

Amendment No. 967

Assembly Amendment to Senate Bill No. 226 Second Reprint (BDR 28-494)

Proposed by: Assembly Committee on Government Affairs

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the unfunded mandate not requested by the affected local government to S.B. 226 R2 (§ 12.7).

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.



SENATE BILL NO. 226—SENATOR CANNIZZARO

MARCH 7, 2023

JOINT SPONSOR: ASSEMBLYMAN YEAGER

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing ~~public works;~~ governmental financial administration. (BDR 28-494)

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

CONTAINS UNFUNDED MANDATE (§ ~~§ 3-5~~) 12.7
(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 ~~public works;~~ governmental financial administration; providing a declaration of legislative intent regarding the payment of prevailing wages on public works projects; ~~providing that certain projects require the payment of prevailing wages; revising the definition of “public work”;~~ establishing certain requirements relating to certain organizations that partner with certain public bodies for the construction of hospitals, medical education buildings or medical research buildings; requiring the payment of prevailing wages on certain leases and lease-purchase and installment-purchase agreements entered into by local governments; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides that every contract to which a public body of this State is a party, requiring the employment of skilled mechanics, skilled workers, semiskilled mechanics, semiskilled workers or unskilled labor in the performance of a public work, must contain in express terms the hourly and daily rate of wages to be paid to each of the classes of mechanics and workers. The hourly and daily rate of wages must not be less than the prevailing wage in the region in which the public work is located, as determined by the Labor Commissioner. (NRS 338.020)

Section 2 of this bill makes a declaration of legislative intent finding that: (1) the payment of prevailing wages to workers on public works projects that are funded in whole or in part by public money is essential to the economic well-being of this State, increasing the number of skilled construction workers in this State, enhancing the workforce of the State and increasing redevelopment opportunities in the State; and (2) careful scrutiny of novel leasing and financial arrangements entered into and incentives offered by a public body is necessary to ensure workers are paid the prevailing wage. **Section 8** of this bill provides that any

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15 regulation adopted by the Labor Commissioner relating to public works must be consistent
16 with the declaration of legislative intent set forth in **section 2**.

17 Existing law sets forth certain requirements relating to state financial
18 administration and local financial administration. (Chapters 353 and 354 of NRS)
19 Sections 10.5 and 12.3 of this bill authorize an organization to partner with a state
20 agency or local government and provide private financing only for the construction of a
21 hospital, medical education building or medical research building in this State if the
22 organization: (1) qualifies as a tax-exempt organization and a supporting organization
23 under certain provisions of the Internal Revenue Code; and (2) is organized and
24 operated to support a state agency or local government in the construction of hospitals
25 or such medical buildings.

26 Existing law makes the prevailing wage requirements applicable to certain, specific
27 construction projects. (NRS 244.286, 244A.058, 244A.763, 268.568, 271.710, 271.800,
28 278C.240, 279.500, 318.140, 318.144, 321.416, 332.390, 333A.120, 349.670, 349.956,
29 349.981, 388A.635, 408.3886, 543.545, 701B.265, 701B.625) ~~Section 3 of this bill requires,~~
30 ~~with certain exceptions,} Sections 10.5 and 12.3 require~~ the payment of prevailing wages on
31 ~~[any project if, pursuant to certain agreements or partnerships between a developer and a~~
32 ~~public body: (1) the property or premises on which the project will be constructed or~~
33 ~~developed is owned by a public body; (2) the property or premises on which a project will be~~
34 ~~constructed or developed is, in whole or in part, subject to a lease or lease-purchase agreement~~
35 ~~by a public body; (3) a public body pays money or other compensation directly to or on behalf~~
36 ~~of the developer or contractor of the project or any subcontractor who performs any work on~~
37 ~~the project; (4) a public body pays, credits, reduces, forgives or waives any fee, cost, rent,~~
38 ~~insurance premium, bond premium, obligation or expense, including, without limitation, an~~
39 ~~incidental expense, in relation to the project that is normally required in the execution of a~~
40 ~~contract for a public work on which the estimated cost exceeds \$100,000; (5) a public body~~
41 ~~loans money in relation to the project that is required to be repaid to the public body; (6) a~~
42 ~~public body retains any right to ownership of the property or premises after construction work~~
43 ~~begins on the project; (7) in relation to the project, a public body sells, leases or otherwise~~
44 ~~transfers for less than fair market value any developed or undeveloped real property or any~~
45 ~~other property or asset; or (8) in relation to the project, a public body transfers property of the~~
46 ~~State or political subdivision for less than fair market value. Section 3 exempts from these~~
47 ~~provisions airport authorities, single-family residential housing and certain projects relating to~~
48 ~~affordable housing.~~

49 ~~Existing law defines the term "public work" to mean any project for the new construction,~~
50 ~~repair or reconstruction of a project financed in whole or in part from public money for certain~~
51 ~~publicly owned works and property. (NRS 338.010) Section 5 of this bill amends the~~
52 ~~definition of "public work" to include a project financed in whole or in part from public~~
53 ~~money.} projects developed by such organizations. Sections 10.5 and 12.3 also provide~~
54 ~~that projects developed by such organizations are exempt from certain provisions of~~
55 ~~existing law governing the award of contracts and the oversight and involvement of the~~
56 ~~State Public Works Division of the Department of Administration. Sections 10.5 and 12.3~~
57 ~~require subcontracts for such projects to be competitively bid and authorize an eligible~~
58 ~~subcontractor who bids on such a project to receive certain bidding preferences. Lastly,~~
59 ~~sections 10.5 and 12.3 require a contract or agreement entered into with a prime~~
60 ~~contractor for such a project to include provisions requiring: (1) at least 15 percent of~~
61 ~~the subcontracts for the project to be awarded to local small businesses; and (2) the use~~
62 ~~of apprentices in accordance with certain provisions of existing law.~~

63 Existing law sets forth a legislative declaration regarding the importance of the use
64 of lease-purchase agreements and installment-purchase agreements by local
65 governments, including the use of such agreements for the construction, alteration,
66 repair or remodeling of an improvement. (NRS 354.740) Sections 12.7 and 12.9 of this
67 bill move this language regarding the use of such agreements for the construction,
68 alteration, repair or remodeling of an improvement from the legislative declaration.
69 Section 12.7 provides that if a local government uses such agreements or leases for the
70 construction, alteration, repair or remodeling of an improvement: (1) the person or
71 entity that executes one or more contracts or agreements for the work must include
72 provisions in the contract or agreement requiring the payment of prevailing wages; and

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(2) the local government, the contractor and any subcontractor must pay prevailing wages. Section 12.5 of this bill defines “agreement” for the purposes of these provisions.

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

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Section 1. Chapter 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *The Legislature hereby finds and declares that:*

1. The payment of prevailing wages to workers on public works projects that are funded in whole or in part by public money is essential to:

- (a) The economic well-being of this State;*
- (b) Increasing the number of skilled construction workers in this State;*
- (c) Enhancing the workforce in this State; and*
- (d) Increasing redevelopment opportunities in this State.*

2. To ensure the intentions set forth in subsection 1 are upheld, careful scrutiny of novel leasing and financing arrangements entered into or incentives offered by public bodies for the construction of public works is necessary to ensure that workers on public works projects are paid prevailing wages.

Sec. 3. ~~*1. The provisions of NRS 338.013 to 338.090, inclusive, apply to any project if, pursuant to the provisions of a contract or a lease agreement, lease purchase agreement, development agreement, improvement district, redevelopment project or public private partnership between a private developer and a public body:*~~

~~*(a) The property or premises on which a project will be constructed or developed is owned by a public body;*~~

~~*(b) The property or premises on which a project will be constructed or developed are, in whole or in part, subject to a lease or lease purchase agreement by a public body;*~~

~~*(c) A public body pays money or other compensation directly to or on behalf of the developer or contractor of the project or any subcontractor who performs any work on the project; or*~~

~~*(d) Except as otherwise provided in subsection 2, a public body:*~~

~~*(1) Pays, credits, reduces, forgives or waives any fee, cost, rent, insurance premium, bond premium, obligation or expense, including, without limitation, an incidental expense, in relation to the project that is normally required in the execution of a contract for a public work on which the estimated cost exceeds \$100,000;*~~

~~*(2) Loans money in relation to the project that is required to be repaid to the public body, regardless of the terms of the loan or the interest charged;*~~

~~*(3) Retains any right, including, without limitation, a contingent right, to retake ownership of the property or premises after construction work begins on the project;*~~

~~*(4) In relation to the project, a public body sells, leases or otherwise transfers for less than fair market value any developed or undeveloped real property or any other property or asset; or*~~

~~*(5) In relation to the project, a public body transfers property for less than fair market value.*~~

~~*2. The provisions of paragraph (d) of subsection 1 are not applicable to:*~~

~~*(a) A local government that takes an action set forth in paragraph (d) of subsection 1 for the construction of:*~~

~~(1) Single-family residential housing; or~~
~~(2) Affordable housing if such affordable housing is four floors or less, regardless of whether each or any floor is above or below ground; or~~
~~(b) An airport authority operating in this State or a department of aviation which is operated by a political subdivision of this State.~~

~~3. As used in this section:~~
~~(a) "Affordable housing" means multifamily housing that is:~~
~~(1) Tier one affordable housing or tier two affordable housing; and~~
~~(2) Subject to a legally binding agreement or other instrument that includes restrictions for the resale of the property to require that such property continue to be used as tier one affordable housing, tier two affordable housing or tier three affordable housing;~~
~~(b) "Improvement district" has the meaning ascribed to it in NRS 271.130.~~
~~(c) "Tier one affordable housing" has the meaning ascribed to it in NRS 278.01902.~~
~~(d) "Tier three affordable housing" has the meaning ascribed to it in NRS 278.01904.~~
~~(e) "Tier two affordable housing" has the meaning ascribed to it in NRS 278.01906.~~ **(Deleted by amendment.)**

Sec. 4. (Deleted by amendment.)

Sec. 5. ~~[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.~~

~~4. "Contractor" means:~~

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

~~(b) A design build team.~~

~~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.~~

~~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.~~

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

3 ~~— (2) Anything other than a building and its site, at least one person who~~
4 ~~holds a certificate of registration to practice architecture pursuant to chapter 623 of~~
5 ~~NRS or landscape architecture pursuant to chapter 623A of NRS or who is licensed~~
6 ~~as a professional engineer pursuant to chapter 625 of NRS.~~

7 ~~— 8. “Design professional” means:~~

8 ~~— (a) A person who is licensed as a professional engineer pursuant to chapter 625~~
9 ~~of NRS;~~

10 ~~— (b) A person who is licensed as a professional land surveyor pursuant to~~
11 ~~chapter 625 of NRS;~~

12 ~~— (c) A person who holds a certificate of registration to engage in the practice of~~
13 ~~architecture, interior design or residential design pursuant to chapter 623 of NRS;~~

14 ~~— (d) A person who holds a certificate of registration to engage in the practice of~~
15 ~~landscape architecture pursuant to chapter 623A of NRS; or~~

16 ~~— (e) A business entity that engages in the practice of professional engineering,~~
17 ~~land surveying, architecture or landscape architecture.~~

18 ~~— 9. “Discrete project” means one or more public works which are undertaken~~
19 ~~on a single construction site for a single public body. The term does not include one~~
20 ~~or more public works that are undertaken on multiple construction sites regardless~~
21 ~~of whether the public body which sponsors or finances the public works bundles the~~
22 ~~public works together.~~

23 ~~— 10. “Division” means the State Public Works Division of the Department of~~
24 ~~Administration.~~

25 ~~— 11. “Eligible bidder” means a person who is:~~

26 ~~— (a) Found to be a responsible and responsive contractor by a local government~~
27 ~~or its authorized representative which requests bids for a public work in accordance~~
28 ~~with paragraph (b) of subsection 1 of NRS 338.1373; or~~

29 ~~— (b) Determined by a public body or its authorized representative which~~
30 ~~awarded a contract for a public work pursuant to NRS 338.1375 to 338.139,~~
31 ~~inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or~~
32 ~~338.1382.~~

33 ~~— 12. “General contractor” means a person who is licensed to conduct business~~
34 ~~in one, or both, of the following branches of the contracting business:~~

35 ~~— (a) General engineering contracting, as described in subsection 2 of NRS~~
36 ~~624.215.~~

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

38 ~~— 13. “Governing body” means the board, council, commission or other body in~~
39 ~~which the general legislative and fiscal powers of a local government are vested.~~

40 ~~— 14. “Horizontal construction” means any construction, alteration, repair,~~
41 ~~renovation, demolition or remodeling necessary to complete a public work,~~
42 ~~including, without limitation, any irrigation, drainage, water supply, flood control,~~
43 ~~harbor, railroad, highway, tunnel, airport or airway, sewer, sewage disposal plant or~~
44 ~~water treatment facility and any ancillary vertical components thereof, bridge,~~
45 ~~inland waterway, pipeline for the transmission of petroleum or any other liquid or~~
46 ~~gaseous substance, pier, and any other work incidental thereto. The term does not~~
47 ~~include vertical construction, the construction of any terminal or other building of~~
48 ~~an airport or airway, or the construction of any other building.~~

49 ~~— 15. “Local government” means every political subdivision or other entity~~
50 ~~which has the right to levy or receive money from ad valorem or other taxes or any~~
51 ~~mandatory assessments, and includes, without limitation, counties, cities, towns,~~
52 ~~boards, school districts and other districts organized pursuant to chapters 244A,~~
53 ~~318, 318A, 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.~~

~~16. "Offense" means:~~

~~(a) Failing to:~~

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

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

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

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

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

~~17. "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.~~

~~18. "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.~~

~~19. "Public work" means any project [for the new construction, repair or reconstruction of a project] financed in whole or in part from public money for:~~

~~(a) Public buildings;~~

~~(b) Jails and prisons;~~

~~(c) Public roads;~~

~~(d) Public highways;~~

~~(e) Public streets and alleys;~~

~~(f) Public utilities;~~

~~(g) Publicly owned water mains and sewers;~~

~~(h) Public parks and playgrounds;~~

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

~~(j) All other publicly owned works and property.~~

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

~~21. "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.~~

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

~~1 (a) A contractor and a subcontractor or supplier; or
 2 (b) A subcontractor and another subcontractor or supplier,
 3 for the provision of labor, materials, equipment or supplies for a construction
 4 project.~~

~~5 22. "Subcontractor" means a person who
 6 (a) Is licensed pursuant to the provisions of chapter 624 of NRS or performs
 7 such work that the person is not required to be licensed pursuant to chapter 624 of
 8 NRS; and~~

~~9 (b) Contracts with a contractor, another subcontractor or a supplier to provide
 10 labor, materials or services for a construction project.~~

~~11 24. "Supplier" means a person who provides materials, equipment or supplies
 12 for a construction project.~~

~~13 25. "Vertical construction" means any construction, alteration, repair,
 14 renovation, demolition or remodeling necessary to complete a public work for any
 15 building, structure or other improvement that is predominantly vertical, including,
 16 without limitation, a building, structure or improvement for the support, shelter and
 17 enclosure of persons, animals, chattels or movable property of any kind, and any
 18 other work or improvement appurtenant thereto.~~

~~19 26. "Wages" means:
 20 (a) The basic hourly rate of pay; and
 21 (b) The amount of pension, health and welfare, vacation and holiday pay, the
 22 cost of apprenticeship training or other bona fide fringe benefits which are a benefit
 23 to the worker.~~

~~24 27. "Worker" means a skilled mechanic, skilled worker, semiskilled
 25 mechanic, semiskilled worker or unskilled worker in the service of a contractor or
 26 subcontractor under any appointment or contract of hire or apprenticeship, express
 27 or implied, oral or written, whether lawfully or unlawfully employed. The term
 28 does not include a design professional.] **(Deleted by amendment.)**~~

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. NRS 338.012 is hereby amended to read as follows:

338.012 **1.** The Labor Commissioner may adopt such regulations as are
 necessary to enable the Labor Commissioner to carry out his or her duties pursuant
 to the provisions of this chapter.

2. *Any regulation adopted by the Labor Commissioner pursuant to this
 chapter must be consistent with the declaration of legislative intent set forth in
 section 2 of this act.*

Sec. 9. (Deleted by amendment.)

Sec. 10. NRS 338.050 is hereby amended to read as follows:

338.050 For the purpose of NRS 338.010 to 338.090, inclusive, *and*
~~[sections] section 2 [and 3] of this act~~, except as otherwise provided by specific
 statute, every worker who performs work for a public work covered by a contract
 therefor is subject to all of the provisions of NRS 338.010 to 338.090, inclusive,
~~and [sections] section 2 [and 3] of this act~~, regardless of any contractual
 relationship alleged to exist between such worker and his or her employer.

Sec. 10.5. **Chapter 353 of NRS is hereby amended by adding thereto a
 new section to read as follows:**

**1. An organization may partner with a state agency and provide private
 financing only for the construction of a hospital, medical education building or
 medical research building in this State if the organization:**

**(a) Qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c)
 and a supporting organization pursuant to 26 U.S.C. § 509(a)(3); and**

1 (b) Is organized and operated to support the state agency in the construction
2 of a hospital, medical education building or medical research building in this
3 State.

4 2. An organization that meets the criteria set forth in subsection 1:
5 (a) Is exempt from the provisions of NRS 338.1375 to 338.139, inclusive, in
6 selecting a contractor for a project developed by the organization;

7 (b) Shall comply with the provisions of NRS 338.013 to 338.090, inclusive;
8 and

9 (c) Is exempt from the provisions of chapter 341 of NRS and not subject to
10 the oversight or involvement of the State Public Works Division of the
11 Department of Administration, except for any authority of the Deputy
12 Administrator of the Public Works - Compliance and Code Enforcement Section
13 exercised pursuant to subsection 2 of NRS 341.145.

14 3. All subcontracts for a project developed by an organization that meets the
15 criteria set forth in subsection 1 must be competitively bid pursuant to NRS
16 338.1685 to 338.1695, inclusive. An eligible subcontractor who bids on such a
17 project is entitled to receive a preference in bidding pursuant to subsection 3 or 4
18 NRS 338.1389.

19 4. Any contract or agreement entered into with a prime contractor for a
20 project developed by an organization that meets the criteria set forth in subsection
21 1 must, without limitation, include provisions requiring:

22 (a) That at least 15 percent of the subcontracts for the project will be
23 awarded to local small businesses; and

24 (b) The prime contractor to comply with the requirements of NRS 338.01165
25 for the use of apprentices.

26 5. As used in this section, "state agency" means an agency, board, bureau,
27 commission, department, division, elected officer or any other unit of the
28 Executive Department of the State Government. The term includes the Nevada
29 System of High Education.

30 **Sec. 11.** ~~[NRS 338.070 is hereby amended to read as follows:~~

31 ~~— 338.070 1. Any public body awarding a contract shall:~~

32 ~~— (a) Investigate possible violations of the provisions of NRS 338.010 to~~
33 ~~338.090, inclusive, and sections 2 and 3 of this act committed in the course of the~~
34 ~~execution of the contract, and determine whether a violation has been committed~~
35 ~~and inform the Labor Commissioner of any such violations; and~~

36 ~~— (b) When making payments to the contractor engaged on the public work of~~
37 ~~money becoming due under the contract, withhold and retain all sums forfeited~~
38 ~~pursuant to the provisions of NRS 338.010 to 338.090, inclusive [,], and sections 2~~
39 ~~and 3 of this act.~~

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

42 ~~— 3. Except as otherwise provided in subsection 7, it is lawful for any contractor~~
43 ~~engaged on a public work to withhold from any subcontractor engaged on the~~
44 ~~public work sufficient sums to cover any penalties withheld from the contractor by~~
45 ~~the awarding public body on account of the failure of the subcontractor to comply~~
46 ~~with the terms of NRS 338.010 to 338.090, inclusive [,], and sections 2 and 3 of~~
47 ~~this act. If payment has already been made to the subcontractor, the contractor may~~
48 ~~recover from the subcontractor the amount of the penalty or forfeiture in a suit at~~
49 ~~law.~~

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

52 ~~— (a) Inquire of each worker employed by the contractor or subcontractor in~~
53 ~~connection with the public work;~~

~~1 (1) Whether the worker wishes to specify voluntarily his or her gender; and~~
~~2 (2) Whether the worker wishes to specify voluntarily his or her ethnicity;~~
~~3 and~~
~~4 (b) For each response the contractor or subcontractor receives pursuant to~~
~~5 paragraph (a):~~
~~6 (1) If the worker chose voluntarily to specify his or her gender or ethnicity,~~
~~7 or both, record the worker's responses; and~~
~~8 (2) If the worker declined to specify his or her gender or ethnicity, or both,~~
~~9 record that the worker declined to specify such information.~~
~~10 A contractor or subcontractor shall not compel or coerce a worker to specify his~~
~~11 or her gender or ethnicity and shall not penalize or otherwise take any adverse~~
~~12 action against a worker who declines to specify his or her gender or ethnicity.~~
~~13 Before inquiring as to whether a worker wishes to specify voluntarily his or her~~
~~14 gender or ethnicity, the applicable contractor or subcontractor must inform the~~
~~15 worker that such information, if provided, will be open to public inspection as set~~
~~16 forth in subsection 6.~~
~~17 5. A contractor engaged on a public work and each subcontractor engaged on~~
~~18 the public work shall keep or cause to be kept:~~
~~19 (a) An accurate record showing, for each worker employed by the contractor or~~
~~20 subcontractor in connection with the public work:~~
~~21 (1) The name of the worker;~~
~~22 (2) The occupation of the worker;~~
~~23 (3) The gender of the worker, if the worker voluntarily agreed to specify~~
~~24 that information pursuant to subsection 4, or an entry indicating that the worker~~
~~25 declined to specify such information;~~
~~26 (4) The ethnicity of the worker, if the worker voluntarily agreed to specify~~
~~27 that information pursuant to subsection 4, or an entry indicating that the worker~~
~~28 declined to specify such information;~~
~~29 (5) If the worker has a driver's license or identification card, an indication~~
~~30 of the state or other jurisdiction that issued the license or card; and~~
~~31 (6) The actual per diem, wages and benefits paid to the worker; and~~
~~32 (b) An additional accurate record showing, for each worker employed by the~~
~~33 contractor or subcontractor in connection with the public work who has a driver's~~
~~34 license or identification card:~~
~~35 (1) The name of the worker;~~
~~36 (2) The driver's license number or identification card number of the~~
~~37 worker; and~~
~~38 (3) The state or other jurisdiction that issued the license or card.~~
~~39 6. The records maintained pursuant to subsection 5 must be open at all~~
~~40 reasonable hours to the inspection of the public body awarding the contract. The~~
~~41 contractor engaged on the public work or subcontractor engaged on the public work~~
~~42 shall ensure that a copy of each record for each calendar month is received by~~
~~43 the public body awarding the contract no later than 15 days after the end of the month.~~
~~44 The copy of the record maintained pursuant to paragraph (a) of subsection 5 must~~
~~45 be open to public inspection as provided in NRS 239.010. The copy of the record~~
~~46 maintained pursuant to paragraph (b) of subsection 5 is confidential and not open to~~
~~47 public inspection. The records in the possession of the public body awarding the~~
~~48 contract may be discarded by the public body 2 years after final payment is made~~
~~49 by the public body for the public work. The Labor Commissioner shall adopt~~
~~50 regulations authorizing and prescribing the procedures for the electronic filing of~~
~~51 the copies of the records required to be provided monthly by a contractor or~~
~~52 subcontractor to a public body pursuant to this subsection.~~

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

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

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

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

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

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

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

Sec. 12. ~~[NRS 338.090 is hereby amended to read as follows:~~

~~338.090 1. Except as otherwise provided in subsection 5, any person, including the officers, agents or employees of a public body, who violates any provision of NRS 338.010 to 338.090, inclusive, and sections 2 and 3 of this act 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.~~

~~5. The provisions of subsection 1 do not apply to a subcontractor specified in NRS 338.072.] (Deleted by amendment.)~~

Sec. 12.2. Chapter 354 of NRS is hereby amended by adding thereto the provisions set forth as sections 12.3, 12.5 and 12.7 of this act.

Sec. 12.3. 1. An organization may partner with a local government and provide private financing only for the construction of a hospital, medical education building or medical research building in this State if the organization:

(a) Qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c) and a supporting organization pursuant to 26 U.S.C. § 509(a)(3); and

1 (b) Is organized and operated to support the local government in the
2 construction of a hospital, medical education building or medical research
3 building in this State.

4 2. An organization that meets the criteria set forth in subsection 1:

5 (a) Is exempt from the provisions of NRS 338.1375 to 338.139, inclusive, in
6 selecting a contractor for a project developed by the organization;

7 (b) Shall comply with the provisions of NRS 338.013 to 338.090, inclusive;
8 and

9 (c) Is exempt from the provisions of chapter 341 of NRS and not subject to
10 the oversight or involvement of the State Public Works Division of the
11 Department of Administration, except for any authority of the Deputy
12 Administrator of the Public Works - Compliance and Code Enforcement Section
13 exercised pursuant to subsection 2 of NRS 341.145.

14 3. All subcontracts for a project developed by an organization that meets the
15 criteria set forth in subsection 1 must be competitively bid pursuant to NRS
16 338.1685 to 338.1695, inclusive. An eligible subcontractor who bids on such a
17 project is entitled to receive a preference in bidding pursuant to subsection 3 or 4
18 NRS 338.1389.

19 4. Any contract or agreement entered into with a prime contractor for a
20 project developed by an organization that meets the criteria set forth in subsection
21 1 must, without limitation, include provisions requiring:

22 (a) That at least 15 percent of the subcontracts for the project will be
23 awarded to local small businesses; and

24 (b) The prime contractor to comply with the requirements of NRS 338.01165
25 for the use of apprentices.

26 Sec. 12.5. As used in NRS 354.740 and section 12.7 of this act,
27 “agreement” means an agreement to purchase property in the form of a lease or
28 an agreement to pay in installments, pursuant to which a local government may
29 pay the purchase price of real or personal property over a period of time which
30 extends beyond the biennium in which the agreement is executed, including,
31 without limitation:

32 1. An agreement pursuant to which a local government may acquire the
33 property that is the subject of the agreement at the end of the term of the
34 agreement or at the end of the term of a renewal of the agreement upon payment
35 of no additional consideration or nominal additional consideration; and

36 2. An agreement that, for the purposes of federal income tax, is treated as
37 an agreement for conditional sale.

38 Sec. 12.7. If a local government enters into a lease, lease-purchase or
39 installment-purchase agreement which involves the construction, alteration,
40 repair or remodeling of an improvement:

41 1. The person or entity that executes one or more contracts or agreements
42 for the actual construction, alteration, repair or remodeling of the improvement
43 shall include in such a contract or agreement the contractual provisions and
44 stipulations that are required to be included in a contract for a public work
45 pursuant to the provisions of NRS 338.013 to 338.090, inclusive.

46 2. The local government, the contractor who is awarded the contract or
47 entered into the agreement to perform the construction, alteration, repair or
48 remodeling of the improvement and any subcontractor on the project shall
49 comply with the provisions of NRS 338.013 to 338.090, inclusive, in the same
50 manner as if the local government had undertaken the project or had awarded
51 the contract.

52 Sec. 12.9. NRS 354.740 is hereby amended to read as follows:

53 354.740 The Legislature hereby finds and declares that:

1 1. The authority provided by other specific statutes for the government of this
2 State and the political subdivisions of this State to use leases and lease-purchase
3 and installment-purchase agreements provides an important and valuable option for
4 these governmental entities and, when this authority is used properly, provides
5 great benefit to the residents of this State.

6 2. The statutory provisions governing the use of leases and lease-purchase
7 and installment-purchase agreements should be interpreted to allow the process of
8 entering into and carrying out these agreements to be as streamlined and efficient as
9 possible.

10 3. The government of this State and the political subdivisions of this State
11 should not use leases and lease-purchase and installment-purchase agreements to:

12 (a) Engage in or allow bid-shopping; or

13 (b) Avoid or circumvent any requirement regarding the payment of prevailing
14 wages for public works.

15 4. When using leases and lease-purchase and installment-purchase
16 agreements, the government of this State and the political subdivisions of this State
17 should provide for the preferential hiring of Nevada residents to the extent
18 otherwise required by law.

19 ~~5. If a lease purchase or installment purchase agreement pursuant to this~~
20 ~~section involves the construction, alteration, repair or remodeling of an~~
21 ~~improvement~~

22 ~~(a) The person or entity that executes one or more contracts or agreements for~~
23 ~~the actual construction, alteration, repair or remodeling of the improvement shall~~
24 ~~include in such a contract or agreement the contractual provisions and stipulations~~
25 ~~that are required to be included in a contract for a public work pursuant to the~~
26 ~~provisions of NRS 338.013 to 338.090, inclusive.~~

27 ~~(b) The government of this State or a political subdivision of this State, the~~
28 ~~contractor who is awarded the contract or entered into the agreement to perform the~~
29 ~~construction, alteration, repair or remodeling of the improvement and any~~
30 ~~subcontractor on the project shall comply with the provisions of NRS 338.013 to~~
31 ~~338.090, inclusive, in the same manner as if the government of this State or a~~
32 ~~political subdivision of this State had undertaken the project or had awarded the~~
33 ~~contract.]~~

34 **Sec. 13.** (Deleted by amendment.)

35 **Sec. 14.** (Deleted by amendment.)

36 **Sec. 15.** (Deleted by amendment.)

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

39 **Sec. 16.5.** The amendatory provisions of this act do not apply to any contract,
40 lease or other agreement entered into before the effective date of this act.

41 **Sec. 17.** This act becomes effective upon passage and approval.