

ASSEMBLY BILL NO. 218—COMMITTEE  
ON GOVERNMENT AFFAIRS

MARCH 7, 2013

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works.  
(BDR 28-981)

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

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

AN ACT relating to public works; defining the term “bona fide fringe benefit” for certain provisions applicable to the payment of wages for public works; revising the requirements pursuant to which a contractor or subcontractor engaged on a public work may discharge his or her obligation to pay prevailing wages to workers; 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 the payment of prevailing wages for public works projects.  
3 (NRS 338.010-338.090) Existing law also authorizes the Labor Commissioner: (1)  
4 to provide certain remedies for violations of those provisions; and (2) after  
5 providing notice and an opportunity for a hearing, to impose an administrative  
6 penalty against a person who violates those provisions. (NRS 338.015, 338.017,  
7 338.090) Further, under existing law, a contractor or subcontractor engaged on a  
8 public work is authorized to discharge his or her obligation to pay prevailing wages  
9 to workers in part by making certain contributions in the name of the worker.  
10 (NRS 338.035)

11 **Section 4** of this bill sets forth the requirements pursuant to which a contractor  
12 or subcontractor engaged on a public work may discharge any part of his or her  
13 obligation to pay prevailing wages to a worker by providing bona fide fringe  
14 benefits in the name of the worker. Those requirements include, among other  
15 things, that the bona fide fringe benefits are paid equally for all hours worked in a  
16 calendar year by the worker for the contractor or subcontractor. **Section 1** of this  
17 bill defines “bona fide fringe benefit” for the purposes of the provisions applicable  
18 to public works. **Section 4** also requires the Labor Commissioner, after providing  
19 notice and an opportunity for a hearing, to: (1) impose an administrative penalty  
20 against a contractor or subcontractor who violates the provisions of that section;



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21 (2) require the contractor or subcontractor to make the affected worker whole by  
22 paying to the worker as wages any amounts disallowed as bona fide fringe benefits;  
23 (3) report the violation to the Attorney General; and (4) notify certain governmental  
24 and other entities of the violation.

25 Existing law provides that if an administrative penalty is imposed against a  
26 person for the commission of an offense as defined in relation to public works: (1)  
27 the person and any corporate officer of the person are prohibited from receiving a  
28 contract for a public work for specified periods depending on the number of  
29 offenses; and (2) the Labor Commissioner is required to notify the State  
30 Contractors' Board with regard to each contractor who is prohibited from being  
31 awarded such a contract. (NRS 338.010, 338.017) **Section 1** of this bill makes this  
32 provision of existing law applicable to discharging an obligation to pay wages in a  
33 manner that violates the provisions of **section 4** by adding that violation to the  
34 definition of an "offense" in **section 1**.

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

1 **Section 1.** NRS 338.010 is hereby amended to read as follows:  
2 338.010 As used in this chapter:

3 1. "Authorized representative" means a person designated by a  
4 public body to be responsible for the development, solicitation,  
5 award or administration of contracts for public works pursuant to  
6 this chapter.

7 2. *"Bona fide fringe benefit" means a benefit in the form of a*  
8 *contribution that is made not less frequently than monthly to an*  
9 *independent third party pursuant to a fund, plan or program:*

10 (a) *Which is established for the sole and exclusive benefit of a*  
11 *worker and his or her family and dependents; and*

12 (b) *For which none of the assets will revert to, or otherwise be*  
13 *credited to, any contributing employer or sponsor of the fund, plan*  
14 *or program.*

15 *↪ The term includes, without limitation, benefits for a worker that*  
16 *are determined pursuant to a collective bargaining agreement and*  
17 *included in the determination of the prevailing wage by the Labor*  
18 *Commissioner pursuant to NRS 338.030.*

19 3. "Contract" means a written contract entered into between a  
20 contractor and a public body for the provision of labor, materials,  
21 equipment or supplies for a public work.

22 ~~3-~~ 4. "Contractor" means:

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

25 (b) A design-build team.

26 ~~14-~~ 5. "Day labor" means all cases where public bodies, their  
27 officers, agents or employees, hire, supervise and pay the wages  
28 thereof directly to a worker or workers employed by them on public  
29 works by the day and not under a contract in writing.



1 ~~15-1~~ 6. “Design-build contract” means a contract between a  
2 public body and a design-build team in which the design-build team  
3 agrees to design and construct a public work.

4 ~~16-1~~ 7. “Design-build team” means an entity that consists of:

5 (a) At least one person who is licensed as a general engineering  
6 contractor or a general building contractor pursuant to chapter 624  
7 of NRS; and

8 (b) For a public work that consists of:

9 (1) A building and its site, at least one person who holds a  
10 certificate of registration to practice architecture pursuant to chapter  
11 623 of NRS.

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

17 ~~17-1~~ 8. “Design professional” means:

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

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

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

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

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

30 ~~18-1~~ 9. “Division” means the State Public Works Division of  
31 the Department of Administration.

32 ~~19-1~~ 10. “Eligible bidder” means a person who is:

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

37 (b) Determined by a public body or its authorized representative  
38 which awarded a contract for a public work pursuant to NRS  
39 338.1375 to 338.139, inclusive, to be qualified to bid on that  
40 contract pursuant to NRS 338.1379 or 338.1382.

41 ~~10-1~~ 11. “General contractor” means a person who is licensed  
42 to conduct business in one, or both, of the following branches of the  
43 contracting business:

44 (a) General engineering contracting, as described in subsection 2  
45 of NRS 624.215.



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

3 ~~113-1~~ 12. "Governing body" means the board, council,  
4 commission or other body in which the general legislative and fiscal  
5 powers of a local government are vested.

6 ~~112-1~~ 13. "Local government" means every political  
7 subdivision or other entity which has the right to levy or receive  
8 money from ad valorem or other taxes or any mandatory  
9 assessments, and includes, without limitation, counties, cities,  
10 towns, boards, school districts and other districts organized pursuant  
11 to chapters 244A, 309, 318, 379, 474, 538, 541, 543 and 555 of  
12 NRS, NRS 450.550 to 450.750, inclusive, and any agency or  
13 department of a county or city which prepares a budget separate  
14 from that of the parent political subdivision. The term includes a  
15 person who has been designated by the governing body of a local  
16 government to serve as its authorized representative.

17 ~~113-1~~ 14. "Offense" means ~~113-1~~ failing:

18 (a) *Failing* to:

19 ~~113-1~~ (1) Pay the prevailing wage required pursuant to this  
20 chapter;

21 ~~113-1~~ (2) Pay the contributions for unemployment compensation  
22 required pursuant to chapter 612 of NRS;

23 ~~113-1~~ (3) Provide and secure compensation for employees  
24 required pursuant to chapters 616A to 617, inclusive, of NRS; or

25 ~~113-1~~ (4) Comply with subsection 4 or 5 of NRS 338.070.

26 ~~114-1~~ (b) *Discharging an obligation to pay wages in a manner*  
27 *that violates the provisions of NRS 338.035.*

28 15. "Prime contractor" means a contractor who:

29 (a) Contracts to construct an entire project;

30 (b) Coordinates all work performed on the entire project;

31 (c) Uses his or her own workforce to perform all or a part of the  
32 public work; and

33 (d) Contracts for the services of any subcontractor or  
34 independent contractor or is responsible for payment to any  
35 contracted subcontractors or independent contractors.

36 ➤ The term includes, without limitation, a general contractor or a  
37 specialty contractor who is authorized to bid on a project pursuant to  
38 NRS 338.139 or 338.148.

39 ~~115-1~~ 16. "Public body" means the State, county, city, town,  
40 school district or any public agency of this State or its political  
41 subdivisions sponsoring or financing a public work.

42 ~~116-1~~ 17. "Public work" means any project for the new  
43 construction, repair or reconstruction of:

44 (a) A project financed in whole or in part from public money  
45 for:



- 1 (1) Public buildings;
- 2 (2) Jails and prisons;
- 3 (3) Public roads;
- 4 (4) Public highways;
- 5 (5) Public streets and alleys;
- 6 (6) Public utilities;
- 7 (7) Publicly owned water mains and sewers;
- 8 (8) Public parks and playgrounds;
- 9 (9) Public convention facilities which are financed at least in
- 10 part with public money; and
- 11 (10) All other publicly owned works and property.

12 (b) A building for the Nevada System of Higher Education of  
13 which 25 percent or more of the costs of the building as a whole are  
14 paid from money appropriated by this State or from federal money.

15 ~~17-1~~ 18. “Specialty contractor” means a person who is licensed  
16 to conduct business as described in subsection 4 of NRS 624.215.

17 ~~18-1~~ 19. “Stand-alone underground utility project” means an  
18 underground utility project that is not integrated into a larger  
19 project, including, without limitation:

20 (a) An underground sewer line or an underground pipeline for  
21 the conveyance of water, including facilities appurtenant thereto;  
22 and

23 (b) A project for the construction or installation of a storm drain,  
24 including facilities appurtenant thereto,

25 ➤ that is not located at the site of a public work for the design and  
26 construction of which a public body is authorized to contract with a  
27 design-build team pursuant to subsection 2 of NRS 338.1711.

28 ~~19-1~~ 20. “Subcontract” means a written contract entered into  
29 between:

30 (a) A contractor and a subcontractor or supplier; or

31 (b) A subcontractor and another subcontractor or supplier,

32 ➤ for the provision of labor, materials, equipment or supplies for a  
33 construction project.

34 ~~20-1~~ 21. “Subcontractor” means a person who:

35 (a) Is licensed pursuant to the provisions of chapter 624 of NRS  
36 or performs such work that the person is not required to be licensed  
37 pursuant to chapter 624 of NRS; and

38 (b) Contracts with a contractor, another subcontractor or a  
39 supplier to provide labor, materials or services for a construction  
40 project.

41 ~~21-1~~ 22. “Supplier” means a person who provides materials,  
42 equipment or supplies for a construction project.

43 ~~22-1~~ 23. “Wages” means:

44 (a) The basic hourly rate of pay; and



1 (b) The amount of pension, health and welfare, vacation and  
2 holiday pay, the cost of apprenticeship training ~~for other similar~~  
3 ~~programs~~ or other bona fide fringe benefits which are a benefit to  
4 the worker.

5 ~~23.~~ 24. "Worker" means a skilled mechanic, skilled worker,  
6 semiskilled mechanic, semiskilled worker or unskilled worker in the  
7 service of a contractor or subcontractor under any appointment or  
8 contract of hire or apprenticeship, express or implied, oral or  
9 written, whether lawfully or unlawfully employed. The term does  
10 not include a design professional.

11 **Sec. 2.** NRS 338.015 is hereby amended to read as follows:

12 338.015 1. The Labor Commissioner shall enforce the  
13 provisions of NRS 338.010 to 338.130, inclusive.

14 2. ~~It~~ *Except as otherwise provided in NRS 338.035 and in*  
15 *addition to any other remedy or penalty provided in this chapter, if*  
16 *any person, including, without limitation, a public body, violates*  
17 *any provision of NRS 338.010 to 338.130, inclusive, or any*  
18 *regulation adopted pursuant thereto, the Labor Commissioner may,*  
19 *after providing the person with notice and an opportunity for a*  
20 *hearing, impose against the person an administrative penalty of not*  
21 *more than \$5,000 for each such violation.*

22 3. The Labor Commissioner may, by regulation, establish a  
23 sliding scale based on the severity of the violation to determine the  
24 amount of the administrative penalty to be imposed against the  
25 person pursuant to this section.

26 4. The Labor Commissioner shall report the violation to the  
27 Attorney General, and the Attorney General may prosecute the  
28 person in accordance with law.

29 **Sec. 3.** NRS 338.018 is hereby amended to read as follows:

30 338.018 The provisions of NRS 338.013 to 338.018, inclusive,  
31 apply to any contract for construction work of the Nevada System of  
32 Higher Education for which the estimated cost exceeds \$100,000  
33 even if the construction work does not qualify as a public work, as  
34 defined in subsection ~~16~~ 17 of NRS 338.010.

35 **Sec. 4.** NRS 338.035 is hereby amended to read as follows:

36 338.035 1. The obligation of a contractor engaged on a  
37 public work or a subcontractor engaged on a public work to pay  
38 wages in accordance with the determination of the Labor  
39 Commissioner may be discharged in part by ~~making contributions~~  
40 ~~to a third person pursuant to a fund, plan or program~~ *providing*  
41 *bona fide fringe benefits* in the name of the worker.

42 2. *A contractor or subcontractor may, pursuant to subsection*  
43 *1, discharge any part of his or her obligation to pay wages in*  
44 *accordance with the determination of the Labor Commissioner*



1 *only to the extent that the bona fide fringe benefits provided in the*  
2 *name of the worker are annualized.*

3 *3. A contractor or subcontractor who, pursuant to subsection*  
4 *1, discharges any part of his or her obligation to pay wages in*  
5 *accordance with the determination of the Labor Commissioner*  
6 *shall provide to the Labor Commissioner and the public body that*  
7 *awarded the contract for the public work any information*  
8 *requested by the Labor Commissioner or the public body, as*  
9 *applicable, to verify compliance with this section.*

10 *4. In addition to any other remedy or penalty provided in this*  
11 *chapter, after providing the contractor or subcontractor with*  
12 *notice and an opportunity for a hearing, the Labor Commissioner*  
13 *shall, if the Labor Commissioner finds that the contractor or*  
14 *subcontractor has violated a provision of this section:*

15 *(a) For the first violation, impose against the contractor or*  
16 *subcontractor an administrative penalty of not less than \$2,500 or*  
17 *more than \$5,000;*

18 *(b) For the second or any subsequent violation within 5 years*  
19 *after the date of imposition of an administrative penalty pursuant*  
20 *to paragraph (a), impose against the contractor or subcontractor*  
21 *an administrative penalty of not less than \$5,000;*

22 *(c) Require the contractor or subcontractor to make the*  
23 *affected worker whole by paying to the worker as wages any*  
24 *amounts disallowed as bona fide fringe benefits in a manner*  
25 *prescribed by the Labor Commissioner;*

26 *(d) Report the violation to the Attorney General, and the*  
27 *Attorney General may prosecute the contractor or subcontractor*  
28 *in accordance with law; and*

29 *(e) In addition to notifying the State Contractors' Board*  
30 *pursuant to NRS 338.017, notify the provider of workers'*  
31 *compensation for the contractor or subcontractor, the*  
32 *Employment Security Division of the Department of Employment,*  
33 *Training and Rehabilitation and the public body that awarded the*  
34 *contract for the public work of the violation.*

35 *5. The provisions of this section do not apply with regard to:*

36 *(a) A worker whose benefits are determined pursuant to a*  
37 *collective bargaining agreement; or*

38 *(b) Contributions made in the name of the worker by a*  
39 *contractor or subcontractor to a defined contribution plan to the*  
40 *extent that the amount contributed does not exceed 25 percent of*  
41 *the hourly rate of wages paid to the worker on the public work.*

42 *6. As used in this section:*

43 *(a) "Annualized" means an amount paid equally for all hours*  
44 *worked in a calendar year by the worker for the contractor or*  
45 *subcontractor who is providing bona fide fringe benefits.*





1 ***(b) "Defined contribution plan" has the meaning ascribed to it***  
2 ***in 29 U.S.C. § 1002(34).***

3 **Sec. 5.** NRS 338.075 is hereby amended to read as follows:

4 338.075 The provisions of NRS 338.020 to 338.090, inclusive,  
5 apply to any contract for construction work of the Nevada System of  
6 Higher Education for which the estimated cost exceeds \$100,000  
7 even if the construction work does not qualify as a public work, as  
8 defined in subsection ~~H6~~ 17 of NRS 338.010.

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

10 338.090 1. Any person, including the officers, agents or  
11 employees of a public body, who violates any provision of NRS  
12 338.010 to 338.090, inclusive, or any regulation adopted pursuant  
13 thereto, is guilty of a misdemeanor.

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

16 (a) Shall ***, except as otherwise provided in subsection 4,*** assess  
17 a person who, after an opportunity for a hearing, is found to have  
18 failed to pay the prevailing wage required pursuant to NRS 338.020  
19 to 338.090, inclusive, an amount equal to the difference between the  
20 prevailing wages required to be paid and the wages that the  
21 contractor or subcontractor actually paid; and

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

25 3. If the Labor Commissioner finds that a person has failed to  
26 pay the prevailing wage required pursuant to NRS 338.020 to  
27 338.090, inclusive, the public body may, in addition to any other  
28 remedy or penalty provided in this chapter, require the person to pay  
29 the actual costs incurred by the public body to investigate the  
30 matter.

31 ***4. The Labor Commissioner is not required to assess a person***  
32 ***an amount equal to the difference between the prevailing wages***  
33 ***required to be paid and the wages that the contractor or***  
34 ***subcontractor actually paid if the contractor or subcontractor has***  
35 ***already paid that amount to a worker pursuant to paragraph (c) of***  
36 ***subsection 4 of NRS 338.035.***

37 **Sec. 7.** NRS 338.1908 is hereby amended to read as follows:

38 338.1908 1. The governing body of each local government  
39 shall, by July 28, 2009, develop a plan to retrofit public buildings,  
40 facilities and structures, including, without limitation, traffic-control  
41 systems, and to otherwise use sources of renewable energy to serve  
42 those buildings, facilities and structures. Such a plan must:

43 (a) Include a list of specific projects. The projects must be  
44 prioritized and selected on the basis of the following criteria:

45 (1) The length of time necessary to commence the project.



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1 (2) The number of workers estimated to be employed on the  
2 project.

3 (3) The effectiveness of the project in reducing energy  
4 consumption.

5 (4) The estimated cost of the project.

6 (5) Whether the project is able to be powered by or otherwise  
7 use sources of renewable energy.

8 (6) Whether the project has qualified for participation in one  
9 or more of the following programs:

10 (I) The Solar Energy Systems Incentive Program created  
11 by NRS 701B.240;

12 (II) The Renewable Energy School Pilot Program created  
13 by NRS 701B.350;

14 (III) The Wind Energy Systems Demonstration Program  
15 created by NRS 701B.580; or

16 (IV) The Waterpower Energy Systems Demonstration  
17 Program created by NRS 701B.820.

18 (b) Include a list of potential funding sources for use in  
19 implementing the projects, including, without limitation, money  
20 available through the Energy Efficiency and Conservation Block  
21 Grant Program as set forth in 42 U.S.C. § 17152 and grants, gifts,  
22 donations or other sources of money from public and private  
23 sources.

24 2. The governing body of each local government shall transmit  
25 the plan developed pursuant to subsection 1 to the Director of the  
26 Office of Energy and to any other entity designated for that purpose  
27 by the Legislature.

28 3. As used in this section:

29 (a) "Local government" means each city or county that meets  
30 the definition of "eligible unit of local government" as set forth in  
31 42 U.S.C. § 17151 and each unit of local government, as defined in  
32 subsection ~~H2~~ 13 of NRS 338.010, that does not meet the  
33 definition of "eligible entity" as set forth in 42 U.S.C. § 17151.

34 (b) "Renewable energy" means a source of energy that occurs  
35 naturally or is regenerated naturally, including, without limitation:

36 (1) Biomass;

37 (2) Fuel cells;

38 (3) Geothermal energy;

39 (4) Solar energy;

40 (5) Waterpower; and

41 (6) Wind.

42 ➔ The term does not include coal, natural gas, oil, propane or any  
43 other fossil fuel, or nuclear energy.



1 (c) "Retrofit" means to alter, improve, modify, remodel or  
2 renovate a building, facility or structure to make that building,  
3 facility or structure more energy-efficient.

4 **Sec. 8.** Section 9.5 of the Reno-Tahoe Airport Authority Act,  
5 being chapter 369, Statutes of Nevada 2005, at page 1386, is hereby  
6 amended to read as follows:

7 Sec. 9.5. 1. Except as otherwise determined by the  
8 Board or provided in subsection 2, the provisions of any law  
9 requiring public bidding or otherwise imposing requirements  
10 on any public contract, project, acquisition, works or  
11 improvements, including, without limitation, the provisions  
12 of chapters 332, 338 and 339 of NRS, do not apply to any  
13 contract entered into by the Board if the Board:

14 (a) Complies with the provisions of subsection 3; and

15 (b) Finances the contract, project, acquisition, works or  
16 improvement by means of:

17 (1) Revenue bonds issued by the Authority; or

18 (2) An installment obligation of the Authority in a  
19 transaction in which:

20 (I) The Authority acquires real or personal property  
21 and another person acquires or retains a security interest in  
22 that or other property; and

23 (II) The obligation by its terms is extinguished by  
24 failure of the Board to appropriate money for the ensuing  
25 fiscal year for payment of the amounts then due.

26 2. A contract entered into by the Board pursuant to this  
27 section must:

28 (a) Contain a provision stating that the requirements of  
29 NRS 338.010 to 338.090, inclusive, apply to any construction  
30 work performed pursuant to the contract; and

31 (b) If the contract is with a design professional who is not  
32 a member of a design-build team, comply with the provisions  
33 of NRS 338.155. As used in this paragraph, "design  
34 professional" has the meaning ascribed to it in subsection ~~7~~  
35 **8** of NRS 338.010.

36 3. For contracts entered into pursuant to this section that  
37 are exempt from the provisions of chapters 332, 338 and 339  
38 of NRS pursuant to subsection 1, the Board shall adopt  
39 regulations pursuant to subsection 4 which establish:

40 (a) One or more competitive procurement processes for  
41 letting such a contract; and

42 (b) A method by which a bid on such a contract will be  
43 adjusted to give a 5 percent preference to a contractor who  
44 would qualify for a preference pursuant to NRS 338.147, if:



1 (1) The estimated cost of the contract exceeds  
2 \$250,000; and

3 (2) Price is a factor in determining the successful bid  
4 on the contract.

5 4. The Board:

6 (a) Shall, before adopting, amending or repealing a  
7 permanent or temporary regulation pursuant to subsection 3,  
8 give at least 30 days' notice of its intended action. The notice  
9 must:

10 (1) Include:

11 (I) A statement of the need for and purpose of the  
12 proposed regulation.

13 (II) Either the terms or substance of the proposed  
14 regulation or a description of the subjects and issues involved.

15 (III) The estimated cost to the Board for  
16 enforcement of the proposed regulation.

17 (IV) The time when, the place where and the  
18 manner in which interested persons may present their views  
19 regarding the proposed regulation.

20 (V) A statement indicating whether the regulation  
21 establishes a new fee or increases an existing fee.

22 (2) State each address at which the text of the  
23 proposed regulation may be inspected and copied.

24 (3) Be mailed to all persons who have requested in  
25 writing that they be placed upon a mailing list, which must be  
26 kept by the Authority for that purpose.

27 (b) May adopt, if it has adopted a temporary regulation  
28 after notice and the opportunity for a hearing as provided in  
29 this subsection, after providing a second notice and the  
30 opportunity for a hearing, a permanent regulation.

31 (c) Shall, in addition to distributing the notice to each  
32 recipient of the Board's regulations, solicit comment  
33 generally from the public and from businesses to be affected  
34 by the proposed regulation.

35 (d) Shall, before conducting a workshop pursuant to  
36 paragraph (g), determine whether the proposed regulation is  
37 likely to impose a direct and significant economic burden  
38 upon a small business or directly restrict the formation,  
39 operation or expansion of a small business. If the Board  
40 determines that such an impact is likely to occur, the Board  
41 shall:

42 (1) Insofar as practicable, consult with owners and  
43 officers of small businesses that are likely to be affected by  
44 the proposed regulation.



1 (2) Consider methods to reduce the impact of the  
2 proposed regulation on small businesses.

3 (3) Prepare a small business impact statement and  
4 make copies of the statement available to the public at the  
5 workshop conducted pursuant to paragraph (g) and the public  
6 hearing held pursuant to paragraph (h).

7 (e) Shall ensure that a small business impact statement  
8 prepared pursuant to subparagraph (3) of paragraph (d) sets  
9 forth the following information:

10 (1) A description of the manner in which comment  
11 was solicited from affected small businesses, a summary of  
12 their response and an explanation of the manner in which  
13 other interested persons may obtain a copy of the summary.

14 (2) The estimated economic effect of the proposed  
15 regulation on the small businesses which it is to regulate,  
16 including, without limitation:

17 (I) Both adverse and beneficial effects; and

18 (II) Both direct and indirect effects.

19 (3) A description of the methods that the Board  
20 considered to reduce the impact of the proposed regulation on  
21 small businesses and a statement regarding whether the Board  
22 actually used any of those methods.

23 (4) The estimated cost to the Board for enforcement of  
24 the proposed regulation.

25 (5) If the proposed regulation provides a new fee or  
26 increases an existing fee, the total annual amount the Board  
27 expects to collect and the manner in which the money will be  
28 used.

29 (f) Shall afford a reasonable opportunity for all interested  
30 persons to submit data, views or arguments upon the  
31 proposed regulation, orally or in writing.

32 (g) Shall, before holding a public hearing pursuant to  
33 paragraph (h), conduct at least one workshop to solicit  
34 comments from interested persons on the proposed  
35 regulation. Not less than 15 days before the workshop, the  
36 Board shall provide notice of the time and place set for the  
37 workshop:

38 (1) In writing to each person who has requested to be  
39 placed on a mailing list; and

40 (2) In any other manner reasonably calculated to  
41 provide such notice to the general public and any business  
42 that may be affected by a proposed regulation which  
43 addresses the general topics to be considered at the workshop.

44 (h) Shall set a time and place for an oral public hearing,  
45 but if no one appears who will be directly affected by the



1 proposed regulation and requests an oral hearing, the Board  
2 may proceed immediately to act upon any written  
3 submissions. The Board shall consider fully all written and  
4 oral submissions respecting the proposed regulation.

5 (i) Shall keep, retain and make available for public  
6 inspection written minutes of each public hearing held  
7 pursuant to paragraph (h) in the manner provided in  
8 subsections 1 and 2 of NRS 241.035.

9 (j) May record each public hearing held pursuant to  
10 paragraph (h) and make those recordings available for public  
11 inspection in the manner provided in subsection 4 of  
12 NRS 241.035.

13 (k) Shall ensure that a small business which is aggrieved  
14 by a regulation adopted pursuant to this subsection may  
15 object to all or a part of the regulation by filing a petition with  
16 the Board within 90 days after the date on which the  
17 regulation was adopted. Such petition may be based on the  
18 following:

19 (1) The Board failed to prepare a small business  
20 impact statement as required pursuant to subparagraph (3) of  
21 paragraph (d); or

22 (2) The small business impact statement prepared by  
23 the Board did not consider or significantly underestimated the  
24 economic effect of the regulation on small businesses.

25 ➤ After receiving a petition pursuant to this paragraph, the  
26 Board shall determine whether the petition has merit. If the  
27 Board determines that the petition has merit, the Board may,  
28 pursuant to this subsection, take action to amend the  
29 regulation to which the small business objected.

30 5. The determinations made by the Board pursuant to  
31 this section are conclusive unless it is shown that the Board  
32 acted with fraud or a gross abuse of discretion.

33 **Sec. 9.** This act becomes effective on July 1, 2013.









