

ASSEMBLY BILL NO. 235—ASSEMBLYWOMAN MONROE-MORENO

MARCH 2, 2023

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public works projects. (BDR 28-176)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact. Effect on the State: Yes.

CONTAINS UNFUNDED MANDATE (§§ 2-4) (NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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 governmental administration; requiring the payment of prevailing wages to workers who perform custom fabrication on a public work or for certain performance contracts of local governments or state agencies; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides that every contract to which a public body of this State is
2 a party, requiring the employment of skilled mechanics, skilled workers,
3 semiskilled mechanics, semiskilled workers or unskilled labor in the performance
4 of a public work, must contain in express terms the hourly and daily rate of wages
5 to be paid to each of the classes of mechanics and workers. The hourly and daily
6 rate of wages must not be less than the prevailing wage in the region in which the
7 public work is located, as determined by the Labor Commissioner. (NRS 338.020)
8 Section 2 of this bill provides that workers who perform custom fabrication on a
9 public work must also be paid such a prevailing wage. Section 1 of this bill: (1)
10 defines the term “custom fabrication”; (2) defines the term “nonstandard good or
11 material”; and (3) revises the definition of “worker” to include a worker who
12 performs custom fabrication.

13 Existing law provides that performance contracts for certain operating cost-
14 savings measures entered into by local governments and state agencies must
15 contain in express terms the hourly and daily rate of wages to be paid to each class
16 of mechanics and workers. Such wages must not be less than the prevailing wage in
17 the region in which the local government or state agency is located. (NRS 332.390,
18 333A.120) Similar to section 1, sections 3 and 4 of this bill, respectively, provide
19 that workers who perform custom fabrication must also be paid such a prevailing
20 wage.



21 **Section 5** of this bill provides that the requirement to pay prevailing wage to
22 workers who perform custom fabrication does not apply to a public works contract
23 or performance contract awarded before January 1, 2024.

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

1 **Section 1.** NRS 338.010 is hereby amended to read as follows:
2 338.010 As used in this chapter:

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

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

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

12 (b) For which none of the assets will revert to, or otherwise be
13 credited to, any contributing employer or sponsor of the fund, plan
14 or program.

15 ↪ The term includes, without limitation, benefits for a worker that
16 are determined pursuant to a collective bargaining agreement and
17 included in the determination of the prevailing wage by the Labor
18 Commissioner pursuant to NRS 338.030.

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

22 4. "Contractor" means:

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

25 (b) A design-build team.

26 5. *"Custom fabrication" means the manufacture, assembly or*
27 *other production of any nonstandard good or material that is*
28 *manufactured, assembled or otherwise produced for a specific*
29 *public work.*

30 6. "Day labor" means all cases where public bodies, their
31 officers, agents or employees, hire, supervise and pay the wages
32 thereof directly to a worker or workers employed by them on public
33 works by the day and not under a contract in writing.

34 ~~[6.]~~ 7. "Design-build contract" means a contract between a
35 public body and a design-build team in which the design-build team
36 agrees to design and construct a public work.

37 ~~[7.]~~ 8. "Design-build team" means an entity that consists of:



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

4 (b) For a public work that consists of:

5 (1) A building and its site, at least one person who holds a
6 certificate of registration to practice architecture pursuant to chapter
7 623 of NRS.

8 (2) Anything other than a building and its site, at least one
9 person who holds a certificate of registration to practice architecture
10 pursuant to chapter 623 of NRS or landscape architecture pursuant
11 to chapter 623A of NRS or who is licensed as a professional
12 engineer pursuant to chapter 625 of NRS.

13 ~~8.1~~ 9. "Design professional" means:

14 (a) A person who is licensed as a professional engineer pursuant
15 to chapter 625 of NRS;

16 (b) A person who is licensed as a professional land surveyor
17 pursuant to chapter 625 of NRS;

18 (c) A person who holds a certificate of registration to engage in
19 the practice of architecture, interior design or residential design
20 pursuant to chapter 623 of NRS;

21 (d) A person who holds a certificate of registration to engage in
22 the practice of landscape architecture pursuant to chapter 623A of
23 NRS; or

24 (e) A business entity that engages in the practice of professional
25 engineering, land surveying, architecture or landscape architecture.

26 ~~9.1~~ 10. "Discrete project" means one or more public works
27 which are undertaken on a single construction site for a single public
28 body. The term does not include one or more public works that are
29 undertaken on multiple construction sites regardless of whether the
30 public body which sponsors or finances the public works bundles
31 the public works together.

32 ~~10.1~~ 11. "Division" means the State Public Works Division of
33 the Department of Administration.

34 ~~11.1~~ 12. "Eligible bidder" means a person who is:

35 (a) Found to be a responsible and responsive contractor by a
36 local government or its authorized representative which requests
37 bids for a public work in accordance with paragraph (b) of
38 subsection 1 of NRS 338.1373; or

39 (b) Determined by a public body or its authorized representative
40 which awarded a contract for a public work pursuant to NRS
41 338.1375 to 338.139, inclusive, to be qualified to bid on that
42 contract pursuant to NRS 338.1379 or 338.1382.

43 ~~12.1~~ 13. "General contractor" means a person who is licensed
44 to conduct business in one, or both, of the following branches of the
45 contracting business:



1 (a) General engineering contracting, as described in subsection 2
2 of NRS 624.215.

3 (b) General building contracting, as described in subsection 3 of
4 NRS 624.215.

5 ~~§3.1~~ 14. "Governing body" means the board, council,
6 commission or other body in which the general legislative and fiscal
7 powers of a local government are vested.

8 ~~§4.1~~ 15. "Horizontal construction" means any construction,
9 alteration, repair, renovation, demolition or remodeling necessary to
10 complete a public work, including, without limitation, any
11 irrigation, drainage, water supply, flood control, harbor, railroad,
12 highway, tunnel, airport or airway, sewer, sewage disposal plant or
13 water treatment facility and any ancillary vertical components
14 thereof, bridge, inland waterway, pipeline for the transmission of
15 petroleum or any other liquid or gaseous substance, pier, and any
16 other work incidental thereto. The term does not include vertical
17 construction, the construction of any terminal or other building of an
18 airport or airway, or the construction of any other building.

19 ~~§5.1~~ 16. "Local government" means every political
20 subdivision or other entity which has the right to levy or receive
21 money from ad valorem or other taxes or any mandatory
22 assessments, and includes, without limitation, counties, cities,
23 towns, boards, school districts and other districts organized pursuant
24 to chapters 244A, 318, 318A, 379, 474, 538, 541, 543 and 555 of
25 NRS, NRS 450.550 to 450.750, inclusive, and any agency or
26 department of a county or city which prepares a budget separate
27 from that of the parent political subdivision. The term includes a
28 person who has been designated by the governing body of a local
29 government to serve as its authorized representative.

30 ~~§6.1~~ 17. *"Nonstandard good or material" includes, without*
31 *limitation, any nonstandard good or material used in any of the*
32 *following building systems:*

- 33 (a) *Plumbing or pipe fitting;*
- 34 (b) *Ventilation system;*
- 35 (c) *Air-conditioning system;*
- 36 (d) *Heating system;*
- 37 (e) *Refrigeration system;*
- 38 (f) *Sheet metal or other duct system;*
- 39 (g) *Boiler system;*
- 40 (h) *Electrical system;*
- 41 (i) *Welding work;*
- 42 (j) *Mechanical insulation work; and*
- 43 (k) *Ornamental iron work.*

44 18. "Offense" means:

- 45 (a) Failing to:



- 1 (1) Pay the prevailing wage required pursuant to this chapter;
- 2 (2) Pay the contributions for unemployment compensation
- 3 required pursuant to chapter 612 of NRS;
- 4 (3) Provide and secure compensation for employees required
- 5 pursuant to chapters 616A to 617, inclusive, of NRS; or
- 6 (4) Comply with subsection 5 or 6 of NRS 338.070.
- 7 (b) Discharging an obligation to pay wages in a manner that
- 8 violates the provisions of NRS 338.035.

9 ~~[17.]~~ 19. "Prime contractor" means a contractor who:

- 10 (a) Contracts to construct an entire project;
- 11 (b) Coordinates all work performed on the entire project;
- 12 (c) Uses his or her own workforce to perform all or a part of the
- 13 public work; and
- 14 (d) Contracts for the services of any subcontractor or
- 15 independent contractor or is responsible for payment to any
- 16 contracted subcontractors or independent contractors.

17 ↪ The term includes, without limitation, a general contractor or a

18 specialty contractor who is authorized to bid on a project pursuant to

19 NRS 338.139 or 338.148.

20 ~~[18.]~~ 20. "Public body" means the State, county, city, town,

21 school district or any public agency of this State or its political

22 subdivisions sponsoring or financing a public work.

23 ~~[19.]~~ 21. "Public work" means any project for the new

24 construction, repair or reconstruction of a project financed in whole

25 or in part from public money for:

- 26 (a) Public buildings;
- 27 (b) Jails and prisons;
- 28 (c) Public roads;
- 29 (d) Public highways;
- 30 (e) Public streets and alleys;
- 31 (f) Public utilities;
- 32 (g) Publicly owned water mains and sewers;
- 33 (h) Public parks and playgrounds;
- 34 (i) Public convention facilities which are financed at least in part
- 35 with public money; and
- 36 (j) All other publicly owned works and property.

37 ~~[20.]~~ 22. "Specialty contractor" means a person who is

38 licensed to conduct business as described in subsection 4 of

39 NRS 624.215.

40 ~~[21.]~~ 23. "Stand-alone underground utility project" means an

41 underground utility project that is not integrated into a larger

42 project, including, without limitation:

- 43 (a) An underground sewer line or an underground pipeline for
- 44 the conveyance of water, including facilities appurtenant thereto;
- 45 and



1 (b) A project for the construction or installation of a storm drain,
2 including facilities appurtenant thereto,

3 ↪ that is not located at the site of a public work for the design and
4 construction of which a public body is authorized to contract with a
5 design-build team pursuant to subsection 2 of NRS 338.1711.

6 ~~[22.]~~ 24. "Subcontract" means a written contract entered into
7 between:

8 (a) A contractor and a subcontractor or supplier; or

9 (b) A subcontractor and another subcontractor or supplier,

10 ↪ for the provision of labor, materials, equipment or supplies for a
11 construction project.

12 ~~[23.]~~ 25. "Subcontractor" means a person who:

13 (a) Is licensed pursuant to the provisions of chapter 624 of NRS
14 or performs such work that the person is not required to be licensed
15 pursuant to chapter 624 of NRS; and

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

19 ~~[24.]~~ 26. "Supplier" means a person who provides materials,
20 equipment or supplies for a construction project.

21 ~~[25.]~~ 27. "Vertical construction" means any construction,
22 alteration, repair, renovation, demolition or remodeling necessary to
23 complete a public work for any building, structure or other
24 improvement that is predominantly vertical, including, without
25 limitation, a building, structure or improvement for the support,
26 shelter and enclosure of persons, animals, chattels or movable
27 property of any kind, and any other work or improvement
28 appurtenant thereto.

29 ~~[26.]~~ 28. "Wages" means:

30 (a) The basic hourly rate of pay; and

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

34 ~~[27.]~~ 29. "Worker" means a skilled mechanic, skilled worker,
35 semiskilled mechanic, semiskilled worker, ~~for~~ unskilled worker *or*
36 *worker who performs custom fabrication* in the service of a
37 contractor or subcontractor under any appointment or contract of
38 hire or apprenticeship, express or implied, oral or written, whether
39 lawfully or unlawfully employed. The term does not include a
40 design professional.

41 **Sec. 2.** NRS 338.020 is hereby amended to read as follows:

42 338.020 1. Every contract to which a public body of this
43 State is a party, requiring the employment of skilled mechanics,
44 skilled workers, semiskilled mechanics, semiskilled workers, ~~for~~
45 unskilled labor *or workers who perform custom fabrication* in the



1 performance of a public work, must contain in express terms the
2 hourly and daily rate of wages to be paid each of the classes of
3 mechanics and workers. The hourly and daily rate of wages must:

4 (a) Not be less than the rate of such wages then prevailing in the
5 region in which the public work is located, which prevailing rate of
6 wages must have been determined in the manner provided in NRS
7 338.030; and

8 (b) Be posted on the site of the public work in a place generally
9 visible to the workers.

10 2. When public work is performed by day labor, the prevailing
11 wage for each class of mechanics and workers so employed applies
12 and must be stated clearly to such mechanics and workers when
13 employed.

14 3. Except as otherwise provided in subsection 4, a contractor or
15 subcontractor shall pay to a mechanic or worker employed by the
16 contractor or subcontractor on the public work not less than one and
17 one-half times the prevailing rate of wages applicable to the class of
18 the mechanic or worker for each hour the mechanic or worker works
19 on the public work in excess of:

20 (a) Forty hours in any scheduled week of work by the mechanic
21 or worker for the contractor or subcontractor, including, without
22 limitation, hours worked for the contractor or subcontractor on work
23 other than the public work; or

24 (b) Eight hours in any workday that the mechanic or worker was
25 employed by the contractor or subcontractor, including, without
26 limitation, hours worked for the contractor or subcontractor on work
27 other than the public work, unless by mutual agreement the
28 mechanic or worker works a scheduled 10 hours per day for 4
29 calendar days within any scheduled week of work.

30 4. The provisions of subsection 3 do not apply to a mechanic or
31 worker who is covered by a collective bargaining agreement that
32 provides for the payment of wages at not less than one and one-half
33 times the rate of wages set forth in the collective bargaining
34 agreement for work in excess of:

35 (a) Forty hours in any scheduled week of work; or

36 (b) Eight hours in any workday unless the collective bargaining
37 agreement provides that the mechanic or worker shall work a
38 scheduled 10 hours per day for 4 calendar days within any
39 scheduled week of work.

40 5. The prevailing wage and any wages paid for overtime
41 pursuant to subsection 3 or 4 to each class of mechanics or workers
42 must be in accordance with the jurisdictional classes recognized in
43 the region where the work is performed.



1 6. Nothing in this section prevents an employer who is
2 signatory to a collective bargaining agreement from assigning such
3 work in accordance with established practice.

4 **Sec. 3.** NRS 332.390 is hereby amended to read as follows:

5 332.390 1. If a performance contract entered into pursuant to
6 NRS 332.300 to 332.440, inclusive, requires the employment of
7 skilled mechanics, skilled workers, semiskilled mechanics,
8 semiskilled workers , ~~for~~ unskilled labor *or workers who perform*
9 *custom fabrication* to perform the performance contract, the
10 performance contract must include a provision relating to the
11 prevailing wage as required pursuant to NRS 338.013 to 338.090,
12 inclusive. The local government, the qualified service company, any
13 contractor who is awarded a contract or enters into an agreement to
14 perform the work for the performance contract, and any
15 subcontractor who performs any portion of that work shall comply
16 with the provisions of NRS 338.013 to 338.090, inclusive, in the
17 same manner as if the local government had undertaken the work or
18 had awarded the contract.

19 2. Before a qualified service company enters into a
20 performance contract pursuant to NRS 332.300 to 332.440,
21 inclusive, that exceeds \$100,000, the qualified service company
22 must furnish to the contracting body any bonds required pursuant to
23 NRS 339.025. The provisions of chapter 339 of NRS apply to any
24 performance contract described in this subsection.

25 3. *As used in this section:*

26 (a) *“Custom fabrication” means the manufacture, assembly or*
27 *other production of any nonstandard good or material that is*
28 *manufactured, assembled or otherwise produced for a specific*
29 *performance contract.*

30 (b) *“Nonstandard good or material” has the meaning ascribed*
31 *to it in NRS 338.010.*

32 **Sec. 4.** NRS 333A.120 is hereby amended to read as follows:

33 333A.120 1. If a performance contract entered into pursuant
34 to this chapter requires the employment of skilled mechanics, skilled
35 workers, semiskilled mechanics, semiskilled workers , ~~for~~
36 labor *or workers who perform custom fabrication* to perform the
37 performance contract, the performance contract must include a
38 provision relating to the prevailing wage as required pursuant to
39 NRS 338.013 to 338.090, inclusive. The using agency, the qualified
40 service company, any contractor who is awarded a contract or enters
41 into an agreement to perform the work for the performance contract,
42 and any subcontractor who performs any portion of that work shall
43 comply with the provisions of NRS 338.013 to 338.090, inclusive,
44 in the same manner as if the using agency had undertaken the work
45 or had awarded the contract.



1 2. *As used in this section:*

2 (a) *“Custom fabrication” means the manufacture, assembly or*
3 *other production of any nonstandard good or material that is*
4 *manufactured, assembled or otherwise produced for a specific*
5 *performance contract.*

6 (b) *“Nonstandard good or material” has the meaning ascribed*
7 *to it in NRS 338.010.*

8 **Sec. 5.** The amendatory provisions of this act do not apply to
9 any contract to which the provisions of:

- 10 1. NRS 338.020 to 338.090, inclusive;
11 2. NRS 332.390; or
12 3. NRS 333A.120,

13 ↪ apply that is awarded before January 1, 2024.

14 **Sec. 6.** The provisions of NRS 354.599 do not apply to any
15 additional expenses of a local government that are related to the
16 provisions of this act.

17 **Sec. 7.** 1. This section becomes effective upon passage and
18 approval.

19 2. Sections 1 to 6, inclusive, of this act become effective:

- 20 (a) Upon passage and approval for the purpose of adopting
21 regulations and performing any other preparatory administrative
22 tasks that are necessary to carry out the provisions of this act; and
23 (b) On January 1, 2024, for all other purposes.



