

**SECOND REVISED PROPOSED REGULATION OF
THE LABOR COMMISSIONER**

LCB File No. R018-18

March 13, 2020

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

AUTHORITY: §§1, 17, 18, 21 and 22, NRS 338.012 and 338.015; §20, NRS 338.012, 338.015 and 607.150; §§2, 3, 7 and 23, NRS 338.012; §§4 and 8, NRS 338.012 and 338.040; §5, NRS 338.012 and 338.020; §§6 and 9-12, NRS 338.012, 338.020 and 338.030; §13, NRS 338.012 and 338.013; §§14-16, NRS 338.012 and 338.070; §19, NRS 338.012, 338.015, 338.070, 607.150 and 607.210.

A REGULATION relating to public works; revising provisions governing complaints, investigations, determinations and hearings related to prevailing wage violations; revising provisions governing the establishment of a prevailing wage; revising provisions governing payroll reports; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, workers who are employed at the site of a public work and necessary in the execution of the contract for the public work are deemed to be employed on a public work. (NRS 338.040) Additionally, existing regulations specifically define when a worker who performs the craft of truck driver is deemed to be employed on a public work. (NAC 338.017) **Section 4** of this regulation revises the interpretation of “employed at the site of a public work” and “necessary in the execution of the contract for the public work” to exclude instances in which a person provides services at the site of a public work for a limited period of time if the services: (1) do not include work typically performed by a recognized class of workers; and (2) are incidental or ancillary to the construction, repair or reconstruction of the public work. **Section 8** of this regulation additionally provides that a worker who performs the craft of truck driver is deemed to be employed on a public work when transporting materials to the site of a public work on a workday in which the truck driver is engaged exclusively in transporting materials to the site of the public work.

Existing regulations require a worker employed on a public work to be paid the applicable prevailing wage for the type of work that the worker actually performs on the public work and in accordance with the recognized class of the worker. (NAC 338.0095) **Section 5** of this regulation states that this requirement does not provide the Labor Commissioner with jurisdiction over collective bargaining disputes involving the assignment of work in accordance with established practice or a collective bargaining agreement.

Existing law requires the Labor Commissioner to determine the prevailing wage in each region of the State for each craft or type of work. (NRS 338.030) **Section 6** of this regulation revises the method for determining the prevailing wage if no construction similar to the proposed construction occurred in the past 2 years. **Section 6** also provides that the Labor Commissioner will use the job classifications, scope of work and job descriptions for a recognized class of workers established in a collective bargaining agreement if the prevailing wage for the recognized class of workers is determined to be the wage bargained for in that collective bargaining agreement. **Section 9** of this regulation revises the kinds of information which the Labor Commissioner will consider in making determinations of prevailing rates of wages.

Existing regulations authorize the Labor Commissioner to correct a determination of prevailing wages which contains a clerical error on his or her own initiative or at the request of a public body. (NAC 338.050) **Section 11** of this regulation additionally authorizes the correction of such an error at the request of the crafts affiliated with the State Federation of Labor or other recognized national labor organizations, and the contractors of the region or their representatives.

Under existing regulations, a person may file a complaint with the Labor Commissioner alleging a violation of certain provisions of existing law which establish requirements relating to wages paid on a public work. (NAC 338.107) **Section 1** of this regulation requires a person who is the subject of such a complaint to file an answer to the complaint with the Labor Commissioner and serve a copy of the answer on the complainant and every other person who is a party to the proceeding. **Section 1** also establishes that failure to file such an answer will result in the issuance of a decision and order by the Labor Commissioner based solely on the facts presented in the complaint.

Existing regulations authorize a public body which has awarded a contract for a public work to investigate possible violations of the prevailing wage requirements. Upon the conclusion of such an investigation, the awarding body is required to issue a determination in writing and to submit a copy of a determination to the Labor Commissioner. (NAC 338.110) **Section 19** of this regulation provides that the awarding body is not required to submit a copy of such a determination to the Labor Commissioner if the determination solely concerns the late submittal of a certified payroll report, unless an objection to the determination is filed. **Section 19** also requires the awarding body to submit to the Labor Commissioner any information gathered during such an awarding body's investigation and authorizes the awarding body, in making its determination regarding whether a violation occurred, to rely on certain information obtained through a subpoena issued by the Labor Commissioner. **Section 20** of this regulation provides that the Labor Commissioner, within 30 days after receipt of a determination issued by an awarding body, will take certain action in response to the determination, which may include conducting his or her own investigation into the alleged violation. Existing regulations require a hearing held by the Labor Commissioner on a determination issued by an awarding body or the Labor Commissioner to be conducted in accordance with the procedures in existing regulations governing hearings by the Labor Commissioner to enforce the labor laws. (NAC 338.116) **Section 22** of this regulation requires such a hearing to also be conducted in accordance with the Nevada Administrative Procedure Act.

Existing law requires a contractor or subcontractor to submit a certified payroll report containing certain information to the public body which awarded the contract for the public

work. (NRS 338.070; NAC 338.094) Existing regulations require an awarding body to cause an examination of the certified payroll reports to assure compliance with the prevailing wage requirements and authorizes the awarding body to request from a contractor or subcontractor payroll records and any other records deemed necessary to verify the accuracy of information contained in any certified payroll report. (NAC 338.094, 338.096) **Section 15** of this regulation provides that the Labor Commissioner will cause an examination of the certified payroll reports and revises certain requirements if such an examination is conducted. **Section 15** also requires an awarding body to report certain information and prevailing wage law violations to the Labor Commissioner. **Section 14** of this regulation authorizes the Labor Commissioner to request payroll records and any other records deemed necessary to verify the accuracy of information contained in any certified payroll report.

Section 16 of this regulation provides that the Labor Commissioner or an awarding body may require a contractor or subcontractor to submit a final nonperformance payroll report or other documentation demonstrating that the work is completed and no further work will be performed on the public work if the contractor or subcontractor does not employ any employees for 3 consecutive months. **Section 16** also requires an awarding body to make certain payroll reports and records available electronically to the Labor Commissioner and the public as soon as practicable if the awarding body uses an electronic system for payroll reporting.

Existing law requires a contractor or subcontractor to report to the Labor Commissioner and the public body certain information regarding each subcontractor whom the contractor or subcontractor engages for work on a public work. (NRS 338.013) **Section 13** of this regulation makes changes to conform with that requirement.

Sections 10 and 23 of this regulation remove provisions that conflict with or are duplicative of certain provisions of statute as a result of amendments to those statutes in the 2019 Legislative Session.

Section 18 of this regulation provides that the Labor Commissioner will accept anonymous complaints and, if the Labor Commissioner determines that further investigation is warranted based upon such a complaint, provides that the Labor Commissioner will serve a copy of the complaint upon the person alleged to have committed a violation.

During the 2017 Legislative Session, Senate Bill No. 516 was enacted, which amended various provisions regarding apprenticeships in this State. **Sections 2, 5 and 14** of this regulation make changes to conform with that legislation. **Section 14** also requires a contractor or subcontractor to submit documentation on the form prescribed by the Labor Commissioner, if such a form has been prescribed, when first listing an apprentice on a certified payroll report.

Sections 3, 7, 12, 17 and 21 of this regulation make conforming changes.

Section 1. Chapter 338 of NAC is hereby amended by adding thereto a new section to read as follows:

1. Within 15 days after being served a complaint pursuant to NAC 338.107, the person alleged to have committed the violation which is the subject of the complaint shall file an answer to the complaint with the Labor Commissioner and serve a copy of the answer on the complainant, if the identity of the complainant is included in the complaint, and every other person who is a party to the proceeding.

2. Matters that are alleged as an affirmative defense must be separately stated and numbered.

3. If, after reviewing the complaint and answer, the Labor Commissioner determines that further investigation is warranted, the Labor Commissioner will order the awarding body to conduct such further investigation pursuant to NAC 338.110, or the Labor Commissioner will conduct his or her own investigation. Complaints filed against the awarding body for which further investigation is warranted will be investigated by the Labor Commissioner.

4. If no answer is timely filed and served pursuant to subsection 1, the Labor Commissioner will determine that the person alleged to have committed the violation is in default and, within 30 days after the determination of a default, issue a decision and order based solely on the facts as presented in the complaint. A decision issued by the Labor Commissioner pursuant to this subsection constitutes the final order of the Labor Commissioner on the matter.

Sec. 2. NAC 338.0052 is hereby amended to read as follows:

338.0052 “Apprentice” means a person employed and individually registered in a bona fide apprenticeship program ~~with:~~

~~—1. 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~~

~~—2. The State Apprenticeship Council pursuant to~~ *in accordance with* chapter 610 of NRS and any regulations adopted pursuant thereto.

Sec. 3. NAC 338.008 is hereby amended to read as follows:

338.008 The existence *or nonexistence* 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 section 1 of this regulation.*

Sec. 4. NAC 338.009 is hereby amended to read as follows:

338.009 1. As used in NRS 338.040, the Labor Commissioner will interpret:

(a) “Employed at the site of a public work” to mean the performance of work in the execution of a contract for a public work at the physical place or places at which the work is performed or at which a significant portion of the public work is constructed, altered or repaired if such place is established specifically for the execution of the contract for the public work or dedicated exclusively, or nearly so, to the execution of the contract for the public work.

(b) “Necessary in the execution of the contract for the public work” to mean the performance of duties required to construct, alter or repair the public work and without which the public work could not be completed.

(c) The terms interpreted in paragraphs (a) and (b) to not include an instance in which a person provides services to the prime contractor or a subcontractor at the site of a public work for a limited period of time if the services provided:

(1) Do not include work typically performed by a recognized class of workers; and

(2) Are incidental or ancillary to the construction, repair or reconstruction of the public work.

2. As used in this section, “site of a public work” includes job headquarters, a tool yard, batch plant, borrow pit or any other location that is established for the purpose of executing the contract for the public work or that is dedicated exclusively, or nearly so, to executing the contract for the public work. The term does not include a permanent home office, branch plant establishment, fabrication plant, tool yard or any other operation of a contractor, subcontractor or supplier if the location or the continued existence of the operation is determined without regard to a particular public work.

Sec. 5. 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 section 1 of this regulation:*

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

(b) Each contractor and subcontractor shall be deemed to be the employer of each worker and apprentice who performs work directly for that contractor or subcontractor in the execution of a contract for a public work, whether the worker 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~~ *does* 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~~ *meet the definition of an apprentice set forth in NAC 338.0052* 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 workers. 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 workers.

3. Nothing in this section shall be construed as providing the Labor Commissioner with jurisdiction over collective bargaining disputes involving the assignment of work in accordance with established practice or a collective bargaining agreement.

Sec. 6. NAC 338.010 is hereby amended to read as follows:

338.010 1. Based on the information described in subsection ~~{2}~~ **1** of NAC 338.020, the Labor Commissioner will determine the prevailing rate of wages paid to each recognized class of workers in a ~~{locality}~~ **region** as follows:

(a) Where the rate of wages is the same for the majority of the total hours worked by a recognized class of workers who are employed in the ~~{locality}~~ **region** on construction similar to the proposed construction, *including, without limitation, rates of wages that were collectively bargained*, that rate will be determined as the prevailing rate.

(b) Where there is no such majority, the prevailing rate for the recognized class of workers will be determined as:

(1) The rate of wages paid for the greater number of hours worked by the recognized class of workers if that number constitutes 40 percent or more of the total number of hours worked by the recognized class of workers; or

(2) The average rate of wages paid per hour, based on the number of hours worked per rate, to a recognized class of workers who are employed if the number of hours paid at the same rate is less than 40 percent of the total number of hours worked by the recognized class of workers.

(c) ~~If no similar~~ *When calculating the prevailing wage in a region in accordance with NRS 338.030, if no construction similar to the proposed* construction has been performed within the ~~locality~~ *region* in the past ~~year~~ *2 years*, the Labor Commissioner will consider ~~wage rates~~ *the prevailing rate of wages* paid ~~on the nearest similar project of construction in this State~~ *in:*

(1) *The Northern Rural Prevailing Wage Region, when calculating the prevailing wage for the Washoe Prevailing Wage Region;*

(2) *The Washoe Prevailing Wage Region, when calculating the prevailing wage for the Northern Rural Prevailing Wage Region;*

(3) *The Southern Rural Prevailing Wage Region, when calculating the prevailing wage for the Clark Prevailing Wage Region; and*

(4) *The Clark Prevailing Wage Region, when calculating the prevailing wage for the Southern Rural Prevailing Wage Region.*

2. If the Labor Commissioner determines that the prevailing rate of wages for a recognized class of workers is a wage which has been collectively bargained, the Labor Commissioner ~~may consider wage and benefit adjustments and~~ *will use the job* classifications, *scope of work and*

job descriptions for the recognized class of workers established in the collective bargaining agreement ~~and may adjust the prevailing rate of wages for the recognized class of workers in accordance with wage and benefit adjustments and classifications of workers in the collective bargaining agreement.~~ *for the time period for which the collectively bargained wage is the prevailing rate of wages for that class of workers.*

3. Nothing in this section shall be construed as authorizing the Labor Commissioner to create a new job classification, scope of work or job description for a recognized class of work without first conducting a hearing as required by NAC 338.090.

4. As used in this section, “construction similar to the proposed construction” means any construction other than the construction of:

(a) A single-family residence; or

(b) A multifamily residence that is not more than three stories in height.

Sec. 7. NAC 338.015 is hereby amended to read as follows:

338.015 1. The subclassifications within the recognized classes of workers include, without limitation:

(a) Foreman. A foreman is a person who works with and supervises one or more journeymen performing a craft or type of work.

(b) General foreman. A general foreman is a person who works with and supervises one or more journeymen performing a craft or type of work, including, without limitation, one or more foremen.

(c) Journeyman. A journeyman is a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker or unskilled worker performing a craft or type of work.

2. The Labor Commissioner will consider the kind of information described in subsection ~~2~~ **1** of NAC 338.020 to determine the applicable prevailing wage for each craft or type of work among the recognized class of workers.

Sec. 8. NAC 338.017 is hereby amended to read as follows:

338.017 A worker who performs the craft of truck driver shall be deemed to be employed on a public work *only* while:

1. Transporting materials at the site of a public work; ~~or~~
2. Transporting materials between the sites of a public work ~~+~~; *or*
3. *Transporting materials to the site of a public work on a workday in which the worker is engaged exclusively in transporting materials to the site of the public work.*

Sec. 9. NAC 338.020 is hereby amended to read as follows:

338.020 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 *pursuant to NRS 338.030* include:

(a) Statements showing rates of wages , *bona fide fringe benefits* paid on public and private projects, where the statements are signed by the contractors or their representatives and contain:

- (1) The names and addresses of the contractors and subcontractors;
- (2) The locations, ~~{approximate costs,}~~ *project names and approximate* dates of construction ~~{and types of projects,}~~ *within the survey period;*

(3) The number of hours each recognized class of workers is employed on each project;
and

(4) The respective ~~rates of~~ wages , *as defined in NRS 338.010*, paid to each recognized class of workers employed on each project.

(b) Signed collective bargaining agreements that are on file with the Labor Commissioner on or before September 1 of each year preceding the ~~annual~~ *biennial* determination of the prevailing rates of wages.

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

~~—3.~~ **2.** When determining prevailing rates of wages, the Labor Commissioner may , *as he or she determines is in the best interest of the State*, exclude from consideration any information submitted to him or her that is untimely filed, duplicative, incomplete or determined by the Labor Commissioner to be unverifiable.

~~4.~~ **3.** As used in this section, “representative” means:

(a) An agent, officer or employee of a contractor or subcontractor who has been authorized to act in such a capacity by the contractor or subcontractor; or

(b) Any other person empowered by a written agreement with the contractor or subcontractor that authorizes the person to act on behalf of the contractor or subcontractor in submitting the information required pursuant to paragraph (a) of subsection ~~2.~~ **1.**

Sec. 10. 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 the Labor Commissioner issues an amendment to a determination of prevailing rates of wages, the prevailing rates of wages that are set forth in the amendment:~~

~~—(a) Will be~~ *An adjustment in the prevailing rate of wages pursuant to NRS 338.030 becomes* effective:

~~{(1)}~~ (a) On the date specified ~~{in the amendment,}~~ *by the Labor Commissioner upon issuing or reissuing the prevailing rate of wages for a class of workers;* or

~~{(2)}~~ (b) If an effective date is not specified ~~{in the amendment,}~~ *by the Labor Commissioner,* 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} or reissuance of the prevailing rate of wages.~~

2. *An adjustment in the prevailing rate of wages pursuant to NRS 338.030 expires* 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,}~~ *region,* it may request the Labor Commissioner to make a new determination of the prevailing wages in the ~~{locality,}~~ *region.* Such a request must be accompanied by the information outlined in paragraph (a) of subsection ~~{2}~~ *1* of NAC 338.020.

Sec. 11. NAC 338.050 is hereby amended to read as follows:

338.050 ~~{At the request of a public body or upon}~~ *Upon* his or her own initiative ~~{,}~~ *or at the request of any person who is required to be heard pursuant to subsection 5 of NRS 338.030,* the Labor Commissioner will correct any determination of prevailing wages which he or she has issued if he or she finds that it contains a clerical error. A correction is applicable to

all projects bid after the correction becomes effective ~~§~~ *and to projects bid before the correction becomes effective to the extent provided by NRS 338.030.*

Sec. 12. NAC 338.070 is hereby amended to read as follows:

338.070 The Labor Commissioner will regard himself or herself as being in doubt concerning a prevailing rate of wages in a ~~locality~~ *region* and will hold the required hearing in the ~~locality~~ *region* whenever the Labor Commissioner finds that:

1. The data within his or her possession are not substantial enough; or
2. His or her other means of obtaining information are inadequate,

↳ to enable him or her to determine the prevailing rate of wages for any recognized class of workers in the ~~locality~~ *region*.

Sec. 13. NAC 338.092 is hereby amended to read as follows:

338.092 1. 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 report must include, without limitation:

- (a) The name of the owner or principal of the subcontractor;
- (b) The telephone number and facsimile number, if any, of the subcontractor;
- (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 *or the public body that awarded the contract* pursuant to subsection 1.

3. A contractor engaged on a public work has the burden of proof in substantiating that he or she reported any subcontractors whom the contractor has engaged for work on the public work to the Labor Commissioner *and the public body that awarded the contract* 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. 14. NAC 338.094 is hereby amended to read as follows:

338.094 1. Each certified payroll report:

(a) May be submitted *electronically* 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~~ 5 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~~ *bona fide fringe benefits provided in the name* of a worker as authorized by NRS 338.035, if any such contributions were made as part of the wages of that worker.

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

- (a) Based on the type of work actually performed by the workers;
- (b) Based on the number of hours worked per worker per day; and
- (c) In accordance with the recognized classes of workers.

↳ Such a report must not include any hours of work performed by the workers 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, *on such forms as the Labor Commission may prescribe*, 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.~~ *meets the definition of apprentice as provided in NAC 338.0052 and that the hours and wages of any such apprentice have been accurately reported in the certified payroll report.*

4. Upon the request of the awarding body ~~or~~ *or the Labor Commissioner*, a contractor or subcontractor engaged on a public work shall provide to the ~~awarding body~~ *requesting entity* payroll records and any other records deemed necessary by the ~~awarding body~~ *requesting entity* to verify the accuracy of information contained in any certified payroll report submitted by the contractor or subcontractor.

Sec. 15. NAC 338.096 is hereby amended to read as follows:

338.096 1. An awarding body shall cause *, or the Labor Commissioner will cause,* such an examination of the certified payroll reports of a contractor or subcontractor to be made 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 section 1 of this regulation*. Such an examination ~~{may}~~ *must* include, *or, if conducted by the Labor Commissioner will include*, without limitation:

(a) ~~{Verifications with employees of the contractor or subcontractor}~~ *Verification* of the wages *entered into the payroll system, wages that were actually paid, validation settings in the payroll system and self-audit and preventative measures established by the contractor or subcontractor to ensure the correct wages are* paid ~~{to and}~~ *for* 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 ~~{}~~ *or documentation demonstrating that the use of apprentices was not required for the project or was waived by the Labor Commissioner*; and

(d) Evidence of payments ~~{to}~~ *of bona fide* fringe ~~{benefit plans,}~~ *benefits*, if any ~~{}~~, *and, if so, a description of any such benefits, the amount of any such benefits, the frequency with which such benefits were paid and, if applicable, the plan or group name.*

2. In conducting an examination pursuant to this section, an awarding body shall verify ~~{}~~ *and report to the Labor Commissioner upon request*:

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

(b) The ratio of apprentices to journeymen authorized under the registered program of apprenticeship ~~{}~~ *and the percentage of apprentices under the registered program that were used.*

3. Except for the late submittal of a certified payroll report pursuant to subsection 6 of NRS 338.070, an awarding body shall report to the Labor Commissioner any potential violation of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, and section 1 of this regulation discovered during the examination of the certified payroll reports. Such a report to the Labor Commissioner must include, if applicable, documentation identifying any error in payroll reporting and a description of any subsequent corrective action or audit taken by the contractor, subcontractor or awarding body.

Sec. 16. 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 workers in any calendar month during which he or she 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~~ *subsection 6* 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 workers on the public work during that month. *If a contractor or subcontractor employs any worker on the public work in any calendar month after the submission of a nonperformance payroll report, the contractor or subcontractor shall submit a certified payroll report for that month to the awarding body as required by NRS 338.070 and NAC 338.094.*

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 15 days after the end of a month in which the contractor or subcontractor did not employ any workers on the public work.

3. *If a contractor or subcontractor engaged on a public work does not employ any workers for 3 consecutive calendar months on the public work, the Labor Commissioner or the awarding body may, as determined is in the best interest of the State, request that the contractor or subcontractor submit a final nonperformance payroll report or other documentation demonstrating that the contractor or subcontractor has completed all the work on the public work for which the contractor or subcontractor was engaged.*

4. *If the awarding body uses an electronic system for submission of payroll reports by contractors and subcontractors, the awarding body shall make the payroll reports and payroll records it has received pursuant to NRS 338.070 and NAC 338.092, 338.094 and 338.096 available electronically to the Labor Commissioner and the public as soon as practicable after the end of the month for which such payroll reports and records were filed.*

Sec. 17. NAC 338.105 is hereby amended to read as follows:

338.105 As used in NAC 338.105 to 338.116, inclusive, “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 section 1 of this regulation* has occurred.

Sec. 18. NAC 338.107 is hereby amended to read as follows:

338.107 1. ~~1A)~~ *Except as otherwise provided in subsection 2, a person filing a complaint, including a claim for wages, 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 section 1 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, 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 section 1 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.

2. The Labor Commissioner will accept a written anonymous complaint which alleges a violation of a provision of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125,

inclusive, and section 1 of this regulation has occurred with respect to a person other than the person filing the complaint if the person filing an anonymous complaint provides:

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

(b) A statement of facts and information supporting that an alleged violation of a provision of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, and section 1 of this regulation has occurred.

3. If, after reviewing a complaint submitted pursuant to subsection 2, the Labor Commissioner determines that further investigation is warranted, the Labor Commissioner will serve a copy of the complaint upon the person alleged to have committed the violation by:

(a) Personal service; or

(b) Regular mail.

4. The Commissioner will not accept a complaint submitted pursuant to this section that is based on an act or omission that occurred more than 24 months before the date on which the complaint is filed with the Commissioner.

Sec. 19. NAC 338.110 is hereby amended to read as follows:

338.110 1. Upon its own initiative or ~~upon notice from~~ *at the order of* the Labor Commissioner ~~of a possible violation,~~ *pursuant to subsection 3 of section 1 of this regulation,* 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 section 1 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. 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, 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) *The results of any inspection conducted pursuant to NRS 607.150, which may include, without limitation, the inspection of the public work or any business office, plant, pit, yard or physical job site of the contractor or subcontractor, including any location designated by the contractor or subcontractor as a job site to perform work related to and necessary for the public work;*

(e) *Information obtained through a subpoena issued by the Labor Commissioner pursuant to NRS 607.210; and*

(f) 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, the determination ~~issued by~~ *of* the awarding body and shall:

- (a) ~~Submit~~ *Except as otherwise provided in subsection 9, 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 issues a determination that a contractor or subcontractor has failed to pay the correct wages to workers 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 workers and any applicable penalties.

6. In addition to submitting a copy of the determination issued by the awarding body to the Labor Commissioner pursuant to subsection 4, the awarding body shall 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;

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

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

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

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

(i) The identifying number requested from the Labor Commissioner by the public body pursuant to NRS 338.013 ~~+~~; *and*

(j) Any other information gathered during the investigation.

7. 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~~ *disputes* 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.

9. Unless a written objection is filed with the Labor Commissioner pursuant to subsection 8, an awarding body is not required to submit a copy of a determination to the Labor Commissioner pursuant to subsection 4 if the determination solely concerns the late submittal of a certified payroll report in violation of subsection 6 of NRS 338.070.

Sec. 20. 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 workers;
- (d) *Conduct his or her own investigation which may involve, without limitation, an inspection conducted pursuant to NRS 607.150 of the public work or any business office, plant, pit, yard or physical job site of the contractor or subcontractor, including any location*

designated by the contractor or subcontractor as a job site to perform work related to and necessary for the public work;

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

2. If, pursuant to subsection 1, the Labor Commissioner:

(a) Modifies a determination issued by an awarding body, the Labor Commissioner will serve a copy of the modified determination by 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.

(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 paragraph (a) of subsection 2 and who ~~is aggrieved by~~ *disputes* 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.

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

(a) The modified determination included an assessment of back wages owed to workers, 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 did not include an assessment of back wages owed to workers, 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 submitted to him or her by the awarding body pursuant to subsection 6 of NAC 338.110.

5. If:

(a) An objection is filed with the Labor Commissioner that does not meet the requirements of subsection 3; or

(b) An objection was not filed with the Labor Commissioner,

↳ the determination 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.

6. If, after holding a hearing 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 section 1 of this regulation*, the Labor Commissioner will issue a written decision, which will include, without limitation, the relevant facts and applicable laws on which the decision was based. The Labor Commissioner will serve a copy of the 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 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. 21. NAC 338.114 is hereby amended to read as follows:

338.114 1. If, after an investigation conducted by the Labor Commissioner ~~on~~ *on a complaint filed pursuant to NAC 338.107 or on a complaint filed against an awarding body*, 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 section 1 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 mail on:

- (a) The person who was alleged to have committed the violation;
- (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~~ *disputes* 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. If an objection to a determination issued by the Labor Commissioner pursuant to subsection 1 is filed with the Labor Commissioner 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 workers, 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 workers, 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 that does not meet the requirements of subsection 2; or

(b) An objection was not filed with the Labor Commissioner,

↳ the Labor Commissioner will issue an order affirming the determination issued by the Labor Commissioner. 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 section 1 of this regulation*, the Labor Commissioner will issue a written decision, which will include, without limitation, the relevant facts and applicable laws on which the decision was based. The Labor Commissioner will serve a copy of the 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 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. 22. NAC 338.116 is hereby amended to read as follows:

338.116 ~~At~~ *Except as otherwise provided in this section, at* a hearing held by the Labor Commissioner on a determination issued by an awarding body or the Labor Commissioner, the Labor Commissioner will use the procedures provided pursuant to *chapter 233B of NRS and chapter 607 of NAC* to conduct the hearing. *The provisions of subsection 8 of NAC 607.300 do not apply to a complaint filed pursuant to NAC 338.107 or to an investigation or hearing*

regarding whether a violation of a provision of NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, and section 1 of this regulation has occurred.

Sec. 23. NAC 338.0097 and 338.065 are hereby repealed.

TEXT OF REPEALED SECTIONS

338.0097 Payment of wages through contributions in name of worker to third person pursuant to fund, plan or program. (NRS 338.012, 338.035)

Contributions made pursuant to NRS 338.035 in the name of a worker to a third person pursuant to a fund, plan or program must be made in accordance with the provisions of NRS 608.060 and 608.070.

338.065 Prevailing rates of wages for contract for public work entered into without opening of bids. (NRS 338.012, 338.020, 338.030)

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.

