Background Paper 85-4

PREVAILING WAGE LAW

Prevailing Wage

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PREVAILING WAGE

I

INTRODUCTION

Prevailing wage laws in the states and at the federal level have been controversial, particularly in recent years. The purpose of this background paper is to acquaint legislators with the historical background of state and federal prevailing wage laws, review Nevada's law and its legislative history, and briefly highlight the major arguments for and against the policy of a prevailing wage.

II

DEFINITION

Prevailing wage legislation generally requires that workers on public construction and other types of public works projects be paid at a rate not less than that commonly paid for similar work in the area.

The federal law - the Davis-Bacon Act - applies prevailing wages to projects financed with federal funds. State laws, also known as "Little Davis-Bacon Acts," apply prevailing wages to state-funded construction projects.

III

HISTORICAL BACKGROUND - FEDERAL LAW

The federal Davis-Bacon law was enacted in 1931 in response to complaints about the award of federal construction contracts to itinerant contractors importing low-wage workers from outside the construction areas.

Efforts to enact prevailing wage legislation in Congress began in 1927. Between then and 1931, as the national economy slowed, 14 attempts were made to enact such legislation for federal construction projects. The successful legislation in 1931 was sponsored by United States Senator James J. Davis of Pennsylvania, and Representative Robert L. Bacon of New York. Both were Republicans.

Several sources indicate that the law was "racist in intent." At that time, southern contractors were forming crews of destitute blacks and underbidding on federal construction projects in the north. One major purpose of the measure framed by Davis and Bacon was to put an end to this practice.

Provisions of Federal Law

The Davis-Bacon Act requires payment of wages "prevailing for the corresponding class of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village or other civil subdivision of the state in which the work is to be performed." The act requires contractors to pay wages as determined by the Secretary of Labor for "every contract in excess of $2,000 to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia."

The federal law has remained in effect for over 50 years with little change. The Davis-Bacon Act was amended in 1935 to provide an enforcement mechanism and to allow predetermination of wage rates by the Secretary of Labor. The law was amended again in 1964 to include fringe benefits, such as medical care and pensions, in wage rate determinations.

Over the years, Congress has incorporated the prevailing wage provisions of the Davis-Bacon Act into over 70 other laws which provide federal financial assistance for the construction of hospitals, schools, transportation facilities, and many other state or local public works projects.

Suspension of the Federal Law

There was little apparent controversy regarding the prevailing wage law until about the past 15 years.

President Nixon suspended the Davis-Bacon Act by executive proclamation on February 23, 1971, due to inflationary pressures at a time when construction wages and prices were increasing rapidly. President Nixon believed that the law indirectly supported inflation.

The Davis-Bacon Act was reinstated about a month later by the executive order of March 29, 1971. The executive order established a cooperative, self-regulating system of constraints for the stabilization of wages and prices in the construction industry.

Recent Federal Action

Most criticism of the federal Davis-Bacon Act has centered around administration of the law by the United States Secretary of Labor. A major controversy took place in the early 1980's when Labor Secretary Raymond J. Donovan attempted to implement new regulations to administer the law.

A lengthy court battle ended when the United States Supreme Court upheld a federal appeals court decision to validate four of the five proposed rule changes. One of the new rules was to shift from the so-called 30 percent rule in determining prevailing wages in an area to a weighted average when there is no single wage prevailing for a majority of workers. Another approved rule was the exclusion by the United States Department of Labor of urban prevailing wage data from rural wage determinations.

IV

HISTORICAL BACKGROUND - STATE LAWS

Kansas, in 1891, was the first state to adopt a prevailing wage law. Five other states - Arizona, Idaho, Massachusetts, New Jersey and New York - also enacted such laws before the federal Davis-Bacon Act.

However, during the 1930's, 17 other states, including Nevada, adopted prevailing wage laws. More states enacted such laws in subsequent decades - four states in the 1940's, four in the 1950's, eight in the 1960's and two states in the 1970's.

As of 1978, 41 states had "Little Davis-Bacon Acts." Nine states - Georgia, Iowa, Mississippi, North Carolina, North Dakota, South Carolina, South Dakota, Vermont and Virginia - have never enacted such a law.

Recent Actions in States

As of 1983, 37 states had prevailing wage laws. Three states repealed their laws - Florida in 1979, Alabama in 1980, and Utah in 1981. Arizona's law was repealed, in effect, in 1980 when the courts found the method for determining wage rates to be unconstitutional.

According to the Book of the States, 1984-1985, one or more amendments to the prevailing wage laws of most of the 37 states involved were introduced in recent years. Some bills sought to strengthen or extend existing laws, but most proposed reduced coverage or repeal.

State prevailing wage laws vary widely in their coverage, methods of determining wage rates and other matters. For example, 13 of the state laws do not have a minimum contract amount to trigger the prevailing wage requirement. Conversely, the states of Maryland and New Hampshire have very high minimum contract amounts - $500,000 in each state.

V

NEVADA'S PREVAILING WAGE LAW

Nevada's prevailing wage requirement was enacted in 1937. The law is found in Nevada Revised Statutes (NRS) 338.020, et seq. A portion of chapter 338 of NRS (sections 338.010 to 338.135), "Public Works Projects," accompanies this report as Attachment 1.

Provisions of Nevada's Law

Nevada's law requires that public contracts of the state for public works must contain "* * * the hourly and daily rate of wages to be paid each of the classes of mechanics and workmen. The hourly and daily rate of wages must not be less than the rate of such wages then prevailing * * *"

A public work is defined in NRS 338.010 as any project for new construction, repair or reconstruction of public buildings, highways, utilities, parks, and "* * * all other publicly owned works and property whose cost as a whole exceeds $20,000."

Under Nevada's prevailing wage law, wage rates are determined by the state labor commissioner. If the commissioner is in doubt about a wage rate, he must hold a hearing in the locality where the work is to be done.

"Locality" in the statute is designated as "* * * the county, city, town or district in this state in which the public work is located." Wage rates previously were determined in districts by dividing the state into two sections - the north and the south portions.

Current Status of Nevada's Law

According to Frank MacDonald, Nevada's labor commissioner, wage rates now are determined in each of the 17 counties and are based on a wage survey. The survey of 1984 was mailed to every licensed contractor in the state, and about one-third of the 5,700 surveys were returned.

Injunctions, however, currently exist in three counties so the law cannot be enforced in Churchill, Douglas and Elko counties. Mr. MacDonald stated that the Nevada supreme court granted the injunctions because the wage rates were contested and no hearings were held. No other counties were affected by this ruling.

The labor commissioner recently conducted a hearing in Elko. Mr. MacDonald stated that this hearing was the first on prevailing wages to be conducted in Nevada. The wage rates resulting from that hearing will be determined and released shortly. The labor commissioner expects to return to court to have the injunction lifted in Elko County and to enforce the determination when it is made. He anticipates that hearings will be conducted in the other two counties in the near future.

Rules of the Labor Commissioner

The labor commissioner is operating under rules effective December 1, 1983, for the "determination of prevailing rate of wages." The rules are in chapter 338 of the Nevada Administrative Code. A copy of the rules is provided as Attachment 2.

According to the rules, wage rate determinations remain in effect for 1 year. The labor commissioner is to determine prevailing rates for each class of workmen in a locality as follows:

1. The prevailing rate is to be the same as the wages paid to a majority of each class of workmen on similar construction in the locality.

2. If there is no majority, the prevailing rate will be:

    a. The rate paid to the greater number of workmen if they constitute at least 30 percent of those employed, or

    b. The average rate if the number of those employed at the same rate is less than 30 percent.

3. If there is no similar construction in the locality in the last year, the labor commissioner will consider wage rates on the nearest similar construction in Nevada.

The rules also list the kinds of information to be considered by the labor commissioner to determine prevailing wage rates. The information includes:

1. Certain statements which show wage rates paid on public and private projects;

2. Signed collective bargaining agreements; and

3. Wage rates determined by federal officials.

VI

LEGISLATIVE HISTORY OF NEVADA'S LAW

Nevada's prevailing wage law has been amended four times since its adoption in 1937. A few unsuccessful proposals to repeal or change the law have been introduced in the legislature during recent sessions.

Amendments

The original act is in chapter 139, Statutes of Nevada 1937. The first amendment to the law is in chapter 169, Statutes of Nevada 1941. The 1941 amendment defined terms, increased penalties and changed wording throughout to apply to workmen instead of just mechanics.

The next amendment - in chapter 430, Statutes of Nevada 1969 - defined wages to include fringe benefits and repealed provisions relating to a minimum daily $5 wage rate for unskilled labor.

The last substantial amendment - in chapter 552, Statutes of Nevada 1973 - required the labor commissioner to enforce the prevailing wage law and provided that the wage rates correspond with the classification of workers recognized in the locality where the work is performed.

The final amendment - in chapter 26, Statutes of Nevada 1983 - simply made technical corrections to the wording of the law.

Attempts to Repeal or Change the Law

Unsuccessful attempts to change Nevada's prevailing wage law were made in the 1983, 1981, 1971 and 1969 legislative sessions. A measure to repeal the law also was introduced in the 1981 session.

The 1983 Legislative Session

During the 1983 legislative session, two bills were introduced to make changes in the state's prevailing wage law.

Senate Bill 36 would have removed the authority of the labor commissioner to establish districts when determining wage scales for public works. The bill was not voted out of the senate committee on government affairs. One hearing was held on the bill.

Assembly Bill 665 also was proposed to eliminate districts, along with making other changes primarily in the hearing process for determining wage rates. The bill was not voted out of the assembly committee on labor and management, and no hearings were held on the measure.

The 1981 Legislative Session

During the 1981 legislative session, Senate Bill 383 was introduced to repeal the setting of wages by the labor commissioner for public works. It appears that no hearing was held on the bill, and it was not voted out of the senate committee on government affairs.

Senate Bill 76 would have required the payment of prevailing wages on state projects to be the same as that determined by the United States Secretary of Labor for federal projects. One hearing was held on the bill, and it was not voted out of the senate committee on government affairs.

The 1971 and 1969 Legislative Sessions

Similar bills were introduced in the 1971 and 1969 legislative sessions to require that wage rates be set in accordance with recognized labor union agreements. The proposal in 1971 - Senate Bill 270 - was not voted out of the senate committee on labor.

The 1969 proposal - Senate Bill 527 - passed the senate but failed on a vote in the assembly.

VII

ARGUMENTS IN FAVOR OF PREVAILING WAGE LAW

There are few publications available which provide detailed arguments and data to support the prevailing wage law. This situation seems to be typical of many laws and policies which have been in existence for an extended period of time.

Supporters of the prevailing wage law generally make the following arguments in favor of the policy:

1. The law is needed to maintain quality in public construction projects.

2. The law is essential to prevent state governments and the Federal Government from depressing local economies and wage rates.

3. Prevailing wage laws provide a model of fair treatment by employers of employees by guaranteeing and providing sufficient compensation.

The "quality" argument seems to be the most pervasive and widely used justification.

An important determinant of quality in the construction industry is labor, since employee compensation may constitute 20 percent to 60 percent of the total cost of a project. One way of encouraging quality, according to proponents of the policy, is offering wages which are sufficient to attract highly skilled workers who are capable of producing a quality product.

To allow wages to be established by individual contractors, while at the same time awarding contracts to the lowest responsible bidder would, according to advocates, provide contractors with an incentive to use labor which has limited experience. Such labor would be receptive to lower wages, thus allowing the contractor to make lower bids on state projects. Less qualified labor could, in all likelihood, complete a project according to its specifications, but the risk of a contractor providing a product of marginal quality, either intentionally or inadvertently, would be increased.

VIII

ARGUMENTS AGAINST PREVAILING WAGE LAW

Many of the publications available concerning prevailing wage law are critiques of the federal Davis-Bacon Act. Opponents of state prevailing wage laws use many of the same arguments.

Criticisms of prevailing wage laws can be divided into two general areas dealing with (1) the policy itself, and (2) administration of the law.

Criticism of the policy concerning a government's establishment and enforcement of a prevailing wage law can be summarized as follows:

1. The policy imposes on the construction industry a condition of doing business with the state which is not imposed on any other industry in the private sector.

2. The policy violates the principle that public business should be awarded to the lowest responsible bidder - resulting in the inefficient expenditure of public funds.

3. The policy is not in the public interest because it benefits only small groups of people - construction workers.

Major criticisms of the administration of the law can be summarized as follows:

1. The law creates an administrative burden which is costly for both government and business.

2. Current and accurate prevailing wage rates are difficult, if not impossible, to determine and maintain.

3. Wage determinations are biased toward rates set for union labor - resulting in unnecessarily high wage scales and construction costs.

IX

CONCLUSION

Prevailing wage laws undoubtedly will remain controversial for some time to come. Several studies have attempted to

measure the effect of such laws on the cost of public construction projects. However, it appears that no study yet has developed a satisfactory methodology to take into account all of the factors involved in construction projects. Public projects vary widely, and it is difficult to measure the effects of costs versus quality and productivity. Even if these cost/benefit questions were resolved, the other philosophical policy issues would remain.

X

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Publications

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Fraundorf, Martha Norby, John P. Farrell and Robert Mason, Effect of the Davis-Bacon Act on Construction Costs in Non-Metropolitan Areas of the United States, Department of Economics, Oregon State University, January 1982.

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Gould, John P. and George Bittling Mayer, The Economics of the Davis-Bacon Act, American Entrprise Institute, 1980.

Public Affairs Research Council of Louisiana, Inc., The Louisiana Prevailing Wage Law, 1976 (out of print).

The Council of State Governments, The Book of the States, 1984-85, 1984.

"The Other Prevailing Wage Laws," Nation's Business, June 1983.

SOURCES

(continued)

Nevada Revised Statutes 338.010 through 338.135

GENERAL PROVISIONS

338.010 Definitions. As used in this chapter:

1. "Day labor" means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a workman or workmen employed by them on public works by the day and not under a contract in writing.
2. "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.
3. "Public work" means any project for the new construction, repair or reconstruction of public buildings, public highways, public roads, public streets and alleys, public utilities paid for in whole or in part by public funds, publicly owned water mains and sewers, public parks and playgrounds, and all other publicly owned works and property whose cost as a whole exceeds $20,000. Each separate unit which is a part of a project is included in the cost of the project for the purpose of determining whether a project meets this threshold.
4. "Wages" means:

(a) The basic hourly rate of pay; and

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

5. "Workman" means a skilled mechanic, skilled workman, semi-skilled mechanic, semiskilled workman or unskilled workman.

[1 1/2:139:1937; added 1941, 389; 1931 NCL § 6179.51 1/2]—(NRS A 1969, 735; 1979, 1288; 1981, 526; 1983, 130, 1573)

338.011 Applicability of chapter. The requirements of this chapter do not apply to a contract awarded in compliance with chapter 332 or 333 of NRS which is:

1. Directly related to the normal operation of the public body or the normal maintenance of its property.
2. Awarded to meet an emergency which results from a natural or man-made disaster and which threatens the health, safety or welfare of the public.

(Added to NRS by 1981, 526)

338.012 Regulations of labor commissioner. The labor commissioner may adopt such regulations as are necessary to enable him to carry out his duties pursuant to the provisions of this chapter.

(Added to NRS by 1983, 1361)

EMPLOYMENT

General Provisions

338.013 Reports by public bodies and contractors to labor commissioner.

1. Each public body which awards a contract for any public work shall report its award to the labor commissioner, giving the name and address of each contractor who will be engaged on the project.

2. Each contractor engaged on a public work shall report to the labor commissioner the name and address of each subcontractor whom he engages for work on the project within 10 days after the subcontractor commences work on the contract.

(Added to NRS by 1977, 789)

338.015 Enforcement by labor commissioner.

1. The labor commissioner shall enforce the provisions of NRS 338.010 to 338.130, inclusive. When informed of violations thereof he shall report such violations to the district attorney of the county in which such violations occurred.

2. The district attorney shall prosecute the violator in accordance with law.

(Added to NRS by 1973, 874)

Wages

338.020 Contracts to contain hourly and daily rate of wages.

1. Every contract to which a public body of this state is a party, requiring the employment of skilled mechanics, skilled workmen, semiskilled mechanics, semiskilled workmen or unskilled labor in the performance of public work, must contain in express terms the hourly and daily rate of wages to be paid each of the classes of mechanics and workmen. The hourly and daily rate of wages must not be less than the rate of such wages then prevailing in the county, city, town or district in this state in which the public work is located, which prevailing rate of wages must have been determined in the manner provided in NRS 338.030.

2. When public work is performed by day labor, the prevailing wage for each class of mechanics and workmen so employed applies and must be stated clearly to such mechanics and workmen when employed.

3. The prevailing wage so paid to each class of mechanics or workmen must be in accordance with the jurisdictional classes recognized in the locality where the work is performed.

4. Nothing in this section prevents an employer who is signatory to

a collective bargaining agreement from assigning such work in accordance with established practice.

[1:139:1937; A 1941, 389; 1931 NCL § 6179.51]—(NRS A 1969, 736; 1973, 874; 1983, 131)

338.030 Determination of prevailing wage rates by labor commissioner: Procedure.

1. The public body awarding any contract for public work, or otherwise undertaking any public work, shall ascertain from the labor commissioner the general prevailing wage in the locality in which the public work is to be performed for each craft or type of workman.

2. When the labor commissioner is in doubt as to the general prevailing rate of per diem wage he shall hold a hearing in the locality in which the work is to be executed. Notice of the hearing shall be advertised in a newspaper nearest to the locality of the work once a week for 2 weeks prior to the time of the hearing. At the hearing, organizations such as the crafts affiliated with the state federation of labor or other recognized national labor organizations and the contractors of the locality or their representatives shall be heard. From the evidence presented the labor commissioner shall determine the general prevailing rate of per diem wage.

3. The wage scales so determined shall be filed by the labor commissioner, and shall be available to all public works awarding bodies. It shall be deemed necessary to hold additional hearings in the same locality only when evidence is presented to show that the prevailing wage has changed since the prior hearing.

4. Nothing contained in NRS 338.010 to 338.090, inclusive, shall be construed to authorize the fixing of any wage below any rate which may now or hereafter be established as a minimum wage for any person employed upon any public work, or employed by any officer or agent of any political subdivision of the State of Nevada.

[2:139:1937; 1931 NCL § 6179.52]

338.035 Discharge of obligation to pay wages. The obligation of a contractor or subcontractor to pay wages in accordance with the determination of the labor commissioner may be discharged by the making of payments in cash, or by making contributions to a third person pursuant to a fund, plan or program in the name of the workman.

(Added to NRS by 1983, 1574)

338.040 Necessary employees of contractors and subcontractors deemed employed on public works. Workmen employed by contractors or subcontractors or by public bodies at the site of the work and necessary in the execution of any contract for public works are deemed to be employed on public works.

[3:139:1937; A 1941, 389; 1931 NCL § 6179.53]

338.050 Contractual relationships: Applicability of NRS 338.010 to 338.090, inclusive. For the purpose of NRS 338.010 to 338.090, inclusive, every workman employed by a contractor or subcontractor on public work covered by a contract therefor shall be subject to all of the provisions of NRS 338.010 to 338.090, inclusive, regardless of any contractual relationship alleged to exist between the contractor and subcontractor and such workman.

[4:139:1937; A 1941, 389; 1931 NCL § 6179.54]

338.060 Forfeitures when workmen paid less than designated rates; forfeiture clauses in contracts. A contractor engaged on public works shall forfeit, as a penalty to the public body in behalf of which the contract has been made and awarded to such contractor, $5 for each workman employed for each calendar day or portion thereof that such workman is paid less than the designated rate for any work done under the contract, by him or any subcontractor under him. The public body awarding the contract shall cause a stipulation to this effect to be inserted in the contract.

[6:139:1937; A 1941, 389; 1931 NCL § 6179.56]

338.070 Forfeited sums may be withheld by public bodies, contractors; employment and wage records to be kept.

1. Any public body and its officers or agents awarding a contract shall:

(a) Take cognizance of complaints of violations of the provisions of NRS 338.010 to 338.090, inclusive, committed in the course of the execution of the contract; and

(b) When making payments to the contractor of money becoming due under the contract, withhold and retain therefrom all sums forfeited pursuant to the provisions of NRS 338.010 to 338.090, inclusive.

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

3. It is lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the subcontractor's failure to comply with the terms of NRS 338.010 to 338.090, inclusive. If payment has already been made to the subcontractor, the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

4. The contractor and each subcontractor shall keep or cause to be kept an accurate record showing:

(a) The names and occupations of all mechanics employed by him in connection with the public work.

(b) The actual wages paid to each of the mechanics.

The record shall be open at all reasonable hours to the inspection of the public body awarding the contract, and its officers and agents.

[7:139:1937; 1931 NCL § 6179.57]—(NRS A 1977, 789)

338.080 Applicability of NRS 338.010 to 338.090, inclusive. None of the provisions of NRS 338.010 to 338.090, inclusive, shall apply to:

1. Any work or labor done, or any construction, alteration or repair, or other employment performed, undertaken or carried out, by or for any railroad or railroad company, or any person, firm, association or corporation operating the same, whether such work, labor, construction, alteration, repair or improvement is incident to or in conjunction with a contract to which this state or any of its political subdivisions is a party, or otherwise.

2. Apprentices recorded under the provisions of chapter 610 of NRS.

[9:139:1937; 1931 NCL § 6179.59] + [8:169:1941; 1931 NCL § 6179.62]—(NRS A 1967, 34)

338.090 Penalties. Any person, firm or corporation, including the officers, agents or employees of a public body, violating any of the provisions of NRS 338.010 to 338.080, inclusive, shall be guilty of a misdemeanor.

[7 1/2:139:1937; A 1941, 389; 1931 NCL § 6179.57 1/2]—(NRS A 1967, 553)

338.095 Contractors, subcontractors to keep accurate wage records; inspection of records; copy of records to be furnished labor commissioners; penalties.

1. Every contractor and subcontractor shall keep an accurate record showing the name, occupation, and the actual per diem wages and benefits paid to each workman employed by him in connection with the public work.

2. The record shall be kept open at all reasonable hours to the inspection of the public body awarding the contract and a copy of the record for each calendar month shall be sent to the labor commissioner no later than 1 week after the end of that month.

3. Any contractor or subcontractor, or agent or representative thereof, doing public work who neglects to comply with the provisions of this section is guilty of a misdemeanor.

(Added to NRS by 1957, 161; A 1977, 1035)

EMPLOYMENT PRACTICES

338.125 Fair employment practices: Contents of contracts concerning public works; breach of contract.

1. It is unlawful for any contractor in connection with the performance of work under a contract with the state, or any of its political subdivisions, when payment of the contract price, or any part of such payment, is to be made from public funds, to refuse to employ or to discharge from employment any person because of his race, color, creed, national origin, sex or age, or to discriminate against a person with respect to hire,

tenure, advancement, compensation or other terms, conditions or privileges of employment because of his race, creed, color, national origin, sex or age.

2. Contracts negotiated between contractors and the state, or any of its political subdivisions, shall contain the following contractual provisions:

In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex or age. Such agreement shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The contractor further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

3. Any violation of such provision by a contractor shall constitute a material breach of contract.

(Added to NRS by 1959, 137; A 1973, 981)

338.130 Preferential employment in construction of public works.

1. In all cases where persons are employed in the construction of public works, preference shall be given, the qualifications of the applicants being equal:

(a) First: To honorably discharged soldiers, sailors and marines of the United States who are citizens of the State of Nevada.

(b) Second: To other citizens of the State of Nevada.

2. Nothing in this section shall be construed to prevent the working of prisoners by the State of Nevada, or by any political subdivision of the state, on street or road work or other public work.

3. In each contract for the construction of public works a proviso shall be inserted to the effect that if the provisions of this section are not complied with by the contractor, the contract shall be void, and any failure or refusal to comply with any of the provisions of this section shall render any such contract void. All boards, commissions, officers, agents and employees having the power to enter into contracts for the expenditure of public money on public works shall file in the office of the labor commissioner the names and addresses of all contractors holding contracts with the State of Nevada, or with any political subdivision of the state. Upon the letting of new contracts the names and addresses of such new contractors shall likewise be filed. Upon the demand of the labor commissioner a contractor shall furnish a list of the names and addresses of all subcontractors in his employ.

4. Subject to the exceptions contained in this section, no money shall be paid out of the state treasury or out of the treasury of any political subdivision of the state to any person employed on any work mentioned in this section unless there has been compliance with the provisions of this section.

5. Any contractor with the State of Nevada or with any political subdivision of the state or any other person who violates any of the provisions of this section shall be guilty of a misdemeanor. The penalties provided for in this section shall not apply where violations thereof are due to misrepresentations made by the employee or employees.

[Part 1:168:1919; A 1921, 205; 1929, 89; NCL § 6173] + [2:168:1919; A 1921, 205; NCL § 6174] + [3:168:1919; 1919 RL p. 2965; NCL § 6175] + [Part 4:168:1919; A 1921, 205; NCL § 6176]—(NRS A 1967, 554; 1971, 209)

338.135 Rental, lease of trucks, truck and trailer combinations by contractors, subcontractors: Hourly rate for vehicle and services of driver. Where a truck or truck and trailer combination is rented or leased after April 22, 1969, by a contractor or subcontractor on a public work, the hourly rate for the rental or lease of such truck or truck and trailer combination shall, when added to the prevailing rate of wages required by NRS 338.020 for the driver, not be less than the hourly rate for similar vehicles with a driver as such hourly rate appears in freight tariffs approved by the public service commission of Nevada for the area in which the public work is located.

(Added to NRS by 1969, 900)

SOURCES

(continued)

Chapter 338, Nevada Administrative Code

DETERMINATION OF PREVAILING RATE OF WAGES

338.010 Method of determination.

The labor commissioner will determine the prevailing rate of wages paid to each class of workmen in a locality as follows:

1. Where the majority of a class of workmen who are employed in the locality on construction similar to the proposed construction are paid wages at the same rate, that rate will be determined as the prevailing rate.

2. Where there is no such majority, the prevailing rate for the class will be determined as:

(a) The rate paid to the greater number of workmen in the class if that number constitutes 30 percent or more of those so employed; or

(b) The average rate paid to those so employed if the number of workmen paid at the same rate is less than 30 percent of those so employed.

3. If no similar construction has been performed within the locality in the past year, the labor commissioner will consider wage rates paid on the nearest similar project of construction in the State of Nevada.

(Added to NAC by Labor Comm'r, eff. 12-1-83)

338.020 Compilation of information for use in determining prevailing rates.

1. The labor commissioner will conduct a continuing program of obtaining and compiling information for use in determining prevailing rates of wages.

2. The kinds of information which the labor commissioner will consider in making determinations of prevailing rates of wages include:

(a) Statements showing rates of wages paid on public and private projects, where the statements contain:

(1) The names and addresses of the contractors and subcontractors;

(2) The locations, approximate costs, dates of construction and types of projects;

(3) The number of workmen employed in each class on each project; and

(4) The respective rates of wages paid to such workmen.

(b) Signed collective bargaining agreements.

(c) Wage rates determined by officials of the Federal Government for public construction and other information furnished by state and federal agencies.

(Added to NAC by Labor Comm'r, eff. 12-1-83)

338.030 Information to be submitted to labor commissioner.

At the beginning of its fiscal year each public body shall furnish the labor commissioner with the following information for the coming year:

1. The estimated number of projects of public work for which it will require determinations of prevailing wages by the labor commissioner;

2. The anticipated types of construction which will be involved; and

3. The locations of the construction.

(Added to NAC by Labor Comm'r, eff. 12-1-83)

338.040 Duration of determination; use of rates after expiration; request for new determination.

1. A determination by the labor commissioner of the prevailing rates of wages in a locality remains effective for 1 year after the date on which the determination is issued except as otherwise provided in this section.

2. If a determination of prevailing rates expires between the opening of bids and the award of a contract for a particular project of public work, the labor commissioner, upon

receiving a written notice of that fact, will allow the prevailing rates used for the bids to apply for the duration of the project.

3. If a public body believes that a pattern of wages is not clearly established in a locality, it may request the labor commissioner to make a new determination of the prevailing wages in the locality. Such a request must be accompanied by the information outlined in paragraph (a) of subsection 2 of NAC 338.020.

(Added to NAC by Labor Comm'r, eff. 12-1-83)

338.050 Correction of clerical error in determination.

At the request of a public body or upon his own initiative, the labor commissioner will correct any determination of prevailing wages which he has issued if he finds that it contains a clerical error.

(Added to NAC by Labor Comm'r, eff. 12-1-83)

338.060 Copies of determinations.

Copies of the labor commissioner's determinations of prevailing rates of wages are available at his office and will be furnished to public bodies and interested persons upon request.

(Added to NAC by Labor Comm'r, eff. 12-1-83)

338.070 Doubt concerning prevailing rate of wages.

The labor commissioner will regard himself as being in doubt concerning a prevailing rate of wages in a locality and will hold the required hearing in the locality whenever he finds that:

1. The data within his possession are not substantial enough; or

2. His other means of obtaining information are inadequate,

to enable him to determine the prevailing rate of wages for any class of workmen in the locality.

(Added to NAC by Labor Comm'r, eff. 12-1-83)