

Assembly Bill No. 218—Committee
on Government Affairs

CHAPTER.....

AN ACT relating to public works; defining the term “bona fide fringe benefit” for certain provisions applicable to the payment of wages for public works; revising the requirements pursuant to which a contractor or subcontractor engaged on a public work may discharge his or her obligation to pay prevailing wages to workers; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law sets forth general provisions applicable to public works, including provisions requiring the payment of prevailing wages for public works projects. (NRS 338.010-338.090) Existing law also authorizes the Labor Commissioner: (1) to provide certain remedies for violations of those provisions; and (2) after providing notice and an opportunity for a hearing, to impose an administrative penalty against a person who violates those provisions. (NRS 338.015, 338.017, 338.090) Further, under existing law, a contractor or subcontractor engaged on a public work is authorized to discharge his or her obligation to pay prevailing wages to workers in part by making certain contributions in the name of the worker. (NRS 338.035)

Section 4 of this bill sets forth the requirements pursuant to which 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. Those requirements include, among other things, 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. **Section 1** of this bill defines “bona fide fringe benefit” for the purposes of the provisions applicable to public works. **Section 4** also requires the Labor Commissioner, after providing notice and an opportunity for a hearing, to: (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.

Existing law provides that if an administrative penalty is imposed against a person for the commission of an offense as defined in relation to public works: (1) the person and any corporate officer of the person are prohibited from receiving a contract for a public work for specified periods depending on the number of offenses; and (2) the Labor Commissioner is required to notify the State Contractors’ Board with regard to each contractor who is prohibited from being awarded such a contract. (NRS 338.010, 338.017) **Section 1** of this bill makes this provision of existing law applicable to discharging an obligation to pay wages in a manner that violates the provisions of **section 4** by adding that violation to the definition of an “offense” in **section 1**.



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

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 and included in the determination of the prevailing wage by the Labor Commissioner pursuant to NRS 338.030.

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.

~~13-1~~ 4. “Contractor” means:

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

(b) A design-build team.

~~14-1~~ 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.

~~15-1~~ 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.

~~16-1~~ 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.

~~7-1~~ **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.

~~8-1~~ **9.** “Division” means the State Public Works Division of the Department of Administration.

~~9-1~~ **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.

~~10-1~~ **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.

~~11-1~~ **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.



~~12.1~~ **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.

~~13.1~~ **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.

~~14.1~~ **(b) Discharging an obligation to pay wages in a manner 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.

~~15.1~~ **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.

~~16.1~~ **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 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 ~~for other similar programs~~ or other bona fide fringe benefits which are a benefit to the worker.

~~23.1~~ **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. 2. NRS 338.015 is hereby amended to read as follows:

338.015 1. The Labor Commissioner shall enforce the provisions of NRS 338.010 to 338.130, inclusive.

2. ~~H4~~ *Except as otherwise provided in NRS 338.035 and in addition to any other remedy or penalty provided in this chapter, if any person, including, without limitation, a public body, violates any provision of NRS 338.010 to 338.130, inclusive, or any regulation adopted pursuant thereto, the Labor Commissioner may, after providing the person with notice and an opportunity for a hearing, impose against the person an administrative penalty of not more than \$5,000 for each such violation.*

3. The Labor Commissioner may, by regulation, establish a sliding scale based on the severity of the violation to determine the amount of the administrative penalty to be imposed against the person pursuant to this section.

4. The Labor Commissioner shall report the violation to the Attorney General, and the Attorney General may prosecute the person in accordance with law.

Sec. 3. NRS 338.018 is hereby amended to read as follows:

338.018 The provisions of NRS 338.013 to 338.018, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds \$100,000 even if the construction work does not qualify as a public work, as defined in subsection ~~H6~~ **17** of NRS 338.010.

Sec. 4. NRS 338.035 is hereby amended to read as follows:

338.035 **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 remedy or penalty provided in this chapter, after providing the contractor or subcontractor with notice and an opportunity for a 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 with regard to:*

(a) *A worker whose benefits are determined pursuant to a collective bargaining agreement; or*

(b) *Contributions made in the name of the worker by a contractor or subcontractor to a defined contribution plan to the*



extent that the amount contributed does not exceed 25 percent of the hourly rate of wages paid to the worker on the public work.

6. As used in this section:

(a) “Annualized” means an amount paid equally for all hours worked in a calendar year by the worker for the contractor or subcontractor who is providing bona fide fringe benefits.

(b) “Defined contribution plan” has the meaning ascribed to it in 29 U.S.C. § 1002(34).

Sec. 5. NRS 338.075 is hereby amended to read as follows:

338.075 The provisions of NRS 338.020 to 338.090, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds \$100,000 even if the construction work does not qualify as a public work, as defined in subsection ~~H6~~ 17 of NRS 338.010.

Sec. 6. NRS 338.090 is hereby amended to read as follows:

338.090 1. Any person, including the officers, agents or employees of a public body, who violates any provision of NRS 338.010 to 338.090, inclusive, 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.*



Sec. 7. NRS 338.1908 is hereby amended to read as follows:

338.1908 1. The governing body of each local government shall, by July 28, 2009, develop a plan to retrofit public buildings, facilities and structures, including, without limitation, traffic-control systems, and to otherwise use sources of renewable energy to serve those buildings, facilities and structures. Such a plan must:

(a) Include a list of specific projects. The projects must be prioritized and selected on the basis of the following criteria:

(1) The length of time necessary to commence the project.

(2) The number of workers estimated to be employed on the project.

(3) The effectiveness of the project in reducing energy consumption.

(4) The estimated cost of the project.

(5) Whether the project is able to be powered by or otherwise use sources of renewable energy.

(6) Whether the project has qualified for participation in one or more of the following programs:

(I) The Solar Energy Systems Incentive Program created by NRS 701B.240;

(II) The Renewable Energy School Pilot Program created by NRS 701B.350;

(III) The Wind Energy Systems Demonstration Program created by NRS 701B.580; or

(IV) The Waterpower Energy Systems Demonstration Program created by NRS 701B.820.

(b) Include a list of potential funding sources for use in implementing the projects, including, without limitation, money available through the Energy Efficiency and Conservation Block Grant Program as set forth in 42 U.S.C. § 17152 and grants, gifts, donations or other sources of money from public and private sources.

2. The governing body of each local government shall transmit the plan developed pursuant to subsection 1 to the Director of the Office of Energy and to any other entity designated for that purpose by the Legislature.

3. As used in this section:

(a) "Local government" means each city or county that meets the definition of "eligible unit of local government" as set forth in 42 U.S.C. § 17151 and each unit of local government, as defined in subsection ~~H2~~ 13 of NRS 338.010, that does not meet the definition of "eligible entity" as set forth in 42 U.S.C. § 17151.



(b) “Renewable energy” means a source of energy that occurs naturally or is regenerated naturally, including, without limitation:

- (1) Biomass;
- (2) Fuel cells;
- (3) Geothermal energy;
- (4) Solar energy;
- (5) Waterpower; and
- (6) Wind.

↳ The term does not include coal, natural gas, oil, propane or any other fossil fuel, or nuclear energy.

(c) “Retrofit” means to alter, improve, modify, remodel or renovate a building, facility or structure to make that building, facility or structure more energy-efficient.

Sec. 8. Section 9.5 of the Reno-Tahoe Airport Authority Act, being chapter 369, Statutes of Nevada 2005, at page 1386, is hereby amended to read as follows:

Sec. 9.5. 1. Except as otherwise determined by the Board or provided in subsection 2, the provisions of any law requiring public bidding or otherwise imposing requirements on any public contract, project, acquisition, works or improvements, including, without limitation, the provisions of chapters 332, 338 and 339 of NRS, do not apply to any contract entered into by the Board if the Board:

(a) Complies with the provisions of subsection 3; and

(b) Finances the contract, project, acquisition, works or improvement by means of:

(1) Revenue bonds issued by the Authority; or

(2) An installment obligation of the Authority in a transaction in which:

(I) The Authority acquires real or personal property and another person acquires or retains a security interest in that or other property; and

(II) The obligation by its terms is extinguished by failure of the Board to appropriate money for the ensuing fiscal year for payment of the amounts then due.

2. A contract entered into by the Board pursuant to this section must:

(a) Contain a provision stating that the requirements of NRS 338.010 to 338.090, inclusive, apply to any construction work performed pursuant to the contract; and

(b) If the contract is with a design professional who is not a member of a design-build team, comply with the provisions of NRS 338.155. As used in this paragraph, “design



professional” has the meaning ascribed to it in subsection ~~7~~**8** of NRS 338.010.

3. For contracts entered into pursuant to this section that are exempt from the provisions of chapters 332, 338 and 339 of NRS pursuant to subsection 1, the Board shall adopt regulations pursuant to subsection 4 which establish:

(a) One or more competitive procurement processes for letting such a contract; and

(b) A method by which a bid on such a contract will be adjusted to give a 5 percent preference to a contractor who would qualify for a preference pursuant to NRS 338.147, if:

(1) The estimated cost of the contract exceeds \$250,000; and

(2) Price is a factor in determining the successful bid on the contract.

4. The Board:

(a) Shall, before adopting, amending or repealing a permanent or temporary regulation pursuant to subsection 3, give at least 30 days’ notice of its intended action. The notice must:

(1) Include:

(I) A statement of the need for and purpose of the proposed regulation.

(II) Either the terms or substance of the proposed regulation or a description of the subjects and issues involved.

(III) The estimated cost to the Board for enforcement of the proposed regulation.

(IV) The time when, the place where and the manner in which interested persons may present their views regarding the proposed regulation.

(V) A statement indicating whether the regulation establishes a new fee or increases an existing fee.

(2) State each address at which the text of the proposed regulation may be inspected and copied.

(3) Be mailed to all persons who have requested in writing that they be placed upon a mailing list, which must be kept by the Authority for that purpose.

(b) May adopt, if it has adopted a temporary regulation after notice and the opportunity for a hearing as provided in this subsection, after providing a second notice and the opportunity for a hearing, a permanent regulation.

(c) Shall, in addition to distributing the notice to each recipient of the Board’s regulations, solicit comment



generally from the public and from businesses to be affected by the proposed regulation.

(d) Shall, before conducting a workshop pursuant to paragraph (g), determine whether the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business. If the Board determines that such an impact is likely to occur, the Board shall:

(1) Insofar as practicable, consult with owners and officers of small businesses that are likely to be affected by the proposed regulation.

(2) Consider methods to reduce the impact of the proposed regulation on small businesses.

(3) Prepare a small business impact statement and make copies of the statement available to the public at the workshop conducted pursuant to paragraph (g) and the public hearing held pursuant to paragraph (h).

(e) Shall ensure that a small business impact statement prepared pursuant to subparagraph (3) of paragraph (d) sets forth the following information:

(1) A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.

(2) The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:

(I) Both adverse and beneficial effects; and

(II) Both direct and indirect effects.

(3) A description of the methods that the Board considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the Board actually used any of those methods.

(4) The estimated cost to the Board for enforcement of the proposed regulation.

(5) If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the Board expects to collect and the manner in which the money will be used.

(f) Shall afford a reasonable opportunity for all interested persons to submit data, views or arguments upon the proposed regulation, orally or in writing.



(g) Shall, before holding a public hearing pursuant to paragraph (h), conduct at least one workshop to solicit comments from interested persons on the proposed regulation. Not less than 15 days before the workshop, the Board shall provide notice of the time and place set for the workshop:

(1) In writing to each person who has requested to be placed on a mailing list; and

(2) In any other manner reasonably calculated to provide such notice to the general public and any business that may be affected by a proposed regulation which addresses the general topics to be considered at the workshop.

(h) Shall set a time and place for an oral public hearing, but if no one appears who will be directly affected by the proposed regulation and requests an oral hearing, the Board may proceed immediately to act upon any written submissions. The Board shall consider fully all written and oral submissions respecting the proposed regulation.

(i) Shall keep, retain and make available for public inspection written minutes of each public hearing held pursuant to paragraph (h) in the manner provided in subsections 1 and 2 of NRS 241.035.

(j) May record each public hearing held pursuant to paragraph (h) and make those recordings available for public inspection in the manner provided in subsection 4 of NRS 241.035.

(k) Shall ensure that a small business which is aggrieved by a regulation adopted pursuant to this subsection may object to all or a part of the regulation by filing a petition with the Board within 90 days after the date on which the regulation was adopted. Such petition may be based on the following:

(1) The Board failed to prepare a small business impact statement as required pursuant to subparagraph (3) of paragraph (d); or

(2) The small business impact statement prepared by the Board did not consider or significantly underestimated the economic effect of the regulation on small businesses.

➤ After receiving a petition pursuant to this paragraph, the Board shall determine whether the petition has merit. If the Board determines that the petition has merit, the Board may, pursuant to this subsection, take action to amend the regulation to which the small business objected.



5. The determinations made by the Board pursuant to this section are conclusive unless it is shown that the Board acted with fraud or a gross abuse of discretion.

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



