
ASSEMBLY BILL NO. 257—ASSEMBLYMEN HARDY, ELLISON,
HICKEY, HAMBRICK; DUNCAN, FIORE, GRADY, HANSEN,
KIRNER, LIVERMORE, STEWART AND WHEELER

MARCH 13, 2013

JOINT SPONSOR: SENATOR HARDY

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public works.
(BDR 28-962)

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 public works; revising provisions concerning contracts for public works; revising provisions pertaining to the payment of prevailing wages on public works projects; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law imposes various requirements on certain public bodies seeking to
2 solicit bids on a public work and awarding and entering a contract for a public
3 work. (NRS 338.1373-338.155) **Section 2** of this bill provides that a public body
4 shall not, as a condition of bidding, negotiating or being awarded a contract for
5 performing work on a public work, require a contractor or subcontractor to employ
6 certain workers on the public work, or to require workers employed by the
7 contractor or subcontractor to become a member of or make any payment to a labor
8 organization. **Section 2** also provides that the public body shall not prohibit a
9 contractor or subcontractor from employing on the public work certain apprentices
10 or certain workers who currently work for or have previously worked for the
11 contractor or subcontractor at the time of the award of a contract. **Section 3** of this
12 bill states that a contract entered into for a public work must provide that all parties
13 to the contract have an equal right to raise a dispute as to the provisions of the
14 contract or the performance of work under the contract, as well as equal access to
15 any procedures provided for dispute resolution and an equal right to representation
16 in any such procedures.

17 Existing law provides that certain public works contracts must provide for the
18 payment of the prevailing wage to certain workers. (NRS 338.020) Existing law



19 also allows a contractor or subcontractor on such a public work, in part, to
20 discharge the obligation to pay the prevailing wage to a worker by making
21 contributions to a third person pursuant to a fund, plan or program in the name of
22 the worker. (NRS 338.035) **Section 5** of this bill places certain requirements on
23 such contributions and on the fund, plan or program to which the contributions are
24 made, and those requirements must be met for the contribution to discharge part of
25 the obligation to pay prevailing wages.

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. 1.** *A public body shall not, as a condition of bidding,*
4 *negotiating or being awarded a contract for or performing work*
5 *on a public work pursuant to this chapter:*

6 *(a) Require a contractor or subcontractor to employ a worker*
7 *to perform work on the public work who is not already in the*
8 *service of the contractor or subcontractor at the time of the award*
9 *of the contract;*

10 *(b) Require a worker employed by the contractor or*
11 *subcontractor on the public work to become a member of or make*
12 *any payment to a labor organization;*

13 *(c) Prohibit a contractor or subcontractor from employing on*
14 *the public work any apprentice provided that the apprentice is*
15 *hired pursuant to an apprenticeship program which is registered*
16 *and approved pursuant to chapter 610 of NRS; and*

17 *(d) Prohibit a contractor or subcontractor from employing on*
18 *the public work:*

19 *(1) All workers already in the service of the contractor or*
20 *subcontractor at the time of the award of the contract; or*

21 *(2) Any worker the contractor or subcontractor hires after*
22 *the award of the contract, including, without limitation, a worker*
23 *who has previously been employed by the contractor or*
24 *subcontractor.*

25 2. *As used in this section, "labor organization" means any*
26 *organization of any kind, or any agency or employee*
27 *representation committee or plan, in which employees participate*
28 *and which exists for the purpose, in whole or in part, of dealing*
29 *with employers concerning grievances, labor disputes, wages, rates*
30 *of pay, hours of employment, or conditions of work.*

31 **Sec. 3.** *A contract for a public work entered into pursuant to*
32 *this chapter must provide that all parties to the contract, including,*
33 *without limitation, a contractor, prime contractor, subcontractor*
34 *or worker involved in the performance of the contract must have:*



1 *1. An equal right to raise a dispute as to the provisions of the*
2 *contract or the performance of work under the contract;*

3 *2. Equal access to any procedures provided for the resolution*
4 *of a dispute; and*

5 *3. An equal right to and provision for representation in any*
6 *procedures provided for the resolution of a dispute.*

7 **Sec. 4.** NRS 338.0115 is hereby amended to read as follows:

8 338.0115 1. Except as otherwise provided in subsection 2,
9 the provisions of this chapter and chapters 332 and 339 of NRS do
10 not apply to a contract under which a private developer, for the
11 benefit of a private development, constructs a water or sewer line
12 extension and any related appurtenances:

13 (a) Which qualify as a public work pursuant to NRS 338.010;
14 and

15 (b) For which the developer will receive a monetary contribution
16 or refund from a public body as reimbursement for a portion of the
17 costs of the project.

18 2. If, pursuant to the provisions of such a contract, the
19 developer is not responsible for paying all of the initial construction
20 costs of the project, the provisions of NRS 338.0117, 338.013 to
21 338.090, inclusive, and 338.1373 to 338.148, inclusive, *and section*
22 *2 of this act* apply to the contract.

23 **Sec. 5.** NRS 338.035 is hereby amended to read as follows:

24 338.035 1. The obligation of a contractor engaged on a
25 public work or a subcontractor engaged on a public work to pay
26 wages in accordance with the determination of the Labor
27 Commissioner may be discharged in part by making contributions to
28 a third person pursuant to a fund, plan or program in the name of the
29 worker.

30 *2. Except as otherwise provided in subsection 3, if a*
31 *contractor or subcontractor is authorized to discharge an*
32 *obligation pursuant to subsection 1:*

33 (a) *The fund, plan or program to which the contribution is*
34 *made must be:*

35 (1) *A bona fide fund, plan or program;*

36 (2) *In effect at the time the contractor or subcontractor*
37 *begins work on the public work; and*

38 (3) *Available to all workers employed by the contractor or*
39 *subcontractor on the public work;*

40 (b) *The amount of the contribution made by the contractor or*
41 *subcontractor in the name of the worker must be equal to the*
42 *actual cost, expressed as an hourly contribution, to the contractor*
43 *or subcontractor of the benefit provided to the worker by the fund,*
44 *plan or program; and*

45 (c) *The worker in whose name the contribution is made must:*



1 (1) *Be enrolled in the fund, plan or program at the time of*
2 *his or her initial employment on the public work; or*

3 (2) *Have been enrolled in the fund, plan or program at the*
4 *time of his or her last employment with the contractor or*
5 *subcontractor.*

6 3. *If a contractor or subcontractor is authorized to discharge*
7 *an obligation pursuant to subsection 1 and the fund, plan or*
8 *program is a retirement or pension fund, plan or program:*

9 (a) *The fund, plan or program must be:*

10 (1) *In effect at the time the contractor or subcontractor*
11 *begins work on the public work; and*

12 (2) *Available to all workers employed by the contractor or*
13 *subcontractor on the public work;*

14 (b) *Any difference between the contribution made by the*
15 *contractor or subcontractor in the name of the worker and*
16 *the amount of the actual cost to the contractor or subcontractor of*
17 *the benefit provided to the worker must be paid to the worker as*
18 *part of his or her wages earned on the public work;*

19 (c) *The fund, plan or program must meet the requirements of*
20 *29 U.S.C. § 1001 et seq.; and*

21 (d) *The worker in whose name the contribution is made must:*

22 (1) *Be enrolled in the fund, plan or program at the time of*
23 *his or her initial employment on the public work; or*

24 (2) *Have been enrolled in the fund, plan or program at the*
25 *time of his or her last employment with the contractor or*
26 *subcontractor.*

27 **Sec. 6.** This act becomes effective on July 1, 2013.

