

LCB File No. R072-00

**PROPOSED REGULATION OF THE
OFFICE OF THE LABOR COMMISSIONER**

NOTICE OF INTENT TO ACT UPON A REGULATION

**Notice of Hearing for the Amendment of Regulations
of the Office of the Labor Commissioner**

The Office of the Nevada Labor Commissioner will hold a public hearing at 11:00 AM on April 25, 2000 at the Legislative Counsel Bureau, 401 S. Carson Street, Room 3143 Carson City, Nevada 89710. The purpose of the hearing is to receive comments from all interested persons regarding the Amendment of regulations that pertain to Chapter 338 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. **The need for and the purpose of the proposed regulations or amendment.** Amending NAC 338 would provide greater clarification, limitations, and guidance with regards to the methods of determining the prevailing rates of wages.
2. **Either the terms of the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.** The issues involved center on the survey methodology primarily, and secondarily, certain guidelines and procedures related to the types of information that may be used in the determination of the prevailing rates of wages.
3. **The estimated economic effect of the regulation on the business which it is to regulate and on the public.**
 - (a) **Adverse and beneficial effects:** There are no anticipated adverse effects on businesses and the public as a result of the proposed amendments. The beneficial effects will occur as a result of having clarified and provided greater direction with regards to the methods of determination for the prevailing rates of wages.
 - (b) **Both immediate and long term effects:** The results of the amendments should be realized immediately, upon passage. Both short term and long term effects should include outcomes that are more reflective of inputs.
4. **The estimated cost to the agency for enforcement of the proposed regulation:** It is expected that additional expenses shall not be incurred by the agency in the enforcement of the proposed amendments. In actuality, by clarifying and providing greater guidance, the agency should be able to operate in a more efficient manner with regards to its

responsibilities in this area.

5. **A description of and citation to any regulation of other state or local government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency:** The proposed amendments do not contribute in any way, to duplicative or overlapping functions with regards to other local, state, and federal government agencies.
6. **If the regulation is required pursuant to federal law, a citation and description of federal law:** N/A
7. **If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions:** N/A
8. **Whether the proposed regulation establishes a new fee or increases an existing fee:** N/A

Persons wishing to comment upon the proposed action of the Office of the Labor Commissioner may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form to:

State of Nevada
Office of the Labor Commissioner
Attn: Terry Johnson, Labor Commissioner
555 E. Washington Avenue Suite 4100
Las Vegas, NV 89101

Written submissions must be received by the Office of the Labor Commissioner on or before May 5, 2000. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Office of the Labor Commissioner may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be amended will be available at:

Office of the Labor Commissioner
555 E. Washington Avenue Suite 4100
Las Vegas, NV 89101

Office of the Labor Commissioner
1445 Hot Springs Road Suite 109
Carson City, NV 89706

and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative

Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. **Copies of this notice and the proposed regulation will also be mailed to members of the public upon request.** A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption. (NRS 233B.064)

This notice of hearing has been posted at the following locations:

Grant Sawyer State Office Building
555 E. Washington Avenue
Las Vegas, NV 89101

Bradley State Office Building
2501 E. Sahara Avenue
Las Vegas, NV 89104

Carson City District Courthouse
885 E. Musser Street
Carson City, NV 89706

PROPOSED REGULATION OF THE OFFICE OF THE LABOR COMMISSIONER

Notice of Workshop to Solicit Comments on Proposed Regulation

The Office of the Nevada Labor Commissioner, 555 E. Washington Avenue, Ste. 4100, Las Vegas, NV 89101, (702) 486-2650, is proposing the amendment of regulations pertaining to Chapter 338 of the Nevada Administrative Code. A workshop has been set for 9:00 AM on April 25, 2000 at the Legislative Counsel Bureau, 401 S. Carson Street, Carson City, NV 89710. The purpose of the workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations:

Prevailing Wage Method of Determination
Prevailing Wage Survey Methodology
Types of Information to be used in prevailing wage determinations

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting the Office of the Nevada Labor Commissioner, 555 E. Washington Avenue, Ste. 4100, Las Vegas, NV 89101, (702) 486-2650. A reasonable fee for copying may be charged.

This Notice of Workshop to Solicit Comments on Proposed Regulation has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Grant Sawyer State Office Building
555 E. Washington Avenue
Las Vegas, NV 89101

Bradley State Office Building
2501 E. Sahara Avenue
Las Vegas, NV 89104

Carson City District Courthouse
885 E. Musser Street
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*Items enclosed in ~~brackets~~ represent material to be deleted.
*Items that are *italicized* represent a new section being added.

CHAPTER 338

PUBLIC WORKS PROJECTS

DETERMINATION OF PREVAILING RATE OF WAGES

- 338.010 Method of determination.*
- 338.020 Compilation of information for use in determining prevailing rates.*
- 338.030 Information to be submitted to labor commissioner.*
- 338.040 Duration of determination; use of rates after expiration; request for new determination.*
- 338.050 Correction of clerical error in determination.*
- 338.060 Copies of determinations.*
- 338.070 Doubt concerning prevailing rate of wages.*
- 338.080 Sliding scale of penalties.*

DETERMINATION OF PREVAILING RATE OF WAGES

NAC 338.010 is hereby amended to read as follows:

NAC 338.010 Method of determination. *Utilizing the information outlined in subsection 2 of NAC 338.020*, the labor commissioner will determine the prevailing rate of wages paid to each *recognized* class of workmen in a locality as follows:

1. Where the majority of a class of workmen, *based on hours worked*, who are employed in the locality on construction similar to the proposed construction are paid wages at the same rate, that rate will be determined as the prevailing rate.
2. Where there is no such majority, the prevailing rate for the class will be determined as ~~is~~

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

~~—(b) The average rate paid to those so employed if the number of workmen paid at the same rate is less than 30 percent of those so employed.]~~ *the weighted average rate paid, based on hours worked, to those so employed in the locality on construction similar to the proposed construction.*

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

NAC 338.020 is hereby amended to read as follows:

NAC 338.020 Compilation of information for use in determining prevailing rates.

1. The labor commissioner will conduct a continuing program of obtaining and compiling information for use in determining prevailing rates of wages *and at his discretion may exclude information submitted that is duplicative, incomplete, or otherwise found to be inaccurate or unverifiable.*

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

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

- (1) The names , ~~[and]~~ addresses , *and signatures* of the contractors and subcontractors;
- (2) The locations, approximate costs, dates of construction and types of projects;
- (3) The number of workmen employed in each class on each project; and
- (4) The respective rates of wages paid to such workmen.

(b) Signed collective bargaining agreements *on file with the Office of the Labor Commissioner within 30 days of their effective date.*

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

Chapter 338.020 of NAC is hereby amended by adding thereto a new section to read as follows:

Sec. 3. *Wage and Benefit Adjustments.* *The labor commissioner may take cognizance of wage and benefit adjustments and group classifications established in collective bargaining agreements for those trades or occupations where the most recently established prevailing wage rates were derived from a collective bargaining agreement.*

NAC 338.030 Information to be submitted to labor commissioner. At the beginning of its fiscal year each public body shall furnish the labor commissioner with the following information for the coming year:

1. The estimated number of projects of public work for which it will require determinations of prevailing wages by the labor commissioner;
2. The anticipated types of construction which will be involved; and
3. The locations of the construction.

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

1. A determination by the labor commissioner of the prevailing rates of wages in a locality remains effective for 1 year after the date on which the determination is issued except as otherwise provided in this section.
2. If a determination of prevailing rates expires between the opening of bids and the award of a contract for a particular project of public work, the labor commissioner, upon receiving a written notice of that fact, will allow the prevailing rates used for the bids to apply for the duration of the project.
3. If a public body believes that a pattern of wages is not clearly established in a locality, it may request the labor commissioner to make a new determination of the prevailing wages in the locality. Such a request must be accompanied by the information outlined in paragraph (a) of subsection 2 of NAC 338.020.

Chapter 338.050 of NAC is hereby amended to read as follows:

NAC 338.050 Correction of clerical error in determination. At the request of a public body or upon his own initiative, the labor commissioner will correct any determination of prevailing wages which he has issued if he finds that it contains a clerical error. *Any corrections of determinations established pursuant to this section shall expire upon issuance of the next regularly scheduled prevailing rates of wages.*

Chapter 338.060 of NAC is hereby amended to read as follows:

NAC 338.060 Copies of determinations. Copies of the labor commissioner's determinations of prevailing rates of wages are available at his office and will be furnished to

public bodies and interested persons upon request *beginning on the 20th day of September of each year with an effective date of the following 1st day of October for the applicable time period.*

NAC 338.070 Doubt concerning prevailing rate of wages. The labor commissioner will regard himself as being in doubt concerning a prevailing rate of wages in a locality and will hold the required hearing in the locality whenever he finds that:

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

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

NAC 338.080 Sliding scale of penalties. (NRS 338.060)

1. If the state contractors' board has established a monetary limit on the license of a contractor pursuant to NRS 624.220, the amount of any penalty imposed against the contractor pursuant to NRS 338.060 must be:

- (a) If the monetary limit is less than \$250,000, \$10 for each calendar day or portion thereof.
- (b) If the monetary limit is \$250,000 or more but less than \$500,000, \$15 for each calendar day or portion thereof.
- (c) If the monetary limit is \$500,000 or more but less than \$750,000, \$20 for each calendar day or portion thereof.
- (d) If the monetary limit is \$750,000 or more, \$25 for each calendar day or portion thereof.

2. If the state contractors' board has not established a monetary limit on the license of a contractor or has removed a monetary limit established on his license, the amount of the penalty imposed against the contractor pursuant to NRS 338.060 must be \$25 for each calendar day or portion thereof.