

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY NAC 338
LCB FILE R018-018**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 338.

1. A clear and concise explanation of the need for the adopted regulation.

The Regulations set up the necessary framework to help ensure that the Office of the Labor Commissioner and/or Awarding Bodies as applicable, enforce the laws and regulations relating to Public Works Projects and the payment of the prevailing wage in an efficient and timely manner and ensure that the public funds being used to fund these projects are expended in accordance with the law. In addition, these regulations ensure that workers are paid the applicable prevailing wage based on the work being performed and the applicable job classification and job description. The regulations also provide the necessary clarity for Contractors, Subcontractors, workers, and other persons employed on Public Works Projects as to when payment of the prevailing wage is required, along with the reporting requirements.

These regulations implement and clarify Assembly Bill (AB) 136, AB 190, Senate Bill (SB) 207, SB 231, and SB 243, all passed during the 80th Session of the Nevada Legislature 2019. The regulations are necessary to clarify and provide certain definitions and guidelines for enforcement by the Office of the Labor Commissioner and/or Awarding Bodies as applicable, and Contractors, Subcontractors, and other workers/persons on Public Works Projects where there is a prevailing wage requirement.

Specifically, the regulations do the following:

- *Authority for Labor Commissioner to investigate anonymous complaints and requirement that claims and/or complaints be submitted within 24 months.*
- *Assignment of work in accordance with established practice and Collective Bargaining Agreements: limitation on authority for Labor Commissioner to resolve jurisdictional disputes.*
- *Information considered in determination of Prevailing Wage, Calculation of Prevailing Wage; Effective date and period of Prevailing Wage Rates; Adjustments and Amendments to Prevailing Wage Rates; Public Works Projects over 36 months.*
- *Prevailing Wage; Prevailing Wage reports and forms; Electronic Reporting of certified payroll reports and review and access to certified payroll reports; forms and documents for Apprenticeship Utilization Act – SB 207; Reporting of bona fide fringe benefits; and reporting of Apprentices.*
- *Complaints and claims submitted to Labor Commissioner and forms and requirement that the complaints and/or claims be submitted within 24 months.*

- *Authority for the Labor Commissioner to conduct inspections and issue subpoenas.*

Finally, the regulations revise the provisions governing payroll reports on Public Works Projects and clarify the requirements governing complaints, investigations, determinations, and hearings relating to potential prevailing wage violations.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were posted at specific local government entities; sent by U.S. mail, and emailed to persons of interest in the subject of the Rules of Practice before the Labor Commissioner, as well as any persons who had specifically requested such notice. The April 27, 2020, hearing was also posted and advertised on Eventbrite. These documents were also made available at the website of the Office of Business and Industry (B&I), www.labor.nv.gov and mailed to all county libraries in Nevada and posted at the following locations:

Legislative Building, State of Nevada 401 So. Carson Street, 1st Floor Carson City, Nevada 89701	Business & Industry 3300 West Sahara Avenue - Lobby Las Vegas, Nevada 89102
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Office of the Labor Commissioner 3300 West Sahara, Suite 225 Las Vegas, Nevada 89102	Office of the Labor Commissioner 1818 College Parkway, Suite 102 Carson City, Nevada 89706
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Carson City Court 885 E. Musser Street Carson City, Nevada 89701	Office of the Labor Commissioner Website www.labor.nv.gov
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Nevada Legislature Website www.leg.state.nv.us/App/Notice/A/89701	Nevada Public Notice Website notice.nv.gov
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Office of the Labor Commissioner website http://labor.nv.gov	Interested Parties List
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A Notice to Solicit Comments on Nevada Administrative Code section 338 was sent out by the Labor Commissioner in February 2018. A Workshop was held on May 30, 2018. An additional hearing was scheduled for July 31, 2018. In July 2019, the Labor Commissioner issued a Notice to Solicit Comments by August 1, 2019.

Location of Public Comments: Public comments are available from the Office of the Labor Commissioner at www.labor.nv.gov or at the Office of the Labor Commissioner office locations listed above. These comments can also be requested through mail1@labor.nv.gov.

Summary of Comments: The following is a summary of the public comments received.

2018 Public Comments at workshop

The public comments made at the workshop hearing in May 2018 were focused on the proposed definition of normal maintenance. There was concern about the proposed definition. Public comments were also made about “service providers” and the proposed language to define service providers and limited service type activities on the site of a public work and exclude these from prevailing wage requirements.

2019 Public Comments:

City of Sparks Purchasing 7/26/19 Data Collection (process and forms): How will hours worked on the project be tracked to calculate the percentages required. Will the Labor Commissioner be defining new CPRs to use?

Data Analysis: Who has the responsibility to calculate the percentage of hours worked by apprentices? They expect that the data analysis cannot be completed until the work is completed. Who must the hours be reported to and is there a deadline?

Penalties: The Bill and Statute is silent as to penalties for violating the apprenticeship requirement. How will this be addressed?

Timing of Modification/Waiver Requests: Seek clarification that the request can be made any time during the life of the project and how mid-project modifications or waivers might affect achievement of the overall requirement for a specified percentage of apprenticeship hours.

Truckee Meadows Water Authority 8/1/19 What are a public body’s rights and obligations while a request for a modification or exemption is pending? While a request is pending does work need to be stopped pending the outcome of the request?

When does a public body have to submit a request for a waiver or modification to the Labor Commissioner? Can a request be submitted at any time?

Do the threshold requirements apply to the public work as a whole or to each individual contractor/subcontractor?

What are a public body’s responsibilities to enforce the law if any? Does the public body have to track hours to ensure compliance? Does the public body need to supply any documentation to the Labor Commissioner?

Reno Tahoe Airport Authority 8/2/19 P 2 Sec. 1.7(1): What if there are no apprentices or not enough? The statute is based on number of hours for the public work, but change orders occur after the original estimate of the job. NOTE: this will negatively impact the pricing of the public work given that the apprentice(s) will not have the necessary expertise to complete the work and there will be more mistakes and the project will take longer. P2 Sec. 1.7(3): The bill says that “the Labor Commissioner may adopt regulations to increase the percentage”. Will the Labor Commissioner adopt regulations to decrease percentages if the program is not working?

P3 Sec. 1.8: A hearing can be requested within 10 days but there is not timeline when the hearing will be held. Can this be clarified because it will hold the project in limbo?

2020 Public Comments:

Associated General Contractors, Sierra Nevada Construction, Q&D Construction, and Granite Construction all had public comments against the proposed language regarding truck drivers in NAC 338.017. The public comments noted that the proposed language was not consistent with the decision issued by the Nevada Supreme Court in *Granite Decision* 118 Nev. 83 (2002), regarding when prevailing wages are to be paid to truck drivers and what is considered a public work jobsite.

Southern Nevada Building Trades had comments about Sections 5, 6, and 9. For section 5, the comments were related to the proposed language regarding jurisdictional disputes. The public comments requested that additional language regarding multiple unions be added. For Section 6, the comments expressed concerns about the Labor Commissioner utilizing collective bargaining agreements when publishing the prevailing wage rates for a job classification and job description. The comments indicated that the Labor Commissioner should not use the job classifications and job descriptions in the collective bargaining agreements to create new job classifications and job descriptions that were not surveyed for. On section 9, the comments requested that additional language about the Labor Commissioner's authority to conduct a "local area practice survey" consistent with the Federal Davis-Bacon Field Operations Handbook be added when there is an objection to the prevailing wage rates.

The Plumbers, Pipefitters and Service Technicians Local 525 had similar public comments jurisdictional disputes and the Labor Commissioner potentially creating new job classifications and subclassifications from collective bargaining agreements. They requested that language be added that would require the Labor Commissioner to conduct a public hearing before creating and/or establishing a new subclassification in the prevailing wage job classifications and job descriptions.

The Teamsters Union submitted public comment and requested that the following language be added to NAC 338.009 – "and delivery of construction materials intended for incorporation into the public work or removal of waste construction materials and substrate from the site, and delivery from a departure point within a 100-mile radius of the site or removal to a destination within a 100-mile radius of such site structures or equipment used by workers on the site."

3. The number persons who:

(a) **Attended each hearing:** May 30, 2018 = 12 in Carson City and 33 in Las Vegas.

(b) **Testified at each hearing:** May 30, 2018 = 12 in Carson City and 14 in Las Vegas.

April 27, 2020 = 2

(c) **Submitted to the agency written comments:** 10

4. **A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency, is attached as Exhibit A.**

2018

Please see the attached sign in list as Exhibit A.

2020

Brian Dowd, Granite Construction, 1900 Glendale Avenue, Sparks, NV 89431.

(775) 358-8792; Bdowd@graniteconstruction.com

Nevada Associated General Contractors, 5400 Mill Street, Reno, NV 89502.

(775) 329-6116; info@nevadaagc.org

5. **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.**

The impact of the Regulations on small businesses was analyzed by the Office of the Labor Commissioner. None of the proposed changes in the Regulations will impact small businesses, the public, or any other size business.

However, the Office of the Labor Commissioner did solicit comments in February 2018 and in July 2019. A Public Hearing was also held on May 30, 2018. The Office of the Labor Commissioner sought public comment along with additional written comments on any of the proposed changes that could impact small business.

No public or written comments were received that identified an impact to small business.

This regulation will create the necessary definitions and rules for enforcement by the Office of the Labor Commissioner and/or Awarding Bodies as applicable, governing when payment of the prevailing wage is required based on the recognized class of worker, job classifications and job descriptions. These regulations will also streamline the complaint, investigation, determination, and hearing process for potential violations, along with payroll reporting requirements on Public Works Projects subject to the prevailing wage requirement and reporting on apprentice utilization.

The Labor Commissioner also solicited comments from all businesses in February 2018, July 2019, and a Public Hearing was held on May 30, 2018.

No comments were received from any size business that these regulations would affect business.

No comments were received that these regulations would have any cost to the public.

A summary of the public comments received is set forth in #2 above.

Any information concerning these regulations can be obtained at the Office of the Labor Commissioner at www.labor.nv.gov or mail1@labor.nv.gov or at the Office of the Labor Commissioner office locations listed above.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

There were changes to the regulation.

Section 5 – Jurisdictional Disputes.

Section 6 – Clarification on surveyed job classifications and subclassifications.

Section 8 – Proposed subdivision 3 of NAC 338.017 for truck drivers removed.

Section 9 – Language about limited area practice survey added.

Section 16 – Clarification that awarding body should provide records as soon as practicable after they are received.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

Small Business:

- a. The Regulations do not place any additional regulatory or fee requirements on small business. The Regulations set up the necessary framework to help ensure that the Office of the Labor Commissioner provides a streamlined and efficient process on matters involving public works projects, prevailing wage, and apprentice utilization.
- b. This regulation will create the necessary definitions and rules for enforcement by the Office of the Labor Commissioner and/or Awarding Bodies as applicable, governing when payment of the prevailing wage is required based on the recognized class of worker, job classifications and job descriptions. These regulations will also streamline the complaint, investigation, determination, and hearing process for potential violations, along with payroll reporting requirements on Public Works Projects subject to the prevailing wage requirement and reporting on apprentice utilization.
- c. There should be no adverse effects on small business. The beneficial effects on small business are stated above.

Any Business:

- a. The Regulations do not place any additional regulatory or fee requirements on business. The Regulations set up the necessary framework to help ensure that the Office of the Labor Commissioner provides a streamlined and efficient process on matters involving public works projects, prevailing wage, and apprentice utilization.
- b. This regulation will create the necessary definitions and rules for enforcement by the Office of the Labor Commissioner and/or Awarding Bodies as applicable, governing when payment of the prevailing wage is required based on the recognized class of worker, job classifications and job descriptions. These regulations will also streamline the complaint, investigation, determination, and hearing process for potential violations, along with payroll reporting requirements on Public Works Projects subject to the prevailing wage requirement and reporting on apprentice utilization.
- c. There should be no adverse effects on business. The beneficial effects on business are stated above.

Public:

- a. The Regulations do not place any additional regulatory or fee requirements on the public. The Regulations set up the necessary framework to help ensure that the Office of the Labor Commissioner provides a streamlined and efficient process on matters involving public works projects, prevailing wage, and apprentice utilization.
- b. This regulation will create the necessary definitions and rules for enforcement by the Office of the Labor Commissioner and/or Awarding Bodies as applicable, governing when payment of the prevailing wage is required based on the recognized class of worker, job classifications and job descriptions. These regulations will also streamline the complaint, investigation, determination, and hearing process for potential violations, along with payroll reporting requirements on Public Works Projects subject to the prevailing wage requirement and reporting on apprentice utilization.
- c. There should be no adverse effects on the public. The beneficial effects on for the public are stated above.

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for enforcement of this regulation.

9. A description of any regulations 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.

There are no other state or government agency regulations that the proposed regulation duplicates.

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

Section 1 & Section 18 – Complaints and Default Decisions and Authority for Labor Commissioner to investigate anonymous complaints and requirement that claims and/or complaints be submitted within 24 months.

Section 5 & Section 6 - Assignment of work in accordance with established practice and Collective Bargaining Agreements: limitation on authority for Labor Commissioner to resolve jurisdictional disputes.

Section 6, Section 9, & Section 10 - Information considered in determination of Prevailing Wage, Calculation of Prevailing Wage; Effective date and period of Prevailing Wage Rates; Adjustments and Amendments to Prevailing Wage Rates; Public Works Projects over 36 months.

Section 12, Section 13, Section 14, Section 15, and Section 16 - Prevailing Wage; Prevailing Wage reports and forms; Electronic Reporting of certified payroll reports and review and access to certified payroll reports; forms and documents for Apprenticeship Utilization Act – SB 207; Reporting of bona fide fringe benefits and Apprentices.

Section 19 - Authority for the Labor Commissioner to conduct inspections and issue subpoenas.

- 11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

This regulation does not provide a new fee or increase an existing fee.