

SENATE BILL NO. 433—SENATOR DALY

MARCH 27, 2023

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to prevailing wages. (BDR 28-541)

FISCAL NOTE: Effect on Local Government: No. Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to prevailing wages; revising provisions governing the payment of prevailing wages; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law sets forth general provisions applicable to public works, including
2 provisions requiring, with certain exceptions, the payment of prevailing wages for
3 public works projects which are enforced by the Labor Commissioner. (NRS
4 338.010-338.090) **Section 2** of this bill makes a declaration of legislative intent
5 concerning the interpretation of the provisions governing prevailing wages. **Section**
6 **3** of this bill provides criteria that the Labor Commissioner is required to examine
7 when determining whether prevailing wages are required to be paid on a project. If
8 the Labor Commissioner finds that certain circumstances exist with respect to a
9 project, **section 3** requires the Labor Commissioner to determine that prevailing
10 wages are required to be paid on the project. **Section 4** of this bill revises the
11 definition of “public work” to include public financing from nonmonetary sources
12 and private financing if the project is for a public use. **Sections 5-7** of this bill make
13 conforming changes to indicate the proper placement of **sections 2 and 3** in the
14 Nevada Revised Statutes.

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

1 **Section 1.** Chapter 338 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.
3 **Sec. 2. *The Legislature hereby finds and declares:***
4 ***1. The payment of prevailing wages is essential to the***
5 ***economic well-being of this State.***



1 2. *The laws governing prevailing wages in the State of*
2 *Nevada must be liberally construed to effectuate their purpose.*

3 3. *A narrow interpretation of these provisions will undermine*
4 *the intent of and defeat the purpose of these provisions.*

5 4. *The expenditure of public money on a project is not*
6 *essential to finding that the laws governing prevailing wages apply*
7 *to the project.*

8 5. *Careful scrutiny of novel financing arrangements or*
9 *incentives for projects is required to ensure that the laws*
10 *governing prevailing wages are not circumvented.*

11 **Sec. 3. 1.** *When determining whether a project is subject to*
12 *the provisions of NRS 338.013 to 338.090, inclusive, the Labor*
13 *Commissioner shall examine:*

14 (a) *Whether public financing or incentives have been or will*
15 *be provided for the benefit of the project.*

16 (b) *Whether the project is subject to a timetable for completion*
17 *specified by a public body.*

18 (c) *Whether the project is required to meet the specifications of*
19 *a public body, including, without limitation, design specifications.*

20 (d) *Whether the construction of the project is subject to*
21 *inspection by a public body.*

22 (e) *If the project is performed pursuant to a lease-purchase*
23 *agreement, a public-private partnership or a similar agreement*
24 *with a public body, whether the cost of the project will be paid, in*
25 *whole or in part, by the public body.*

26 (f) *If the project, including, without limitation, a remodel of an*
27 *existing structure, involves space in private property that is leased*
28 *or rented by a public body, whether the project was required by the*
29 *public body.*

30 (g) *Whether the project is located on property owned by a*
31 *public body.*

32 (h) *Whether the project is for a public use.*

33 (i) *Whether the public body is or will be responsible for the*
34 *maintenance of the project after its completion.*

35 2. *The Labor Commissioner is not bound by any*
36 *determination or finding of a public body relating to the*
37 *applicability of NRS 338.013 to 338.090, inclusive.*

38 3. *If the Labor Commissioner determines that any of the*
39 *circumstances in paragraph (a), (c), (e), (f) or (h) of subsection 1*
40 *exist, the Labor Commissioner shall determine that the provisions*
41 *of NRS 338.013 to 338.090, inclusive, apply to the project.*

42 4. *Any determination made by the Labor Commissioner*
43 *regarding the applicability of NRS 338.013 to 338.090, inclusive,*
44 *is a final order of the Labor Commissioner for purposes of judicial*
45 *review.*



1 *5. Except as otherwise provided by specific statute, the*
2 *provisions of this section do not apply to:*

3 *(a) A renewable energy project, as defined in NRS 701B.975.*

4 *(b) Residential streets in a new subdivision.*

5 *6. As used in this section, "public financing or incentives"*
6 *includes, without limitation:*

7 *(a) The payment of money or the equivalent of money directly*
8 *or indirectly by a public body for the benefit of a project,*
9 *including, without limitation, the use of any money derived from*
10 *tax increments, special assessments or similar financing methods.*

11 *(b) Work performed by the public body that is directly related*
12 *to or for the benefit of a private development project.*

13 *(c) The sale, lease or transfer by a public body of real property*
14 *or other public property or asset for less than market value.*

15 *(d) Waiving, foregoing, abating, deferring, reducing, offsetting*
16 *or crediting any expense or other obligation, including, without*
17 *limitation, fees, costs, insurance or bond premiums, loans or taxes,*
18 *that would otherwise be required to be paid or provided.*

19 *(e) Loans or similar financial arrangements made by or on*
20 *behalf of the public body.*

21 *(f) Issuing bonds under the authority of the public body.*

22 *(g) Except as otherwise provided in NRS 338.0115, repayment*
23 *or reimbursement by any method or agreement by a public body*
24 *for the construction of a project.*

25 **Sec. 4.** NRS 338.010 is hereby amended to read as follows:

26 338.010 As used in this chapter:

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

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

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

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

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

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



1 4. "Contractor" means:

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

4 (b) A design-build team.

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

9 6. "Design-build contract" means a contract between a public
10 body and a design-build team in which the design-build team agrees
11 to design and construct a public work.

12 7. "Design-build team" means an entity that consists of:

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

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

17 (1) A building and its site, at least one person who holds a
18 certificate of registration to practice architecture pursuant to chapter
19 623 of NRS.

20 (2) Anything other than a building and its site, at least one
21 person who holds a certificate of registration to practice architecture
22 pursuant to chapter 623 of NRS or landscape architecture pursuant
23 to chapter 623A of NRS or who is licensed as a professional
24 engineer pursuant to chapter 625 of NRS.

25 8. "Design professional" means:

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

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

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

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

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

38 9. "Discrete project" means one or more public works which
39 are undertaken on a single construction site for a single public body.
40 The term does not include one or more public works that are
41 undertaken on multiple construction sites regardless of whether the
42 public body which sponsors or finances the public works bundles
43 the public works together.

44 10. "Division" means the State Public Works Division of the
45 Department of Administration.



1 11. "Eligible bidder" means a person who is:

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

6 (b) Determined by a public body or its authorized representative
7 which awarded a contract for a public work pursuant to NRS
8 338.1375 to 338.139, inclusive, to be qualified to bid on that
9 contract pursuant to NRS 338.1379 or 338.1382.

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

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

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

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

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

31 15. "Local government" means every political subdivision or
32 other entity which has the right to levy or receive money from ad
33 valorem or other taxes or any mandatory assessments, and includes,
34 without limitation, counties, cities, towns, boards, school districts
35 and other districts organized pursuant to chapters 244A, 318, 318A,
36 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,
37 inclusive, and any agency or department of a county or city which
38 prepares a budget separate from that of the parent political
39 subdivision. The term includes a person who has been designated by
40 the governing body of a local government to serve as its authorized
41 representative.

42 16. "Offense" means:

43 (a) Failing to:

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



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

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

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

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

8 17. "Prime contractor" means a contractor who:

9 (a) Contracts to construct an entire project;

10 (b) Coordinates all work performed on the entire project;

11 (c) Uses his or her own workforce to perform all or a part of the
12 public work; and

13 (d) Contracts for the services of any subcontractor or
14 independent contractor or is responsible for payment to any
15 contracted subcontractors or independent contractors.

16 ↪ The term includes, without limitation, a general contractor or a
17 specialty contractor who is authorized to bid on a project pursuant to
18 NRS 338.139 or 338.148.

19 18. "Public body" means the State, county, city, town, school
20 district or any public agency of this State or its political subdivisions
21 sponsoring or financing a public work.

22 19. "Public work" means any project ~~[for the new construction,~~
23 ~~repair or reconstruction of a project financed]~~, *regardless of the*
24 *existence of any written agreement:*

25 (a) *Sponsored or financed* in whole or in part from public
26 money *or the equivalent of public money* for:

27 ~~[(a)]~~ (1) Public buildings;

28 ~~[(b)]~~ (2) Jails and prisons;

29 ~~[(c)]~~ (3) Public roads;

30 ~~[(d)]~~ (4) Public highways;

31 ~~[(e)]~~ (5) Public streets and alleys;

32 ~~[(f)]~~ (6) Public utilities;

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

34 ~~[(h)]~~ (8) Public parks and playgrounds;

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

37 ~~[(j)]~~ (10) All other publicly owned works and property.

38 (b) *Financed wholly by private money that is intended for a*
39 *public use.*

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

42 21. "Stand-alone underground utility project" means an
43 underground utility project that is not integrated into a larger
44 project, including, without limitation:



1 (a) An underground sewer line or an underground pipeline for
2 the conveyance of water, including facilities appurtenant thereto;
3 and

4 (b) A project for the construction or installation of a storm drain,
5 including facilities appurtenant thereto,
6 ↪ that is not located at the site of a public work for the design and
7 construction of which a public body is authorized to contract with a
8 design-build team pursuant to subsection 2 of NRS 338.1711.

9 22. "Subcontract" means a written contract entered into
10 between:

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

12 (b) A subcontractor and another subcontractor or supplier,
13 ↪ for the provision of labor, materials, equipment or supplies for a
14 construction project.

15 23. "Subcontractor" means a person who:

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

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

22 24. "Supplier" means a person who provides materials,
23 equipment or supplies for a construction project.

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

31 26. "Wages" means:

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

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

36 27. "Worker" means a skilled mechanic, skilled worker,
37 semiskilled mechanic, semiskilled worker or unskilled worker in the
38 service of a contractor or subcontractor under any appointment or
39 contract of hire or apprenticeship, express or implied, oral or
40 written, whether lawfully or unlawfully employed. The term does
41 not include a design professional.

42 **Sec. 5.** NRS 338.050 is hereby amended to read as follows:

43 338.050 For the purpose of NRS 338.010 to 338.090, inclusive,
44 *and sections 2 and 3 of this act*, except as otherwise provided by
45 specific statute, every worker who performs work for a public work



1 covered by a contract therefor is subject to all of the provisions of
2 NRS 338.010 to 338.090, inclusive, *and sections 2 and 3 of this*
3 *act*, regardless of any contractual relationship alleged to exist
4 between such worker and his or her employer.

5 **Sec. 6.** NRS 338.070 is hereby amended to read as follows:

6 338.070 1. Any public body awarding a contract shall:

7 (a) Investigate possible violations of the provisions of NRS
8 338.010 to 338.090, inclusive, *and sections 2 and 3 of this act*
9 committed in the course of the execution of the contract, and
10 determine whether a violation has been committed and inform the
11 Labor Commissioner of any such violations; and

12 (b) When making payments to the contractor engaged on the
13 public work of money becoming due under the contract, withhold
14 and retain all sums forfeited pursuant to the provisions of NRS
15 338.010 to 338.090, inclusive ~~§~~, *and sections 2 and 3 of this act.*

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

19 3. Except as otherwise provided in subsection 7, it is lawful for
20 any contractor engaged on a public work to withhold from any
21 subcontractor engaged on the public work sufficient sums to cover
22 any penalties withheld from the contractor by the awarding public
23 body on account of the failure of the subcontractor to comply with
24 the terms of NRS 338.010 to 338.090, inclusive ~~§~~, *and sections 2*
25 *and 3 of this act.* If payment has already been made to the
26 subcontractor, the contractor may recover from the subcontractor the
27 amount of the penalty or forfeiture in a suit at law.

28 4. A contractor engaged on a public work and each
29 subcontractor engaged on the public work shall:

30 (a) Inquire of each worker employed by the contractor or
31 subcontractor in connection with the public work:

32 (1) Whether the worker wishes to specify voluntarily his or
33 her gender; and

34 (2) Whether the worker wishes to specify voluntarily his or
35 her ethnicity; and

36 (b) For each response the contractor or subcontractor receives
37 pursuant to paragraph (a):

38 (1) If the worker chose voluntarily to specify his or her
39 gender or ethnicity, or both, record the worker's responses; and

40 (2) If the worker declined to specify his or her gender or
41 ethnicity, or both, record that the worker declined to specify such
42 information.

43 ↪ A contractor or subcontractor shall not compel or coerce a worker
44 to specify his or her gender or ethnicity and shall not penalize or
45 otherwise take any adverse action against a worker who declines to



1 specify his or her gender or ethnicity. Before inquiring as to whether
2 a worker wishes to specify voluntarily his or her gender or ethnicity,
3 the applicable contractor or subcontractor must inform the worker
4 that such information, if provided, will be open to public inspection
5 as set forth in subsection 6.

6 5. A contractor engaged on a public work and each
7 subcontractor engaged on the public work shall keep or cause to be
8 kept:

9 (a) An accurate record showing, for each worker employed by
10 the contractor or subcontractor in connection with the public work:

11 (1) The name of the worker;

12 (2) The occupation of the worker;

13 (3) The gender of the worker, if the worker voluntarily
14 agreed to specify that information pursuant to subsection 4, or an
15 entry indicating that the worker declined to specify such
16 information;

17 (4) The ethnicity of the worker, if the worker voluntarily
18 agreed to specify that information pursuant to subsection 4, or an
19 entry indicating that the worker declined to specify such
20 information;

21 (5) If the worker has a driver's license or identification card,
22 an indication of the state or other jurisdiction that issued the license
23 or card; and

24 (6) The actual per diem, wages and benefits paid to the
25 worker; and

26 (b) An additional accurate record showing, for each worker
27 employed by the contractor or subcontractor in connection with the
28 public work who has a driver's license or identification card:

29 (1) The name of the worker;

30 (2) The driver's license number or identification card number
31 of the worker; and

32 (3) The state or other jurisdiction that issued the license or
33 card.

34 6. The records maintained pursuant to subsection 5 must be
35 open at all reasonable hours to the inspection of the public body
36 awarding the contract. The contractor engaged on the public work or
37 subcontractor engaged on the public work shall ensure that a copy of
38 each record for each calendar month is received by the public body
39 awarding the contract no later than 15 days after the end of the
40 month. The copy of the record maintained pursuant to paragraph (a)
41 of subsection 5 must be open to public inspection as provided in
42 NRS 239.010. The copy of the record maintained pursuant to
43 paragraph (b) of subsection 5 is confidential and not open to public
44 inspection. The records in the possession of the public body
45 awarding the contract may be discarded by the public body 2 years



1 after final payment is made by the public body for the public work.
2 The Labor Commissioner shall adopt regulations authorizing and
3 prescribing the procedures for the electronic filing of the copies of
4 the records required to be provided monthly by a contractor or
5 subcontractor to a public body pursuant to this subsection.

6 7. A contractor engaged on a public work shall not withhold
7 from a subcontractor engaged on the public work the sums
8 necessary to cover any penalties provided pursuant to subsection 3
9 of NRS 338.060 that may be withheld from the contractor by the
10 public body awarding the contract because the public body did not
11 receive a copy of the record maintained by the subcontractor
12 pursuant to subsection 5 for a calendar month by the time specified
13 in subsection 6 if:

14 (a) The subcontractor provided to the contractor, for submission
15 to the public body by the contractor, a copy of the record not later
16 than the later of:

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

18 (2) A date agreed upon by the contractor and subcontractor;

19 and

20 (b) The contractor failed to submit the copy of the record to the
21 public body by the time specified in subsection 6.

22 ↪ Nothing in this subsection prohibits a subcontractor from
23 submitting a copy of a record for a calendar month directly to the
24 public body by the time specified in subsection 6.

25 8. Any contractor or subcontractor, or agent or representative
26 thereof, performing work for a public work who neglects to comply
27 with the provisions of this section is guilty of a misdemeanor.

28 **Sec. 7.** NRS 338.090 is hereby amended to read as follows:

29 338.090 1. Except as otherwise provided in subsection 5, any
30 person, including the officers, agents or employees of a public body,
31 who violates any provision of NRS 338.010 to 338.090, inclusive,
32 *and sections 2 and 3 of this act*, or any regulation adopted pursuant
33 thereto, is guilty of a misdemeanor.

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

36 (a) Shall, except as otherwise provided in subsection 4, assess a
37 person who, after an opportunity for a hearing, is found to have
38 failed to pay the prevailing wage required pursuant to NRS 338.020
39 to 338.090, inclusive, *and sections 2 and 3 of this act*, an amount
40 equal to the difference between the prevailing wages required to be
41 paid and the wages that the contractor or subcontractor actually
42 paid; and

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



1 3. If the Labor Commissioner finds that a person has failed to
2 pay the prevailing wage required pursuant to NRS 338.020 to
3 338.090, inclusive, *and sections 2 and 3 of this act*, the public body
4 may, in addition to any other remedy or penalty provided in this
5 chapter, require the person to pay the actual costs incurred by the
6 public body to investigate the matter.

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

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

15 **Sec. 8.** This act becomes effective on July 1, 2023.



