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ASSEMBLY BILL NO. 287—ASSEMBLYMAN OCEGUERA

MARCH 21, 2005

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Referred to Committee on Commerce and Labor

**SUMMARY**—Requires contractors and certain subcontractors to provide bona fide health care plan for certain employees employed on certain public works. (BDR 28-723)

**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.

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**AN ACT** relating to public works; requiring contractors and certain subcontractors to provide and maintain a bona fide health care plan for certain employees employed on certain public works projects; providing a penalty; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law requires that contracts for public works to which a public body of  
2 this State is a party contain certain provisions expressly providing for the payment  
3 to mechanics and workmen of wages at least equal to the rate of wages then  
4 prevailing in the county in which the public work is located. (NRS 338.010-  
5 338.090) Existing law requires contractors and subcontractors to maintain records  
6 showing the per diem, wages and benefits paid to each workman who is employed  
7 by the contractor or subcontractor in connection with a public work, and provides  
8 for the imposition of civil and criminal penalties against contractors and  
9 subcontractors who fail to pay the required prevailing wage. (NRS 338.060,  
10 338.070, 338.090)

11 This bill provides that certain contracts for public works for which the  
12 estimated cost is \$100,000 or more and to which a public body of this State is a  
13 party must require a contractor and certain subcontractors who perform work under  
14 the contract to provide coverage under a bona fide health care plan for a workman  
15 whom the contractor or subcontractor employs in connection with the public work,  
16 if the workman is deemed to be employed on the public work. This bill requires  
17 that the necessary coverage under a bona fide health care plan must begin before  
18 work commences on the public work and continue during the period in which a  
19 covered workman is performing work under the contract for the public work. A  
20 workman may refuse coverage under a bona fide health care plan under certain  
21 circumstances. The Labor Commissioner of the State of Nevada is charged with



22 adopting regulations establishing minimum standards for the coverage required to  
23 be provided under a bona fide health care plan.

24 This bill further provides that a contractor or subcontractor that fails to provide  
25 the required coverage is subject to civil and criminal penalties similar to those  
26 imposed for failure to pay to a workman the required prevailing wage.

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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 a new section to read as follows:

3 *1. Except as otherwise provided in subsections 2, 3 and 5,*  
4 *every contract for a public work for which the estimated cost is*  
5 *\$100,000 or more, and to which a public body of this State is a*  
6 *party, must require a contractor or subcontractor who performs*  
7 *work under the contract to:*

8 (a) *Provide coverage under a bona fide health care plan for*  
9 *each workman who:*

10 (1) *The contractor or subcontractor employs to perform*  
11 *work under the contract; and*

12 (2) *Is deemed to be employed on the public work pursuant*  
13 *to NRS 338.040; and*

14 (b) *Pay the entire cost of the premiums or contributions for the*  
15 *coverage required to be provided pursuant to paragraph (a).*

16 2. *The requirement to provide coverage under a bona fide*  
17 *health care plan applies only to:*

18 (a) *The prime contractor for the construction of the public*  
19 *work; and*

20 (b) *Each subcontractor who will provide labor or a portion of*  
21 *the work on the public work to the prime contractor, for which the*  
22 *subcontractor will be paid an amount exceeding 1 percent of the*  
23 *prime contractor's total bid or \$50,000, whichever is greater.*

24 3. *A workman who has obtained or receives health care*  
25 *coverage by way of another source, including, without limitation,*  
26 *through a benefit plan provided to the workman's spouse, may*  
27 *elect to decline the coverage otherwise required to be provided*  
28 *pursuant to this section by signing a written statement to that*  
29 *effect. If a workman declines coverage pursuant to this subsection,*  
30 *the contractor or subcontractor that employs the workman shall*  
31 *keep an accurate record of the declination as required by*  
32 *paragraph (b) of subsection 4 of NRS 338.070.*

33 4. *The coverage required to be provided under a bona fide*  
34 *health care plan pursuant to paragraph (a) of subsection 1 must*  
35 *be established before the commencement of work on the*  
36 *applicable public work and must be maintained for the entire*



1 *period during which a workman is performing work under the*  
2 *contract for the public work.*

3 *5. In the event of a conflict between the provisions of this*  
4 *section and the provisions of a collective bargaining agreement,*  
5 *the provisions of the agreement prevail.*

6 *6. The Labor Commissioner shall, by regulation, establish the*  
7 *minimum standards for the coverage required to be provided*  
8 *under a bona fide health care plan pursuant to paragraph (a) of*  
9 *subsection 1.*

10 *7. For the purposes of this section, a contractor or*  
11 *subcontractor shall be deemed to be providing "coverage" to a*  
12 *workman under a bona fide health care plan if the contractor or*  
13 *subcontractor, as applicable, has enrolled the workman as a*  
14 *participant in a bona fide health care plan and has begun to pay*  
15 *the cost of the premiums or contributions for the workman to*  
16 *participate in that plan, regardless of whether the benefits that will*  
17 *be available to the workman under the plan have gone into effect.*

18 **Sec. 2.** NRS 338.050 is hereby amended to read as follows:

19 338.050 For the ~~purpose~~ *purposes* of NRS 338.010 to  
20 338.090, inclusive, *and section 1 of this act*, except as otherwise  
21 provided by specific statute, every workman who performs work for  
22 a public work covered by a contract therefor is subject to all of the  
23 provisions of NRS 338.010 to 338.090, inclusive, *and section 1 of*  
24 *this act*, regardless of any contractual relationship alleged to exist  
25 between such workman and his employer.

26 **Sec. 3.** NRS 338.060 is hereby amended to read as follows:

27 338.060 1. Except as otherwise provided in subsection ~~8,~~ **9**,  
28 a contractor engaged on a public work shall forfeit, as a penalty to  
29 the public body on behalf of which the contract has been made and  
30 awarded to the contractor, not less than \$20 nor more than \$50 for  
31 each calendar day or portion thereof that each workman employed  
32 on the public work is paid less than the designated rate for any work  
33 done under the contract, by the contractor or any subcontractor  
34 engaged on the public work.

35 2. *Except as otherwise provided in subsection 9, a contractor*  
36 *engaged on a public work shall forfeit, as a penalty to the public*  
37 *body on behalf of which the contract has been made and awarded*  
38 *to the contractor, not less than \$20 nor more than \$50 per*  
39 *workman for each calendar day or portion thereof during which*  
40 *coverage under a bona fide health care plan as required pursuant*  
41 *to section 1 of this act is not provided for that workman by the*  
42 *contractor or any subcontractor engaged on the public work.*

43 3. Except as otherwise provided in subsection ~~8,~~ **9**, a  
44 contractor engaged on a public work shall forfeit, as a penalty to the



1 public body on behalf of which the contract has been made and  
2 awarded to the contractor, not less than \$20 nor more than \$50 for  
3 each calendar day or portion thereof for each workman employed on  
4 the public work for which the contractor or subcontractor willfully  
5 included inaccurate or incomplete information in the monthly record  
6 required to be submitted to the public body pursuant to subsection 5  
7 of NRS 338.070.

8 ~~[3.]~~ 4. Except as otherwise provided in subsection ~~[8.]~~ 9, a  
9 contractor engaged on a public work shall forfeit, as a penalty to the  
10 public body on behalf of which the contract has been made and  
11 awarded to the contractor, not less than \$20 nor more than \$50 for  
12 each calendar day or portion thereof that each workman employed  
13 on the public work is not reported to the public body awarding the  
14 contract by the contractor or any subcontractor engaged on the  
15 public work as required pursuant to subsection 5 of NRS 338.070,  
16 up to a maximum of:

17 (a) For the first failure to comply during the term of the contract  
18 for the public work, \$1,000; and

19 (b) For each subsequent failure to comply during the term of the  
20 contract for the public work, \$5,000.

21 ~~[4.]~~ 5. Except as otherwise provided in subsection ~~[8.]~~ 9, if a  
22 violation of more than one provision of subsections 1 ~~[, 2 and 3]~~ to  
23 4, *inclusive*, involves the same workman, the contractor shall forfeit  
24 the penalty set forth in each subsection that was violated.

25 ~~[5.]~~ 6. A public body awarding a contract for a public work  
26 shall cause a stipulation setting forth the penalties specified in  
27 subsections 1 to ~~[4.]~~ 5, inclusive, to be inserted in the contract.

28 ~~[6.]~~ 7. The Labor Commissioner shall, by regulation, establish  
29 a sliding scale based on the size of the business of a contractor  
30 engaged on a public work to determine the amount of the penalty to  
31 be imposed pursuant to subsections 1 ~~[and 2,]~~ 2 and 3.

32 ~~[7.]~~ 8. If a penalty is imposed pursuant to this section, the costs  
33 of the proceeding, including investigative costs and attorney's fees,  
34 may be recovered by the Labor Commissioner and the public body.

35 ~~[8.]~~ 9. The Labor Commissioner may, for good cause shown,  
36 waive or reduce any penalty imposed pursuant to this section.

37 **Sec. 4.** NRS 338.070 is hereby amended to read as follows:

38 338.070 1. Any public body awarding a contract shall:

39 (a) Investigate possible violations of the provisions of NRS  
40 338.010 to 338.090, inclusive, *and section 1 of this act* committed  
41 in the course of the execution of the contract, and determine whether  
42 a violation has been committed and inform the Labor Commissioner  
43 of any such violations; and

44 (b) When making payments to the contractor engaged on the  
45 public work of money becoming due under the contract, withhold



1 and retain all sums forfeited pursuant to the provisions of NRS  
2 338.010 to 338.090, inclusive ~~[ ]~~, *and section 1 of this act.*

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

6 3. Except as otherwise provided in subsection 6, it is lawful for  
7 any contractor engaged on a public work to withhold from any  
8 subcontractor engaged on the public work sufficient sums to cover  
9 any penalties withheld from the contractor by the awarding public  
10 body on account of the failure of the subcontractor to comply with  
11 the terms of NRS 338.010 to 338.090, inclusive ~~[ ]~~, *and section 1*  
12 *of this act.* If payment has already been made to the subcontractor,  
13 the contractor may recover from the subcontractor the amount of the  
14 penalty or forfeiture in a suit at law.

15 4. A contractor engaged on a public work and each  
16 subcontractor engaged on the public work shall keep or cause to be  
17 kept an accurate record ~~[showing the]~~ *of:*

18 (a) *The* name, the occupation and the actual per diem, wages  
19 and benefits paid to each workman employed by the contractor  
20 ~~[and]~~ *or* subcontractor, *as applicable*, in connection with the public  
21 work ~~[ ]~~; *and*

22 (b) *If the public work is a public work for which the contractor*  
23 *or subcontractor is required to provide coverage under a bona fide*  
24 *health care plan pursuant to section 1 of this act:*

25 (1) *The benefits provided under that bona fide health care*  
26 *plan to each workman employed by the contractor or*  
27 *subcontractor in connection with the public work; and*

28 (2) *Each written statement pursuant to which a workman*  
29 *employed by the contractor or subcontractor in connection with*  
30 *the public work has declined coverage under that bona fide health*  
31 *care plan, as described in subsection 3 of section 1 of this act.*

32 5. The record maintained pursuant to subsection 4 must be  
33 open at all reasonable hours to the inspection of the public body  
34 awarding the contract. The contractor engaged on the public work or  
35 subcontractor engaged on the public work shall ensure that a copy of  
36 the record for each calendar month is received by the public body  
37 awarding the contract no later than 15 days after the end of the  
38 month. The copy must be open to public inspection as provided in  
39 NRS 239.010. The record in the possession of the public body  
40 awarding the contract may be discarded by the public body 2 years  
41 after final payment is made by the public body for the public work.

42 6. A contractor engaged on a public work shall not withhold  
43 from a subcontractor engaged on the public work the sums  
44 necessary to cover any penalties provided pursuant to subsection ~~[3]~~  
45 *4* of NRS 338.060 that may be withheld from the contractor by the



1 public body awarding the contract because the public body did not  
2 receive a copy of the record maintained by the subcontractor  
3 pursuant to subsection 4 for a calendar month by the time specified  
4 in subsection 5 if:

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

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

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

10 and

11 (b) The contractor failed to submit the copy of the record to the  
12 public body by the time specified in subsection 5.

13 ↪ ~~[Nothing in this subsection prohibits]~~ *This subsection does not*  
14 *prohibit* a subcontractor from submitting a copy of a record for a  
15 calendar month directly to the public body by the time specified in  
16 subsection 5.

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

20 **Sec. 5.** NRS 338.090 is hereby amended to read as follows:

21 338.090 1. Any person, including the officers, agents or  
22 employees of a public body, who violates any provision of NRS  
23 338.010 to 338.090, inclusive, *and section 1 of this act* or any  
24 regulation adopted pursuant thereto, is guilty of a misdemeanor.

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

27 (a) Shall assess a person who, after an opportunity for a hearing,  
28 is found to have failed to pay the prevailing wage required pursuant  
29 to NRS 338.020 to 338.090, inclusive, an amount equal to the  
30 difference between the prevailing wages required to be paid and the  
31 wages that the contractor or subcontractor actually paid; ~~and~~

32 (b) *Shall assess a person who, after an opportunity for a*  
33 *hearing, is found to have failed to provide coverage under a bona*  
34 *fide health care plan as required by section 1 of this act an*  
35 *amount equal to the difference between:*

36 (1) *The entire cost of the premiums and contributions*  
37 *necessary to provide coverage under the bona fide health care*  
38 *plan; and*

39 (2) *The amount, if any, that the contractor or subcontractor*  
40 *actually paid; and*

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

44 3. If the Labor Commissioner finds that a person has failed to  
45 ~~{pay}~~:



- 1        *(a) Pay* the prevailing wage required pursuant to NRS 338.020  
2 to 338.090, inclusive ~~§~~; *or*  
3        *(b) Provide coverage under a bona fide health care plan as*  
4 *required pursuant to section 1 of this act,*  
5        ↳ the public body may, in addition to any other remedy or penalty  
6 provided in this chapter, require the person to pay the actual costs  
7 incurred by the public body to investigate the matter.



