

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.

~

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

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

**Legislative Counsel’s Digest:**

1 Existing law sets forth general provisions applicable to public works, including  
2 provisions requiring, with certain exceptions, the payment of prevailing wages for  
3 public works projects which are enforced by the Labor Commissioner. (NRS  
4 338.010-338.090) **Section 3** of this bill requires the Labor Commissioner to adopt  
5 regulations establishing the factors to be considered when determining whether  
6 prevailing wages are required to be paid on a project. **Section 3** also provides that:  
7 (1) the Labor Commissioner is not bound by any determination or finding of a  
8 public body relating to the applicability of the requirements for the payment of  
9 prevailing wages; and (2) any determination made by the Labor Commissioner  
10 regarding the applicability of those requirements is a final order of the Labor  
11 Commissioner for purposes of judicial review. **Sections 5-7** of this bill make  
12 conforming changes to indicate the proper placement of **section 3** in the Nevada  
13 Revised Statutes.

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

1 **Section 1.** Chapter 338 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 and 3 of this act.  
3 **Sec. 2.** (Deleted by amendment.)  
4 **Sec. 3.** *1. The Labor Commissioner shall adopt regulations*  
5 *establishing the factors to be considered when determining the*  
6 *applicability of NRS 338.013 to 338.090, inclusive.*



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

4 **3. Any determination made by the Labor Commissioner**  
5 **regarding the applicability of NRS 338.013 to 338.090, inclusive,**  
6 **is a final order of the Labor Commissioner for purposes of judicial**  
7 **review.**

8 **Sec. 4.** (Deleted by amendment.)

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

10 338.050 For the purpose of NRS 338.010 to 338.090, inclusive,  
11 **and section 3 of this act**, except as otherwise provided by specific  
12 statute, every worker who performs work for a public work covered  
13 by a contract therefor is subject to all of the provisions of NRS  
14 338.010 to 338.090, inclusive, **and section 3 of this act**, regardless  
15 of any contractual relationship alleged to exist between such worker  
16 and his or her employer.

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

18 338.070 1. Any public body awarding a contract shall:

19 (a) Investigate possible violations of the provisions of NRS  
20 338.010 to 338.090, inclusive, **and section 3 of this act** committed  
21 in the course of the execution of the contract, and determine whether  
22 a violation has been committed and inform the Labor Commissioner  
23 of any such violations; and

24 (b) When making payments to the contractor engaged on the  
25 public work of money becoming due under the contract, withhold  
26 and retain all sums forfeited pursuant to the provisions of NRS  
27 338.010 to 338.090, inclusive **[ ]**, **and section 3 of this act.**

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

31 3. Except as otherwise provided in subsection 7, it is lawful for  
32 any contractor engaged on a public work to withhold from any  
33 subcontractor engaged on the public work sufficient sums to cover  
34 any penalties withheld from the contractor by the awarding public  
35 body on account of the failure of the subcontractor to comply with  
36 the terms of NRS 338.010 to 338.090, inclusive **[ ]**, **and section 3**  
37 **of this act.** If payment has already been made to the subcontractor,  
38 the contractor may recover from the subcontractor the amount of the  
39 penalty or forfeiture in a suit at law.

40 4. A contractor engaged on a public work and each  
41 subcontractor engaged on the public work shall:

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

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



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

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

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

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

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

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

21 (a) An accurate record showing, for each worker employed by  
22 the contractor or 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  
26 agreed to specify that information pursuant to subsection 4, or an  
27 entry indicating that the worker declined to specify such  
28 information;

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

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

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

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

41 (1) The name of the worker;

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

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



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

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

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

- 29 (1) Ten days after the end of the month; or  
30 (2) A date agreed upon by the contractor and subcontractor;  
31 and

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

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

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

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

41 338.090 1. Except as otherwise provided in subsection 5, any  
42 person, including the officers, agents or employees of a public body,  
43 who violates any provision of NRS 338.010 to 338.090, inclusive,  
44 *and section 3 of this act*, or any regulation adopted pursuant thereto,  
45 is guilty of a misdemeanor.



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

3 (a) Shall, except as otherwise provided in subsection 4, assess a  
4 person who, after an opportunity for a hearing, is found to have  
5 failed to pay the prevailing wage required pursuant to NRS 338.020  
6 to 338.090, inclusive, *and section 3 of this act*, an amount equal to  
7 the difference between the prevailing wages required to be paid and  
8 the wages that the contractor or subcontractor actually paid; and

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

12 3. If the Labor Commissioner finds that a person has failed to  
13 pay the prevailing wage required pursuant to NRS 338.020 to  
14 338.090, inclusive, *and section 3 of this act*, the public body may,  
15 in addition to any other remedy or penalty provided in this chapter,  
16 require the person to pay the actual costs incurred by the public  
17 body to investigate the matter.

18 4. The Labor Commissioner is not required to assess a person  
19 an amount equal to the difference between the prevailing wages  
20 required to be paid and the wages that the contractor or  
21 subcontractor actually paid if the contractor or subcontractor has  
22 already paid that amount to a worker pursuant to paragraph (c) of  
23 subsection 4 of NRS 338.035.

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

26 **Sec. 8.** This act becomes effective upon passage and approval.

