

Amendment No. 469

Senate Amendment to Senate Bill No. 433	(BDR 28-541)
Proposed by: Senate Committee on Government Affairs	
Amends: Summary: No Title: No 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.



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:

Existing law sets forth general provisions applicable to public works, including provisions requiring, with certain exceptions, the payment of prevailing wages for public works projects which are enforced by the Labor Commissioner. (NRS 338.010-338.090) ~~[Section 2 of this bill makes a declaration of legislative intent concerning the interpretation of the provisions governing prevailing wages.]~~ **Section 3** of this bill ~~[provides criteria that the Labor Commissioner is required to examine]~~ **requires the Labor Commissioner to adopt regulations establishing the factors to be considered** when determining whether prevailing wages are required to be paid on a project. ~~[If the Labor Commissioner finds that certain circumstances exist with respect to a project, section 3 requires the Labor Commissioner to determine that prevailing wages are required to be paid on the project. Section 4 of this bill revises the definition of “public work” to include public financing from nonmonetary sources and private financing if the project is for a public use.]~~ **Section 3 also provides that: (1) the Labor Commissioner is not bound by any determination or finding of a public body relating to the applicability of the requirements for the payment of prevailing wages; and (2) any determination made by the Labor Commissioner regarding the applicability of those requirements is a final order of the Labor Commissioner for purposes of judicial review.** Sections 5-7 of this bill make conforming changes to indicate the proper placement of ~~[sections 2 and]~~ **section 3** in the Nevada Revised Statutes.

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

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

Sec. 2. ~~[The Legislature hereby finds and declares:
1. The payment of prevailing wages is essential to the economic well-being of this State.
2. The laws governing prevailing wages in the State of Nevada must be liberally construed to effectuate their purpose.]~~

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

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

~~5. Careful scrutiny of novel financing arrangements or incentives for projects is required to ensure that the laws governing prevailing wages are not circumvented.~~ (Deleted by amendment.)

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

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

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

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

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

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

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

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

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

~~(i) Whether the public body is or will be responsible for the maintenance of the project after its completion.] The Labor Commissioner shall adopt regulations establishing the factors to be considered when determining the applicability of NRS 338.013 to 338.090, inclusive.~~

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

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

~~4.] Any determination made by the Labor Commissioner regarding the applicability of NRS 338.013 to 338.090, inclusive, is a final order of the Labor Commissioner for purposes of judicial review.~~

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

~~(a) A renewable energy project, as defined in NRS 701B.075.~~

~~(b) Residential streets in a new subdivision.~~

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

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

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

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

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

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

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

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

Sec. 4. [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) A building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS.~~

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

~~8. "Design professional" means:~~

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

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

~~1 (c) A person who holds a certificate of registration to engage in the practice of
2 architecture, interior design or residential design pursuant to chapter 623 of NRS;~~

~~3 (d) A person who holds a certificate of registration to engage in the practice of
4 landscape architecture pursuant to chapter 623A of NRS; or~~

~~5 (e) A business entity that engages in the practice of professional engineering,
6 land surveying, architecture or landscape architecture.~~

~~7 9. "Discrete project" means one or more public works which are undertaken
8 on a single construction site for a single public body. The term does not include one
9 or more public works that are undertaken on multiple construction sites regardless
10 of whether the public body which sponsors or finances the public works bundles the
11 public works together.~~

~~12 10. "Division" means the State Public Works Division of the Department of
13 Administration.~~

~~14 11. "Eligible bidder" means a person who is:~~

~~15 (a) Found to be a responsible and responsive contractor by a local government
16 or its authorized representative which requests bids for a public work in accordance
17 with paragraph (b) of subsection 1 of NRS 338.1373; or~~

~~18 (b) Determined by a public body or its authorized representative which
19 awarded a contract for a public work pursuant to NRS 338.1375 to 338.139,
20 inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or
21 338.1382.~~

~~22 12. "General contractor" means a person who is licensed to conduct business
23 in one, or both, of the following branches of the contracting business:~~

~~24 (a) General engineering contracting, as described in subsection 2 of NRS
25 624.215.~~

~~26 (b) General building contracting, as described in subsection 3 of NRS 624.215.~~

~~27 13. "Governing body" means the board, council, commission or other body in
28 which the general legislative and fiscal powers of a local government are vested.~~

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

~~38 15. "Local government" means every political subdivision or other entity
39 which has the right to levy or receive money from ad valorem or other taxes or any
40 mandatory assessments, and includes, without limitation, counties, cities, towns,
41 boards, school districts and other districts organized pursuant to chapters 244A,
42 318, 318A, 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,
43 inclusive, and any agency or department of a county or city which prepares a
44 budget separate from that of the parent political subdivision. The term includes a
45 person who has been designated by the governing body of a local government to
46 serve as its authorized representative.~~

~~47 16. "Offense" means:~~

~~48 (a) Failing to:~~

~~49 (1) Pay the prevailing wage required pursuant to this chapter;~~

~~50 (2) Pay the contributions for unemployment compensation required
51 pursuant to chapter 612 of NRS;~~

~~52 (3) Provide and secure compensation for employees required pursuant to
53 chapters 616A to 617, inclusive, of NRS; or~~

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

2 ~~— (b) Discharging an obligation to pay wages in a manner that violates the~~
 3 ~~provisions of NRS 338.025.~~

4 ~~— 17. “Prime contractor” means a contractor who:~~

5 ~~— (a) Contracts to construct an entire project;~~

6 ~~— (b) Coordinates all work performed on the entire project;~~

7 ~~— (c) Uses his or her own workforce to perform all or a part of the public work;~~
 8 ~~and~~

9 ~~— (d) Contracts for the services of any subcontractor or independent contractor or~~
 10 ~~is responsible for payment to any contracted subcontractors or independent~~
 11 ~~contractors.~~

12 ~~— The term includes, without limitation, a general contractor or a specialty~~
 13 ~~contractor who is authorized to bid on a project pursuant to NRS 338.139 or~~
 14 ~~338.148.~~

15 ~~— 18. “Public body” means the State, county, city, town, school district or any~~
 16 ~~public agency of this State or its political subdivisions sponsoring or financing a~~
 17 ~~public work.~~

18 ~~— 19. “Public work” means any project [for the new construction, repair or~~
 19 ~~reconstruction of a project financed], *regardless of the existence of any written*~~
 20 ~~*agreement.*~~

21 ~~— (a) *Sponsored or financed* in whole or in part from public money *or the*~~
 22 ~~*equivalent of public money for:*~~

23 ~~— [(a)] (1) Public buildings;~~

24 ~~— [(b)] (2) Jails and prisons;~~

25 ~~— [(c)] (3) Public roads;~~

26 ~~— [(d)] (4) Public highways;~~

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

28 ~~— [(f)] (6) Public utilities;~~

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

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

31 ~~— [(i)] (9) Public convention facilities which are financed at least in part [with]~~
 32 ~~from public money; and~~

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

34 ~~— (b) *Financed wholly by private money that is intended for a public use.*~~

35 ~~— 20. “Specialty contractor” means a person who is licensed to conduct business~~
 36 ~~as described in subsection 4 of NRS 624.215.~~

37 ~~— 21. “Stand-alone underground utility project” means an underground utility~~
 38 ~~project that is not integrated into a larger project, including, without limitation:~~

39 ~~— (a) An underground sewer line or an underground pipeline for the conveyance~~
 40 ~~of water, including facilities appurtenant thereto; and~~

41 ~~— (b) A project for the construction or installation of a storm drain, including~~
 42 ~~facilities appurtenant thereto,~~

43 ~~— that is not located at the site of a public work for the design and construction of~~
 44 ~~which a public body is authorized to contract with a design-build team pursuant to~~
 45 ~~subsection 2 of NRS 338.1711.~~

46 ~~— 22. “Subcontract” means a written contract entered into between:~~

47 ~~— (a) A contractor and a subcontractor or supplier; or~~

48 ~~— (b) A subcontractor and another subcontractor or supplier,~~

49 ~~— for the provision of labor, materials, equipment or supplies for a construction~~
 50 ~~project.~~

51 ~~— 23. “Subcontractor” means a person who:~~

~~1 (a) Is licensed pursuant to the provisions of chapter 624 of NRS or performs
2 such work that the person is not required to be licensed pursuant to chapter 624 of
3 NRS; and~~

~~4 (b) Contracts with a contractor, another subcontractor or a supplier to provide
5 labor, materials or services for a construction project.~~

~~6 24. "Supplier" means a person who provides materials, equipment or supplies
7 for a construction project.~~

~~8 25. "Vertical construction" means any construction, alteration, repair,
9 renovation, demolition or remodeling necessary to complete a public work for any
10 building, structure or other improvement that is predominantly vertical, including,
11 without limitation, a building, structure or improvement for the support, shelter and
12 enclosure of persons, animals, chattels or movable property of any kind, and any
13 other work or improvement appurtenant thereto.~~

~~14 26. "Wages" means:~~

~~15 (a) The basic hourly rate of pay; and~~

~~16 (b) The amount of pension, health and welfare, vacation and holiday pay, the
17 cost of apprenticeship training or other bona fide fringe benefits which are a benefit
18 to the worker.~~

~~19 27. "Worker" means a skilled mechanic, skilled worker, semiskilled
20 mechanic, semiskilled worker or unskilled worker in the service of a contractor or
21 subcontractor under any appointment or contract of hire or apprenticeship, express
22 or implied, oral or written, whether lawfully or unlawfully employed. The term
23 does not include a design professional.] (Deleted by amendment.)~~

Sec. 5. 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~~
24 ~~2-and] section 3 of this act~~, except as otherwise provided by specific statute, every
25 worker who performs work for a public work covered by a contract therefor is
26 subject to all of the provisions of NRS 338.010 to 338.090, inclusive, ~~and [sections~~
27 ~~2-and] section 3 of this act~~, regardless of any contractual relationship alleged to
28 exist between such worker and his or her employer.

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

338.070 1. Any public body awarding a contract shall:

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

37 (b) When making payments to the contractor engaged on the public work of
38 money becoming due under the contract, withhold and retain all sums forfeited
39 pursuant to the provisions of NRS 338.010 to 338.090, inclusive ~~[]~~, ~~and [sections~~
40 ~~2-and] section 3 of this act~~.

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

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

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

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

3 (1) Whether the worker wishes to specify voluntarily his or her gender; and
4 (2) Whether the worker wishes to specify voluntarily his or her ethnicity;
5 and

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

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

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

12 ➤ A contractor or subcontractor shall not compel or coerce a worker to specify his
13 or her gender or ethnicity and shall not penalize or otherwise take any adverse
14 action against a worker who declines to specify his or her gender or ethnicity.
15 Before inquiring as to whether a worker wishes to specify voluntarily his or her
16 gender or ethnicity, the applicable contractor or subcontractor must inform the
17 worker that such information, if provided, will be open to public inspection as set
18 forth in subsection 6.

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

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

23 (1) The name of the worker;

24 (2) The occupation of the worker;

25 (3) The gender of the worker, if the worker voluntarily agreed to specify
26 that information pursuant to subsection 4, or an entry indicating that the worker
27 declined to specify such information;

28 (4) The ethnicity of the worker, if the worker voluntarily agreed to specify
29 that information pursuant to subsection 4, or an entry indicating that the worker
30 declined to specify such information;

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

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

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

37 (1) The name of the worker;

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

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

41 6. The records maintained pursuant to subsection 5 must be open at all
42 reasonable hours to the inspection of the public body awarding the contract. The
43 contractor engaged on the public work or subcontractor engaged on the public work
44 shall ensure that a copy of each record for each calendar month is received by the
45 public body awarding the contract no later than 15 days after the end of the month.

46 The copy of the record maintained pursuant to paragraph (a) of subsection 5 must
47 be open to public inspection as provided in NRS 239.010. The copy of the record
48 maintained pursuant to paragraph (b) of subsection 5 is confidential and not open to
49 public inspection. The records in the possession of the public body awarding the
50 contract may be discarded by the public body 2 years after final payment is made
51 by the public body for the public work. The Labor Commissioner shall adopt
52 regulations authorizing and prescribing the procedures for the electronic filing of

1 the copies of the records required to be provided monthly by a contractor or
2 subcontractor to a public body pursuant to this subsection.

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

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

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

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

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

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

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

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

22 338.090 1. Except as otherwise provided in subsection 5, any person,
23 including the officers, agents or employees of a public body, who violates any
24 provision of NRS 338.010 to 338.090, inclusive, ~~and [sections 2 and]~~ section 3 of
25 this act, or any regulation adopted pursuant thereto, is guilty of a misdemeanor.

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

28 (a) Shall, except as otherwise provided in subsection 4, assess a person who,
29 after an opportunity for a hearing, is found to have failed to pay the prevailing wage
30 required pursuant to NRS 338.020 to 338.090, inclusive, ~~and [sections 2 and]~~
31 section 3 of this act, an amount equal to the difference between the prevailing
32 wages required to be paid and the wages that the contractor or subcontractor
33 actually paid; and

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

37 3. If the Labor Commissioner finds that a person has failed to pay the
38 prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive, ~~and~~
39 ~~[sections 2 and]~~ section 3 of this act, the public body may, in addition to any other
40 remedy or penalty provided in this chapter, require the person to pay the actual
41 costs incurred by the public body to investigate the matter.

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

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

49 **Sec. 8.** This act becomes effective ~~[on July 1, 2023.]~~ upon passage and
50 approval.