

ADOPTED REGULATION OF THE LABOR COMMISSIONER

LCB File No. R207-03

Effective February 19, 2004

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

AUTHORITY: §§1-19, NRS 338.012.

Section 1. Chapter 338 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *As used in NAC 338.110 to 338.116, inclusive, and sections 2, 3 and 4 of this regulation, “determination” means a proposed finding of the Labor Commissioner or an awarding body as to whether a violation of a provision of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, and sections 2, 3 and 4 of this regulation has occurred.*

Sec. 3. 1. *A person filing a complaint with the Labor Commissioner alleging that a violation of a provision of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, and sections 2, 3 and 4 of this regulation has occurred with respect to the person shall follow the procedures for filing a complaint set forth in chapter 607 of NAC.*

2. *A person filing a complaint with the Labor Commissioner alleging that a violation of a provision of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, and sections 2, 3 and 4 of this regulation has occurred with respect to a person other than the person filing the complaint shall:*

(a) Provide in writing to the Labor Commissioner:

(1) The full name and address of the person filing the complaint;

(2) The full name and address of the person alleged to have committed the violation;

(3) A clear and concise statement of facts sufficient to establish that an alleged violation of a provision of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, and sections 2, 3 and 4 of this regulation has occurred, including, without limitation, the date, time and place of the alleged violation and the name of each person involved;

(4) A citation to the specific statute or regulation alleged to have been violated;

(5) The relief requested by the person filing the complaint;

(6) A certification by the person filing the complaint that the facts alleged in the complaint are true to the best knowledge and belief of the person filing the complaint; and

(7) The signature of the person filing the complaint.

(b) Submit an original and one copy of the complaint to the Labor Commissioner with a certificate of service attached.

(c) Serve a copy of the complaint upon the person alleged to have committed the violation by:

(1) Personal service; or

(2) Regular mail.

Sec. 4. 1. Except as otherwise provided in subsection 2, if a particular contract for a public work is to be entered into without the opening of bids, the prevailing rates of wages in effect on the date the contractor for the contract for the public work is selected by the awarding body will be in effect for the duration of the project.

2. If the contract for a public work is not entered into within 90 days after the date of the selection of the contractor for the contract for the public work by the awarding body, the prevailing rates of wages in effect on the date the contract is entered into will be in effect for the duration of the project.

Sec. 5. NAC 338.0056 is hereby amended to read as follows:

338.0056 “Certified payroll report” means the record that a contractor or subcontractor engaged on a public work is required to submit to an awarding body pursuant to subsections 4 and 5 of NRS 338.070 with a statement of compliance as required pursuant to subsection 1 of NAC 338.094 for each month *after the contractor or subcontractor commences working on the public work* in which the contractor or subcontractor employs one or more workmen in connection with the public work.

Sec. 6. NAC 338.0065 is hereby amended to read as follows:

338.0065 “Nonperformance payroll report” means the report that a contractor or subcontractor engaged on a public work is required to submit to an awarding body pursuant to NAC 338.098 for each month *after the contractor or subcontractor commences working on the public work* in which the contractor or subcontractor does not employ any workmen in connection with the public work.

Sec. 7. NAC 338.008 is hereby amended to read as follows:

338.008 The existence of a contract between an awarding body and a contractor is not a bar to the enforcement by the Labor Commissioner *or the awarding body* of the provisions of NRS 338.010 to 338.090, inclusive, and NAC 338.005 to 338.125, inclusive ~~[]~~, *and sections 2, 3 and 4 of this regulation.*

Sec. 8. NAC 338.0095 is hereby amended to read as follows:

338.0095 1. For the purposes of NRS 338.010 to 338.090, inclusive, and NAC 338.005 to 338.125, inclusive ~~[]~~, *and sections 2, 3 and 4, of this regulation:*

(a) A workman employed on a public work must be paid ~~based on~~ *the applicable prevailing rate of wage for* the type of work that the workman actually performs on the public work and in accordance with the recognized class of the workman; and

(b) Each contractor and subcontractor shall be deemed to be the employer of each workman and apprentice who performs work directly for that contractor or subcontractor in the execution of a contract for a public work, whether the workman or apprentice is employed directly by the contractor or subcontractor or is furnished to the contractor or subcontractor by or through another person or entity such as an employee leasing company or equipment rental business.

2. Any person employed on a public work as an apprentice or listed on a certified payroll report as an apprentice who is not registered with the Bureau of Apprenticeship and Training of the Office of Apprenticeship, Training, Employer and Labor Services of the Employment and Training Administration of the United States Department of Labor or its successor and the State Apprenticeship Council must be paid not less than the applicable wage rate for the type of work actually performed by the person and in accordance with the applicable recognized class of workmen. Any person designated as an apprentice performing work at the site of a public work who exceeds the ratio of apprentices to journeymen authorized under the registered program of apprenticeship must be paid not less than the applicable wage rate for the type of work actually performed by the person and in accordance with the applicable recognized class of workmen.

Sec. 9. NAC 338.040 is hereby amended to read as follows:

338.040 1. A determination by the Labor Commissioner of the prevailing rates of wages in a locality becomes effective on October 1 of each year and remains effective for 1 year after that date except as otherwise provided in this section.

2. If ~~[a]~~ *the Labor Commissioner issues an amendment to 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]~~ *of wages*, the prevailing rates ~~[used for the bids to apply for the duration of the project.]~~ *of wages that are set forth in the amendment:*

(a) Will be effective:

(1) On the date specified in the amendment; or

(2) If an effective date is not specified in the amendment, 10 days after the issuance of the amendment.

(b) Will be applicable to all projects of a public work bid after the effective date of the amendment.

(c) Will expire upon the effective date of a subsequently issued applicable determination of the prevailing rates of wages.

3. After a contract has been awarded, the prevailing rates of wages in effect at the time of the opening of bids remain in effect for the duration of the project.

4. 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.

Sec. 10. NAC 338.092 is hereby amended to read as follows:

338.092 1. ~~[A]~~ *Except as otherwise provided in subsection 2, a* contractor who has been awarded a contract for a public work *and all subcontractors hired by the contractor* shall report the name and address of each subcontractor whom the contractor *or subcontractor* engages for

work on the public work as required pursuant to subsection 3 of NRS 338.013 on a form prescribed by the Labor Commissioner. The ~~contractor shall~~ *report must* include, without limitation : ~~in the report:~~

- (a) The name of the owner or principal of the subcontractor;
- (b) The telephone number and facsimile number, if any, of the subcontractor; ~~and~~
- (c) The scope of work to be performed by the subcontractor in connection with the public work ~~;~~ *and*

(d) The number, if any, of the license issued to the subcontractor by the State Contractors' Board pursuant to chapter 624 of NRS.

2. A contractor who has been awarded a contract for a public work and all subcontractors hired by the contractor do not need to report suppliers hired by the contractor or subcontractor to the Labor Commissioner pursuant to subsection 1.

3. A contractor engaged on a public work has the burden of proof in substantiating that he reported any subcontractors whom he has engaged for work on the public work to the Labor Commissioner pursuant to subsection 3 of NRS 338.013.

4. A contractor or subcontractor hired by the contractor shall provide a copy of the report to the awarding body.

5. As used in this section, "supplier" has the meaning ascribed to it in NRS 338.010.

Sec. 11. NAC 338.094 is hereby amended to read as follows:

338.094 1. Each certified payroll report:

- (a) May be submitted on a form prescribed by the Labor Commissioner or in a format selected by the contractor or subcontractor that provides the information required pursuant to subsection 4 of NRS 338.070;

(b) Must be accompanied by a statement of compliance, on a form prescribed by the Labor Commissioner, which is executed by the contractor or subcontractor and which certifies the truthfulness and accuracy of the payroll report; and

(c) Must include an itemization of all contributions made to a third person pursuant to a fund, plan or program in the name of a workman as authorized by NRS 338.035, if any such contributions were made as part of the wages of that workman.

2. A contractor or subcontractor shall report workmen on a certified payroll report for a public work ~~based on:~~

~~—(a) The~~ :

(a) *Based on the* type of work actually performed by the workmen;

(b) *Based on the number of hours worked per workman per day;* and

~~[(b)]~~ (c) In accordance with the recognized classes of workmen.

↪ Such a report must not include any hours of work performed by the workmen on another public work or private project.

3. When a contractor or subcontractor first lists an apprentice on a certified payroll report, the contractor or subcontractor must submit with that certified payroll report documentation to substantiate that the apprentice is registered with the Bureau of Apprenticeship and Training of the Office of Apprenticeship, Training, Employer and Labor Services of the Employment and Training Administration of the United States Department of Labor or its successor and the State Apprenticeship Council.

4. Upon the request of the awarding body, a contractor or subcontractor engaged on a public work shall provide to the awarding body payroll records and any other records deemed necessary

by the awarding body to verify the accuracy of information contained in any certified payroll report submitted by the contractor or subcontractor.

Sec. 12. NAC 338.096 is hereby amended to read as follows:

338.096 1. An awarding body shall cause such an examination of the certified payroll reports of a contractor or subcontractor to be made ~~[as may be necessary]~~ *at reasonable times* to assure compliance with the provisions of NRS 338.010 to 338.090, inclusive, and NAC 338.005 to 338.125, inclusive ~~[]~~, *and sections 2, 3 and 4 of this regulation*. Such an examination may include, without limitation:

(a) Verifications with employees of the contractor or subcontractor of the wages paid to and the type of work actually performed by those employees;

(b) Review of records and other data concerning the payroll of the contractor or subcontractor;

(c) Verification of the registration of apprentices; and

(d) Evidence of payments to fringe benefit plans, if any.

2. In conducting an examination pursuant to this section, an awarding body shall verify:

(a) The accuracy of the reporting of workmen in the recognized classes of the workmen; and

(b) The ratio of apprentices to journeymen authorized under the registered program of apprenticeship.

Sec. 13. NAC 338.098 is hereby amended to read as follows:

338.098 1. If a contractor or subcontractor engaged on a public work does not employ any workmen in any calendar month during which he is engaged on the public work, the contractor or subcontractor shall, in lieu of submitting a certified payroll report pursuant to subsections 4 and 5 of NRS 338.070 for that month, submit to the awarding body a nonperformance payroll

report certifying that the contractor or subcontractor did not employ any workmen on the public work during that month.

2. A nonperformance payroll report must be completed on a form prescribed by the Labor Commissioner and must be submitted to the awarding body not later than ~~10~~ 15 days after the end of a month in which the contractor or subcontractor did not employ any workmen on the public work.

Sec. 14. NAC 338.110 is hereby amended to read as follows:

338.110 1. Upon its own initiative or upon notice *from the Labor Commissioner* of a possible violation, an awarding body shall cause such an investigation to be made as may be necessary to determine whether a violation of *a provision of* NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, *and sections 2, 3 and 4 of this regulation* was committed in the course of the execution of a contract for a public work that was awarded by the awarding body. Such an investigation must commence and conclude within a reasonable time, except that the investigation must not exceed 30 days unless an additional period of time is approved by the Labor Commissioner. *Upon commencing an investigation upon its own initiative, an awarding body shall notify the Labor Commissioner in writing as soon as is practicable.*

2. ~~[Am]~~ *If a contractor or subcontractor fails to provide to an awarding body information requested by the awarding body pursuant to subsection 4 of NAC 338.094, the* awarding body may request the Labor Commissioner to issue subpoenas on behalf of the awarding body to assist the awarding body in its investigation.

3. In making a determination, ~~[of whether a contractor or subcontractor violated NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive,]~~ an awarding body shall consider:

(a) Information contained in any claim or complaint against the contractor or subcontractor that was received by the Labor Commissioner;

(b) Oral or written statements made by employees of the contractor or subcontractor or witnesses during interviews conducted by the awarding body;

(c) Information contained in certified payroll reports applicable to the public work; and

(d) Any other information that could reasonably assist the awarding body in determining whether a violation was committed.

4. Upon the conclusion of its investigation, an awarding body shall issue, in writing, ~~its determination of whether a contractor or subcontractor violated NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive,~~ *the determination issued by the awarding body* and shall ~~transmit~~ :

(a) *Submit* a copy of the determination *issued by the awarding body* to the Labor Commissioner ~~[-]~~;

(b) *Serve a copy of the determination issued by the awarding body upon the contractor or subcontractor alleged to have committed the violation;*

(c) *If the contractor or subcontractor alleged to have committed the violation was not the prime contractor for the public work, serve a copy of the determination issued by the awarding body upon the prime contractor for the public work;*

(d) *Serve a copy of the determination issued by the awarding body upon the person who filed the complaint; and*

(e) *Serve a copy of the determination issued by the awarding body upon any other person who filed a claim or a complaint with the Labor Commissioner that related to the investigation.*

5. If, after an investigation, an awarding body ~~[determines]~~ *issues a determination* that a contractor or subcontractor has failed to pay the correct wages to workmen employed by the contractor or subcontractor in connection with a public work, the awarding body shall withhold and retain the wages due and owing to the workmen and any applicable penalties . ~~[, and shall immediately notify the Labor Commissioner in writing of its determination and resulting actions.]~~

6. In addition to ~~[transmitting]~~ *submitting* a copy of ~~[its]~~ *the* determination *issued by the awarding body* to the Labor Commissioner pursuant to subsection 4, ~~[an]~~ *the* awarding body shall ~~[transmit]~~ *provide* to the Labor Commissioner the following information pertaining to the determination ~~[:]~~ *issued by the awarding body:*

- (a) A detailed narrative of the findings of the investigation;
- (b) The name and address of the contractor or subcontractor and its responsible officers;
- (c) *If a subcontractor is alleged to have committed the violation, the name and address of:*
 - (1) The prime contractor for the public work and its responsible officers; and*
 - (2) Any intermediate subcontractor and the respective responsible officers of that*

subcontractor;

(d) A copy of the contract for the public work, or an excerpt of the portion of the contract that the Labor Commissioner determines is relevant, which must include, without limitation, information identifying the deadline by which bids on the contract were accepted, the date on which the contract was awarded and the scope of work performed by the contractor or subcontractor;

~~[(d)]~~ *(e)* Copies of any claims or complaints received by the awarding body from the Labor Commissioner relating to the investigation;

~~(e)~~ (f) Copies of the applicable certified payroll reports and nonperformance payroll reports submitted by the contractor or subcontractor;

~~(f)~~ (g) If applicable, signed interview statements of employees of the contractor or subcontractor; ~~and~~

~~(g)~~ (h) If applicable, computations of penalties and back wages for each workman, including, without limitation, the name, address and social security number of the workman ~~(i)~~;

and

(i) The identifying number requested from the Labor Commissioner by the public body pursuant to NRS 338.013.

7. ~~[Within 20 days after receipt of a determination issued by an awarding body pursuant to subsection 4, the Labor Commissioner will:~~

~~—(a) Return the determination to the awarding body with a directive for further investigation;~~

~~or~~

~~—(b) Affirm or modify the determination and, if any wages or penalties were withheld by the awarding body, direct the awarding body to forward to the Labor Commissioner the sums~~

~~withheld for disbursement to the workmen.] *If a person who filed a claim or complaint with the*~~

Labor Commissioner relating to the investigation that is the subject of the determination

issued by the awarding body submits a request to the awarding body to receive the information

submitted by the awarding body to the Labor Commissioner pursuant to subsection 6, the

awarding body shall provide to the person that information.

8. *A person who has been served a copy of a determination issued by an awarding body pursuant to subsection 4 and who is aggrieved by the determination issued by the awarding body may file a written objection with the Labor Commissioner within 15 days after the date of*

service of the determination issued by the awarding body. Such an objection must be accompanied by a short statement of the grounds for the objection and evidence substantiating the objection. The awarding body issuing the determination shall insert a statement to this effect into the determination issued by the awarding body.

Sec. 15. NAC 338.112 is hereby amended to read as follows:

338.112 1. *Within 30 days after receipt of a determination issued by an awarding body pursuant to the provisions of NAC 338.110, the Labor Commissioner will:*

(a) Return the determination issued by the awarding body to the awarding body with a directive for further investigation;

(b) Modify the determination issued by the awarding body;

(c) Affirm the determination issued by the awarding body and, if any wages or penalties were withheld by the awarding body, direct the awarding body to forward to the Labor Commissioner the sums withheld for disbursement to the workmen;

(d) Set the matter that is the subject of the determination issued by the awarding body for an administrative hearing before the Labor Commissioner; or

(e) Decline to assert jurisdiction over the matter that is the subject of the determination issued by the awarding body.

2. If, pursuant to ~~paragraph (b) of subsection 7 of NAC 338.110,~~ *subsection 1*, the Labor Commissioner ~~[affirms or modifies]~~ :

(a) Modifies a determination issued by an awarding body, the Labor Commissioner will serve a copy of the ~~[affirmed or]~~ modified determination by ~~[certified]~~ mail on the contractor or subcontractor who was the subject of the investigation and any person who filed a claim or complaint with the Labor Commissioner relating to the investigation.

~~[2.]~~ (b) *Affirms a determination issued by an awarding body, the Labor Commissioner will issue an order affirming the determination issued by the awarding body. The order affirming the determination issued by the awarding body is deemed to be the final order of the Labor Commissioner on the matter.*

(c) *Sets the matter that is the subject of the determination issued by the awarding body for an administrative hearing before the Labor Commissioner, the Labor Commissioner will conduct a hearing on the matter.*

(d) *Declines to assert jurisdiction over the matter that is the subject of the determination, the Labor Commissioner will issue an order dismissing the determination issued by the awarding body. The order dismissing the determination issued by the awarding body is deemed to be the final order of the Labor Commissioner on the matter.*

3. A person who has been served a copy of a *modified* determination pursuant to ~~[subsection 4]~~ *paragraph (a) of subsection 2* and who is aggrieved by the *modified* determination may file a written objection with the Labor Commissioner within 15 days after the date of service of the *modified* determination. Such an objection must be accompanied by a short statement of the grounds for the objection and evidence substantiating the objection.

~~[3.—Except as otherwise provided in subsection 4, if]~~

4. *If* an objection to a determination issued by an awarding body *and modified by the Labor Commissioner* is filed with the Labor Commissioner ~~[within the period for objection prescribed in subsection 2.]~~ *pursuant to subsection 3*, the Labor Commissioner will, within 15 days after ~~[that]~~ *the* period for objection has expired, schedule a hearing on the *modified* determination if:

(a) The *modified* determination ~~[issued by the awarding body]~~ included an assessment of back wages owed to workmen, an administrative penalty or fine, or a recommendation of the

imposition of a period of disqualification from public works against a contractor or subcontractor pursuant to NRS 338.017; or

(b) The *modified* determination ~~issued by the awarding body~~ did not include an assessment of back wages owed to workmen, an administrative penalty or fine, or a recommendation of the imposition of a period of disqualification from public works against a contractor or subcontractor pursuant to NRS 338.017, but the Labor Commissioner determines that the objection has merit on other grounds after reviewing the determination and the information ~~transmitted~~ *submitted* to him by the awarding body pursuant to subsection 6 of NAC 338.110.

~~4.~~ 5. If:

(a) An objection is filed with the Labor Commissioner ~~within the period for objection prescribed in subsection 2 and the determination~~ *that* does not meet the requirements of ~~paragraph (a) or (b) of~~ subsection 3; or

(b) An objection was not filed with the Labor Commissioner, ~~within the period for objection prescribed in subsection 2,~~

↳ the determination ~~of~~ *issued by* the awarding body *and modified by the Labor Commissioner* is deemed to be the final order of the Labor Commissioner on the matter.

~~5.~~ 6. If, after holding a hearing ~~scheduled pursuant to subsection 3~~ on a determination issued by an awarding body ~~,~~ *or a modified determination*, the Labor Commissioner finds that a contractor or subcontractor violated *a provision of* NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, *and sections 2, 3 and 4 of this regulation*, the Labor Commissioner will issue a written ~~determination,~~ *decision*, which will include, without limitation, the relevant facts and applicable laws on which the ~~determination~~ *decision* was based. The Labor Commissioner will serve a copy of the ~~determination~~ *decision* by certified

mail on the contractor or subcontractor who was the subject of the investigation and any person who filed a claim or complaint with the Labor Commissioner relating to the investigation. A ~~[determination]~~ *decision* issued by the Labor Commissioner pursuant to this subsection is deemed to be the final order of the Labor Commissioner on the matter.

Sec. 16. NAC 338.114 is hereby amended to read as follows:

338.114 1. If, after an investigation conducted ~~[or caused to be conducted]~~ by the Labor Commissioner, the Labor Commissioner finds that a person, including, without limitation, the officers, agents or employees of a public body, has violated *a provision of* NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, *and sections 2, 3 and 4 of this regulation*, the Labor Commissioner will issue a written determination, which will include, without limitation, the relevant facts and applicable laws on which the determination was based. The Labor Commissioner will serve a copy of the determination by ~~[certified]~~ mail on ~~[the]~~ :

(a) *The* person who ~~[is found]~~ *was alleged* to have committed the violation ~~[and any]~~ ;

(b) *If a subcontractor is alleged to have committed the violation:*

(1) *The prime contractor for the public work; and*

(2) *Any intermediate subcontractors; and*

(c) *Any* other person who filed a claim or complaint with the Labor Commissioner relating to the investigation.

2. A person who has been served a copy of a determination issued by the Labor Commissioner pursuant to subsection 1 and who is aggrieved by the determination may file a written objection with the Labor Commissioner within 15 days after the date of service of the determination. Such an objection must be accompanied by a short statement of the grounds for

the objection and evidence substantiating the objection. *The Labor Commissioner will insert a statement to this effect into the determination issued by the Labor Commissioner.*

3. ~~[Except as otherwise provided in subsection 4, if]~~ *If* an objection to a determination issued by the Labor Commissioner pursuant to subsection 1 is filed with the Labor Commissioner ~~[within the period for objection prescribed in]~~ *that meets the requirements of* subsection 2, the Labor Commissioner will, within 15 days after that period for objection has expired, schedule a hearing on the determination if:

(a) The determination issued by the Labor Commissioner included an assessment of back wages owed to workmen, an administrative penalty or fine, or an imposition of a period of disqualification from public works against a contractor or subcontractor pursuant to NRS 338.017; or

(b) The determination issued by the Labor Commissioner did not include an assessment of back wages owed to workmen, an administrative penalty or fine, or an imposition of a period of disqualification from public works against a contractor or subcontractor pursuant to NRS 338.017, but the Labor Commissioner determines that the objection has merit on other grounds.

4. If:

(a) An objection *to a determination issued by the Labor Commissioner* is filed with the Labor Commissioner ~~[within the period for objection prescribed in]~~ *that does not meet the requirements of* subsection 2 ; ~~[and the determination does not meet the requirements of paragraph (a) or (b) of subsection 3;]~~ or

(b) An objection was not filed with the Labor Commissioner ~~[within the period for objection prescribed in subsection 2,]~~,

the Labor Commissioner will issue an order affirming the determination issued by the Labor Commissioner . ~~[pursuant to this section]~~ *The order affirming the determination issued by the Labor Commissioner* is deemed to be the final order of the Labor Commissioner on the matter.

5. If, after holding a hearing scheduled pursuant to subsection 3 on a determination issued by *the* Labor Commissioner pursuant to subsection 1, the Labor Commissioner finds that a person, including, without limitation, the officers, agents or employees of a public body, has violated *a provision of* NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, *and sections 2, 3 and 4 of this regulation,* the Labor Commissioner will issue a written ~~[determination,]~~ *decision,* which will include, without limitation, the relevant facts and applicable laws on which the ~~[determination]~~ *decision* was based. The Labor Commissioner will serve a copy of the ~~[determination]~~ *decision* by certified mail on the person who is found to have committed the violation and any other person who filed a claim or complaint with the Labor Commissioner relating to the investigation. A ~~[determination]~~ *decision* issued by the Labor Commissioner pursuant to this subsection is deemed to be the final order of the Labor Commissioner on the matter.

Sec. 17. NAC 338.116 is hereby amended to read as follows:

338.116 ~~[1.]~~ At a hearing held by the Labor Commissioner on a determination issued by an awarding body or the Labor Commissioner, ~~[a party may:~~

~~—(a) Provide additional evidence or refute the evidence in the determination.~~

~~—(b) Call and examine witnesses. The party who is calling a witness must provide notice of the hearing to the witness. A party may request the Labor Commissioner to issue a subpoena requiring the attendance of a witness.~~

~~—2.— After such a hearing, the Labor Commissioner will issue his decision on the determination, including, without limitation, his findings of fact and conclusions of law based on the evidence presented and matters officially noticed at the hearing.]~~ *the Labor Commissioner will use the procedures provided pursuant to chapter 607 of NAC to conduct the hearing.*

Sec. 18. NAC 338.120 is hereby amended to read as follows:

338.120 1. If the State Contractors' Board has established a monetary limit on the license of a *prime* contractor pursuant to NRS 624.220, the amount of any ~~[penalty imposed]~~ *forfeiture assessed* against the *prime* contractor pursuant to NRS 338.060 must be:

(a) If the monetary limit is less than \$250,000, \$20 for each calendar day or portion thereof.

(b) If the monetary limit is \$250,000 or more but less than \$500,000, \$30 for each calendar day or portion thereof.

(c) If the monetary limit is \$500,000 or more but less than \$750,000, \$40 for each calendar day or portion thereof.

(d) If the monetary limit is \$750,000 or more, \$50 for each calendar day or portion thereof.

2. If the State Contractors' Board has not established a monetary limit on the license of a *prime* contractor or has removed a monetary limit established on his license, the amount of the penalty imposed against the *prime* contractor pursuant to NRS 338.060 must be \$50 for each calendar day or portion thereof.

Sec. 19. NAC 338.030 is hereby repealed.

TEXT OF REPEALED SECTION

338.030 Information to be submitted to Labor Commissioner by public body. 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.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R207-03**

The Labor Commissioner adopted regulations assigned LCB File No. R207-03 which pertain to chapter 338 of the Nevada Administrative Code on January 12, 2004.

Notice date: 11/10/2003
Hearing date: 12/10/2003

Date of adoption by agency: 1/12/2004
Filing date: 2/19/2004

INFORMATIONAL STATEMENT

- (a) **A description of how public comment was solicited, a summary of public response, and explanation how other interested persons may obtain a copy of the summary.**

Prior to drafting the proposed rule, public workshops were conducted in Carson City and Las Vegas. Public comment on the proposed rule was solicited on the agency website, posted notices including copies to the main library in each county and direct mail to persons on the agency 233B mailing list. Copies are available through the agency website or upon request from the agency. Comments were received on several of the proposed changes to the regulations. The largest number of comments concerned eliminating the procedure for determining a prevailing wage rate when no survey data is received. Twelve people testified on this matter and were generally opposed. Six people testified against moving the effective date for prevailing wages from October to July due to the historic negotiating periods for collective bargaining agreements.

Other issues raised included the service of third party complaints, defining the site of the work, requirements for contractors not required to hold contractor's licenses, the forfeiture provisions, a ten-day rule for the applicable wage rates, the degree to which awarding bodies can enforce the rules and the appropriate effective wage rates for non-bid projects.

- (b) **The number of persons who:**
(1) **Attended each hearing:**

44

- (2) **Testified at each hearing:**

Seven individuals testified from Las Vegas including five representatives from organized labor and two representatives from state agencies. In Carson City, 13 people testified including six representatives from organized labor, three from contractors' representatives and four from state and local government.

- (3) **Submitted to the agency written statements:**

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- (c) **A description of how comment was solicited from affected businesses, a summary of their response and an explanation how other interested persons may obtain a copy of the summary.**

Comments were solicited through published and posted notices and by direct mail to organizations and individuals on the agency mailing list.

- (d) **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

Changes were adopted based on information provided at the hearing.

- (e) **The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public.**

In terms of the general regulatory scheme, the proposal should be economically neutral. Because the rules reflect the agency's newly authorized ability to impose administrative penalties for certain violations, there may be a justifiable increase in cost to those who violate the laws or regulations.

Impact on businesses that are regulated:

- (1) **Both adverse and beneficial effects:**

The regulations clarify existing responsibilities; as a result no adverse effects are anticipated. The regulatory scheme is designed to provide a level playing field for the labor cost component of public works projects. The rules are beneficial to the extent that they further the leveling process and reduce the costs associated with uncertainty in the regulations and enforcement process.

- (2) **Both immediate and long-term effects:**

Part of the regulation is an affirmation of previously adopted temporary regulation. The experience we have had with those temporary regulations indicates that there has been a general rise in the sophistication of the participants and better compliance by both contractors and awarding bodies.

Impact on the public:

- (1) **Both adverse and beneficial effects:**

The regulations clarify existing responsibilities; as a result no adverse effects are anticipated. The enhanced regulations benefit the public by strengthening accountability for labor costs on public works projects and reducing the anti-competitive effects of undercutting labor costs.

(2) Both immediate and long-term effects:

The primary effect will be increasing levels of compliance over time.

(f) The estimated cost to the agency for enforcement of the adopted regulation.

There is no anticipated additional cost to the agency for enforcement. Cost savings realized through more efficient operation will be absorbed by increased activity.

(g) A description of any regulation of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

The regulation does not overlap the regulations of any other state or federal agency.

(h) If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

Not applicable.

(i) If the regulation provides a new fee or increase an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

No new fees are involved.