertical construction” means any ~~the~~ construction [, alteration, repair, renovation, demolition] or remodeling [necessary to complete a public work for] ~~of~~ any building, structure or other improvement that is predominantly vertical, including, without limitation, a building, structure or improvement for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, and any other work or improvement appurtenant thereto.

26. “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 bona fide fringe benefits which are a benefit to the worker.

27. “Worker” means a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker, [or] unskilled worker ~~or worker who performs custom fabrication~~ 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. 7 NRS 338.0115 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2 **and 3**, the provisions of this chapter and **chapters 332** and **339** of NRS do not apply to a contract under which a private developer, for the benefit of a private development, constructs a water or sewer line extension and any related appurtenances:

- (a) Which qualify as a public work pursuant to **NRS 338.010**; and
- (b) For which the developer will receive a monetary contribution or refund from a public body as reimbursement for a portion of the costs of the project.

2. If, pursuant to the provisions of such a contract, the developer is not responsible for paying all of the initial construction costs of the project, the provisions of **NRS 338.0117**, **338.013** to **338.090**, inclusive, and **338.1373** to **338.148**, inclusive, apply to the contract.

3. If pursuant to the provisions of a contract, lease agreement, lease purchase agreement, development agreement, improvement district as that term is defined in NRS 271.130, redevelopment project, or a public private partnership between a private developer and a public body the provisions of NRS 338.013 to 338.090 inclusive shall apply in the same manner as if the public body had undertaken the project or had awarded the contract, if any of the following apply:

- (a) The property or premises is owned by a public body;**
- (b) The property or premises, in whole or in part, is leased or leased with an option to purchase by a public body, is subject to an agreement to be subsequently leased by a public body;**
- (c) In relation to the project, a public body transfers property for less than fair market value;**
- (d) In relation to the project, a public body sells, leases or otherwise transfers for less than fair market value any developed or undeveloped real property or any other property or asset;**
- (e) Except as otherwise provided in subsection 2 of this section, a public body pays money or other compensation directly to or on**

behalf of the developer or contractor of the project or any subcontractor who performs any work on the project;

(f) A public body loans money in relation to the project that is required to be repaid to the public body regardless of the terms or interest charged;

(g) A public body pays, credits, reduces, forgives or waives any fee, cost, rent, insurance premium, bond premium, obligation or expense, including, without limitation, an incidental expense, in relation to the project that is normally required in the execution of a contract for a public work, with a value of greater than \$100,000; or

(h) A public body retains any right, including, without limitation, a contingent right, to retake ownership of the property or premises after the commencement of construction work on the project.

4. Subsections (c), (d), (f), (g), and (h) of section 3 shall not apply if a local government engages in one of the actions identified in those subsections for the purposes of the construction of affordable housing that is less than three stories, whether each or any story is above or below ground level.

5. For purposes of section 4, affordable housing shall mean:

(a) Multifamily housing that meets the definition of Tier One or Tier Two Affordable Housing as defined in NRS 278.01902 and NRS 278.01906 and bound by an executed, legally binding agreement or instrument that includes resale restrictions requiring any resale of the premises to require that the premises continue to operate as Tier One or Tier Two Affordable Housing.; or

(b) That is single-family residential housing:

(1) built on property that the homeowner leases through an agreement that restricts the resale of the home to households that meet the definition of Tier Two or Tier Three Affordable Housing, as defined in NRS 278.01904;

(2) owned by a homeowner who qualifies as a household that meets the definition of Tier Two, or Tier Three Affordable Housing; and

(3) bound by an executed, legally binding agreement or instrument that includes resale restrictions requiring any resale

**of the home to also qualify as Tier Two or Tier Three
Affordable Housing.**

Sec. 8. NRS 338.012 is hereby amended to read as follows:

338.012 1. The Labor Commissioner may adopt such regulations as are necessary to enable the Labor Commissioner to carry out his or her duties pursuant to the provisions of this chapter.

2. Any regulation adopted by the Labor Commissioner pursuant to this chapter must be consistent with the declaration of legislative intent set forth in section 2 of this act.

Sec. 9 NRS 338.090 is hereby amended to read as follows:

338.090 1. Except as otherwise provided in subsection 5, any person, including the officers, agents or employees of a public body, who violates any provision of NRS 338.010 to 338.090, inclusive, *and sections 2 and 3 of this act* or any regulation adopted pursuant thereto, is guilty of a misdemeanor.

2. The Labor Commissioner, in addition to any other remedy or penalty provided in this chapter:

(a) Shall, except as otherwise provided in subsection 4, assess a person who, after an opportunity for a hearing, is found to have failed to pay the prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive, an amount equal to the difference between the prevailing wages required to be paid and the wages that the contractor or subcontractor actually paid; and

(b) May, in addition to any other administrative penalty, impose an administrative penalty not to exceed the costs incurred by the Labor Commissioner to investigate and prosecute the matter.

3. If the Labor Commissioner finds that a person has failed to pay the prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive, the public body may, in addition to any other remedy or penalty provided in this chapter, require the person to pay the actual costs incurred by the public body to investigate the matter.

4. The Labor Commissioner is not required to assess a person an amount equal to the difference between the prevailing wages required to be paid and the wages that the contractor or subcontractor actually paid if the contractor or subcontractor has already paid that amount to a worker pursuant to paragraph (c) of subsection 4 of NRS 338.035.

5. The provisions of subsection 1 do not apply to a subcontractor specified in NRS 338.072.

Sec. 10. 1. This ~~section and section 16 of this~~ act become effective upon passage and approval.