

Amendment No. 89

Assembly Amendment to Assembly Bill No. 210	(BDR 28-832)
Proposed by: Assembly Committee on Government Affairs	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date		SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: 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.



ASSEMBLY BILL NO. 210—ASSEMBLYMEN DURAN, TORRES, GONZÁLEZ; CARTER, GORELOW, LA RUE HATCH, MARZOLA, NEWBY, NGUYEN AND THOMAS

FEBRUARY 22, 2023

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public works. (BDR 28-832)

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

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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; requiring a contractor ~~for subcontractor~~ on a public work to provide a worker with written **or electronic** notice of certain information ; ~~in the primary language of the worker; requiring the Labor Commissioner to prepare template forms for such notices; requiring a contractor or subcontractor on a public work to provide certain information to workers regarding leave;~~ requiring a person found by the Labor Commissioner to have **willfully and repeatedly** failed to pay prevailing wages to a worker to pay certain damages to the affected worker; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires every contract to which a public body of this State is a party that
 2 requires the employment of certain skilled, semiskilled and unskilled workers to contain in
 3 express terms the hourly and daily rate of wages to be paid to each class of applicable
 4 workers. The hourly and daily rate must not be less than the prevailing wage in the region in
 5 which the public work is located, as determined by the Labor Commissioner. (NRS 338.020
 6 ~~¶~~, ***338.030***) ***Section 2.5.5*** of this bill requires each contractor ~~and subcontractor~~
 7 on a public work to provide ~~each worker at the time of hiring~~ **his or her workers assigned**
 8 **to the public work** with a written **or electronic** notice ~~in English and the worker’s primary~~
 9 ~~language~~ that sets forth : ~~for the worker to whom the notice is given;~~ (1) the ~~normal hourly~~
 10 ~~wage rate or rates that the worker will be paid for working on the public work, based on the~~
 11 ~~relevant prevailing wages;~~ **Internet website of the Labor Commissioner where the**
 12 **prevailing wage rates for the public work project are posted;** (2) the ~~overtime hourly~~
 13 ~~wage rate or rates that the worker will be paid for working any overtime on the public work,~~
 14 ~~based on the relevant prevailing wages;~~ **name of the contractor; and** (3) the ~~amount by~~
 15 ~~which the Labor Commissioner has discharged the requirement to pay prevailing wages for~~
 16 ~~the contractor or subcontractor providing bona fide fringe benefits, if applicable;~~ (4) certain
 17 information relating to the contractor or subcontractor; and (5) any other such information
 18 required by the Labor Commissioner. **physical address of the principal place of business**
 19 **of the contractor.** **Section 2.5.5** further requires the contractor ~~for subcontractor~~ to obtain
 20 from each worker a written **or electronic** acknowledgment of receipt of the ~~written~~ notice,
 21 to be maintained by the contractor ~~for subcontractor~~ for a period of at least ~~3 years.~~

22 ~~— Section 3 of this bill requires the Labor Commissioner to prepare template forms of the~~
 23 ~~notice required pursuant to section 2. Each template form must contain the necessary~~
 24 ~~information in both English and one other language. The Labor Commissioner shall~~
 25 ~~determine, at his or her discretion, the languages other than English in which the template~~
 26 ~~forms will be prepared. Section 3 also provides that if a notice required pursuant to section 2~~
 27 ~~must be provided to a worker in a language that is not provided by the Labor Commissioner,~~
 28 ~~the contractor or subcontractor must have the notice translated into the primary language of~~
 29 ~~the worker.~~

30 ~~— Section 4 of this bill requires each contractor or subcontractor engaged on a public work~~
 31 ~~to notify his or her workers of the policy of the contractor or subcontractor, as applicable,~~
 32 ~~relating to sick leave, vacation leave, personal leave, holiday leave and holiday hours.~~

33 ~~— Existing law requires a contractor engaged on a public work and a subcontractor engaged~~
 34 ~~on a public work to keep accurate records that include certain information for each worker~~
 35 ~~employed by the contractor or subcontractor in connection with the public work. (NRS~~
 36 ~~338.070) Section 5 of this bill requires such accurate records to also contain the primary~~
 37 ~~language of the worker, as identified by the worker.] **2 years and made available to the**~~
 38 ~~**Labor Commissioner upon request.**~~

39 Existing law requires, with certain exception, the Labor Commissioner, after an
 40 opportunity for a hearing, to assess a person found to have failed to pay the required
 41 prevailing wage an amount equal to the difference between the prevailing wages required
 42 to be paid and the wages that the contractor or subcontractor actually paid. (NRS 338.090)
 43 **Section 6** of this bill requires, without exception, a person found to have **willfully and**
 44 **repeatedly** failed to pay the prevailing wage to pay an affected worker damages in an amount
 45 that is equal to the difference between the prevailing wages required to be paid and the wages
 46 that the contractor or subcontractor actually paid to the affected worker.

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 thereto the
 2 provisions set forth as sections 2 ~~1, 3 and 4~~ **to 5.5, inclusive,** of this act.

3 **Sec. 2.** ~~[1. Each contractor and subcontractor engaged on a public work~~
 4 ~~shall, at the time that the contractor or subcontractor, as applicable, hires a~~
 5 ~~worker in connection with the public work.~~

6 ~~— (a) Ask the worker what his or her primary language is; and~~

7 ~~— (b) Provide the worker with a written notice that:~~

8 ~~— (1) Contains the information required pursuant to subsection 2; and~~

9 ~~— (2) Is prepared on the template form created by the Labor Commissioner~~
 10 ~~that is in the primary language of the worker and English or, if a notice is~~
 11 ~~required in a language for which the Labor Commissioner has not created a~~
 12 ~~template form, is translated into the required primary language of the worker.~~

13 ~~— 2. The written notice required pursuant to subsection 1 must set forth for~~
 14 ~~the worker to whom the notice is given:~~

15 ~~— (a) The normal hourly wage rate or rates that the worker will be paid for~~
 16 ~~working on the public work, based on the applicable prevailing wage or wages for~~
 17 ~~the worker;~~

18 ~~— (b) The overtime hourly wage rate or rates that the worker will be paid for~~
 19 ~~working any overtime on the public work, based on the applicable prevailing~~
 20 ~~wage or wages for the worker;~~

21 ~~— (c) If, pursuant to NRS 338.035, the Labor Commissioner has discharged~~
 22 ~~any part of the obligation of the contractor or subcontractor to pay the prevailing~~
 23 ~~wage because the contractor or subcontractor provides bona fide fringe benefits,~~
 24 ~~the amount by which the prevailing wage is discharged;~~

25 ~~— (d) The following information related to the contractor or subcontractor:~~

~~(1) The name of the contractor or subcontractor and all other names under which the contractor or subcontractor does business;~~

~~(2) The physical address of the principal place of business of the contractor or subcontractor;~~

~~(3) The mailing address of the contractor or subcontractor; and~~

~~(4) The telephone number of the contractor or subcontractor; and~~

~~(c) Any other information that is required to be included by the Labor Commissioner.~~

~~3. The contractor or subcontractor, as applicable, shall obtain a written acknowledgement of receipt of the notice required pursuant to this section from each worker. Each written acknowledgement must be maintained by the contractor or subcontractor for at least 3 years, made available to the Labor Commissioner upon request and include, without limitation:~~

~~(a) The worker's name and signature;~~

~~(b) The date on which the worker received the notice;~~

~~(c) The worker's primary language, as indicated by the worker;~~

~~(d) An indication from the worker as to whether the worker received the notice in his or her primary language; and~~

~~(e) Any other information required by the Labor Commissioner.] (Deleted by amendment.)~~

~~Sec. 3. [1. The Labor Commissioner shall prepare template forms of the notice required pursuant to section 2 of this act.~~

~~2. Each template form prepared pursuant to subsection 1 must contain the necessary information in both English and one other language. The Labor Commissioner shall determine, at his or her discretion, the languages other than English in which the template forms will be prepared. Such determination by the Labor Commissioner must be based upon the major languages used in this State and any other factor the Labor Commissioner determines is relevant.~~

~~3. If the Labor Commissioner has not created a template form in the primary language of a worker of a contractor or subcontractor, the contractor or subcontractor shall have the template form created pursuant to this section by the Labor Commissioner in English translated into the primary language of the worker.~~

~~4. The Labor Commissioner shall make the template forms created pursuant to this section available to contractors and subcontractors engaged on a public work in any manner determined appropriate by the Labor Commissioner.] (Deleted by amendment.)~~

~~Sec. 4. [1. Each contractor or subcontractor engaged on a public work shall notify his or her workers of the policy of the contractor or subcontractor, as applicable, relating to sick leave, vacation leave, personal leave, holiday leave and holiday hours. The notice must be:~~

~~(a) In writing; and~~

~~(b) Personally given to each worker or posted in a conspicuous place where workers can reasonably be expected to see the notice.~~

~~2. If a contractor or subcontractor makes any change to the policy of the contractor or subcontractor, as applicable, described in subsection 1, the contractor or subcontractor shall, not later than 7 calendar days before any change is effective, notify his or her workers of the change. The notice must be:~~

~~(a) In writing; and~~

~~(b) Personally given to each worker or posted in a conspicuous place where workers can reasonably be expected to see the notice.] (Deleted by amendment.)~~

~~Sec. 5. [NRS 338.070 is hereby amended to read as follows:~~

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

1 ~~— (a) Investigate possible violations of the provisions of NRS 338.010 to~~
2 ~~338.090, inclusive, committed in the course of the execution of the contract, and~~
3 ~~determine whether a violation has been committed and inform the Labor~~
4 ~~Commissioner of any such violations; and~~

5 ~~— (b) When making payments to the contractor engaged on the public work of~~
6 ~~money becoming due under the contract, withhold and retain all sums forfeited~~
7 ~~pursuant to the provisions of NRS 338.010 to 338.090, inclusive.~~

8 ~~— 2. No sum may be withheld, retained or forfeited, except from the final~~
9 ~~payment, without a full investigation being made by the awarding public body.~~

10 ~~— 3. Except as otherwise provided in subsection 7, it is lawful for any contractor~~
11 ~~engaged on a public work to withhold from any subcontractor engaged on the~~
12 ~~public work sufficient sums to cover any penalties withheld from the contractor by~~
13 ~~the awarding public body on account of the failure of the subcontractor to comply~~
14 ~~with the terms of NRS 338.010 to 338.090, inclusive. If payment has already been~~
15 ~~made to the subcontractor, the contractor may recover from the subcontractor the~~
16 ~~amount of the penalty or forfeiture in a suit at law.~~

17 ~~— 4. A contractor engaged on a public work and each subcontractor engaged on~~
18 ~~the public work shall:~~

19 ~~— (a) Inquire of each worker employed by the contractor or subcontractor in~~
20 ~~connection with the public work:~~

21 ~~— (1) Whether the worker wishes to specify voluntarily his or her gender; and~~

22 ~~— (2) Whether the worker wishes to specify voluntarily his or her ethnicity;~~
23 ~~and~~

24 ~~— (b) For each response the contractor or subcontractor receives pursuant to~~
25 ~~paragraph (a):~~

26 ~~— (1) If the worker chose voluntarily to specify his or her gender or ethnicity,~~
27 ~~or both, record the worker's responses; and~~

28 ~~— (2) If the worker declined to specify his or her gender or ethnicity, or both,~~
29 ~~record that the worker declined to specify such information.~~

30 ~~— A contractor or subcontractor shall not compel or coerce a worker to specify his~~
31 ~~or her gender or ethnicity and shall not penalize or otherwise take any adverse~~
32 ~~action against a worker who declines to specify his or her gender or ethnicity.~~
33 ~~Before inquiring as to whether a worker wishes to specify voluntarily his or her~~
34 ~~gender or ethnicity, the applicable contractor or subcontractor must inform the~~
35 ~~worker that such information, if provided, will be open to public inspection as set~~
36 ~~forth in subsection 6.~~

37 ~~— 5. A contractor engaged on a public work and each subcontractor engaged on~~
38 ~~the public work shall keep or cause to be kept:~~

39 ~~— (a) An accurate record showing, for each worker employed by the contractor or~~
40 ~~subcontractor in connection with the public work:~~

41 ~~— (1) The name of the worker;~~

42 ~~— (2) The occupation of the worker;~~

43 ~~— (3) The gender of the worker, if the worker voluntarily agreed to specify~~
44 ~~that information pursuant to subsection 4, or an entry indicating that the worker~~
45 ~~declined to specify such information;~~

46 ~~— (4) The ethnicity of the worker, if the worker voluntarily agreed to specify~~
47 ~~that information pursuant to subsection 4, or an entry indicating that the worker~~
48 ~~declined to specify such information;~~

49 ~~— (5) *The primary language of the worker, as identified by the worker;*~~

50 ~~— (6) If the worker has a driver's license or identification card, an indication~~
51 ~~of the state or other jurisdiction that issued the license or card; and~~

52 ~~— [(6)] (7) The actual per diem, wages and benefits paid to the worker; and~~

~~1 (b) An additional accurate record showing, for each worker employed by the
2 contractor or subcontractor in connection with the public work who has a driver's
3 license or identification card;~~

~~4 (1) The name of the worker;~~

~~5 (2) The driver's license number or identification card number of the
6 worker; and~~

~~7 (3) The state or other jurisdiction that issued the license or card.~~

~~8 6. The records maintained pursuant to subsection 5 must be open at all
9 reasonable hours to the inspection of the public body awarding the contract. The
10 contractor engaged on the public work or subcontractor engaged on the public work
11 shall ensure that a copy of each record for each calendar month is received by the
12 public body awarding the contract no later than 15 days after the end of the month.
13 The copy of the record maintained pursuant to paragraph (a) of subsection 5 must
14 be open to public inspection as provided in NRS 239.010. The copy of the record
15 maintained pursuant to paragraph (b) of subsection 5 is confidential and not open to
16 public inspection. The records in the possession of the public body awarding the
17 contract may be discarded by the public body 2 years after final payment is made
18 by the public body for the public work. The Labor Commissioner shall adopt
19 regulations authorizing and prescribing the procedures for the electronic filing of
20 the copies of the records required to be provided monthly by a contractor or
21 subcontractor to a public body pursuant to this subsection.~~

~~22 7. A contractor engaged on a public work shall not withhold from a
23 subcontractor engaged on the public work the sums necessary to cover any
24 penalties provided pursuant to subsection 3 of NRS 338.060 that may be withheld
25 from the contractor by the public body awarding the contract because the public
26 body did not receive a copy of the record maintained by the subcontractor pursuant
27 to subsection 5 for a calendar month by the time specified in subsection 6 if:~~

~~28 (a) The subcontractor provided to the contractor, for submission to the public
29 body by the contractor, a copy of the record not later than the later of:~~

~~30 (1) Ten days after the end of the month; or~~

~~31 (2) A date agreed upon by the contractor and subcontractor; and~~

~~32 (b) The contractor failed to submit the copy of the record to the public body by
33 the time specified in subsection 6.~~

~~34 Nothing in this subsection prohibits a subcontractor from submitting a copy of a
35 record for a calendar month directly to the public body by the time specified in
36 subsection 6.~~

~~37 8. Any contractor or subcontractor, or agent or representative thereof,
38 performing work for a public work who neglects to comply with the provisions of
39 this section is guilty of a misdemeanor.] **(Deleted by amendment.)**~~

~~40 **Sec. 5.5. 1. A contractor engaged on a public work shall provide to his or
41 her workers assigned to the public work a written or electronic notice that
42 includes, without limitation:**~~

~~43 **(a) The Internet website of the Labor Commissioner where the prevailing
44 wage rates for the public work are posted;**~~

~~45 **(b) The name of the contractor; and**~~

~~46 **(c) The physical address of the principal place of business of the contractor.**~~

~~47 **2. A contractor shall obtain a written or electronic acknowledgement of
48 receipt of the notice pursuant to this section from each worker assigned to the
49 public work. Each acknowledgement of notice must be maintained by the
50 contractor for at least 2 years, made available to the Labor Commissioner upon
51 request and include, without limitation:**~~

~~52 **(a) The worker's name, contact information and signature; and**~~

~~53 **(b) The date on which the worker received the notice.**~~

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

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

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

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

13 (b) *Shall require a person found to have willfully and repeatedly failed to pay*
14 *the prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive, to*
15 *pay damages to each affected worker in an amount equal to the difference*
16 *between the prevailing wages required to be paid and the wages that the*
17 *contractor or subcontractor actually paid to the worker; and*

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

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

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

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

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

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

35 (a) Upon passage and approval for the purpose of adopting regulations and
36 performing any other preparatory administrative tasks that are necessary to carry
37 out the provisions of this act; and

38 (b) On January 1, 2024, for all other purposes.