

LCB File No. T017-02

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

**Notice of Workshop to Solicit Comments on Proposed Regulation
Notice of Intent to Act Upon a Regulation**

The Office of the Nevada Labor Commissioner, 555 E. Washington Avenue, Suite 4100, Las Vegas, NV 89101, (702) 486-2650, is proposing the amendment of regulations pertaining to Chapter 338 of Nevada Administrative Code. A workshop has been set for October 31, 2002 at 9:00AM at the Business & Industry Hearing Room on Fairview Drive in Carson City. A public hearing will be November 15, 2002 at the 555 E. Washington Avenue, Room 4412, Las Vegas, Nevada. The due date for submitting written information will be November 8, 2002. 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:

- a. Notification of prime contractors when awarding bodies conduct prevailing wage investigations.
- b. Notifications of contractors when awarding bodies have made determinations in prevailing wage investigations.
- c. Notifications of parties when the Labor Commissioner has issued decisions 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 Labor Commissioner, 555 E. Washington Avenue, Suite 4100, Las Vegas, NV 89101 or by calling (702) 486-2650.

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

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

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

Grant Sawyer State Office Building (Lobby)
555 E. Washington Avenue
Las Vegas, NV

Legislative Building
401 S. Carson Street
Carson City, NV

Office of the Labor Commissioner
675 Fairview Drive, Suite 226
Carson City, Nevada 89701

State of Nevada Bradley Building
2501 Sahara Avenue
Las Vegas, NV

The Nevada Labor Commissioner will hold a public hearing at 10:00 AM, on November 15, 2002 at the 555 E. Washington Avenue, Room 4412, Las Vegas, Nevada. The purpose of the hearing is to solicit testimony from all interested persons regarding the amendment of regulations that pertain to Chapter 338 of NAC.

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

1. The need for and the purpose of the proposed regulation or amendment.

Regulations are needed primarily to provide for earlier notification of contractors that are the subject of prevailing wage investigations by awarding bodies.

2. Either the terms or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.

Subjects involved include:

- a. Provide that awarding bodies making determinations of prevailing wage violations will notify the contractors at the same time the determination is forwarded to the Labor Commissioner for review.
- b. Provide for the filing of objections to determinations made by awarding bodies with the labor Commissioner.

3. The estimated economic effect of the regulation on the business which it is to regulate and on the public.

- a. **Adverse Effects:** No adverse effects are contemplated.
- b. **Beneficial Effects:** The new procedural regulations will shorten the time needed to resolve prevailing wage investigations by providing notice to contractors of the awarding bodies' determinations approximately three weeks earlier than under the current regulation.
- c. **Immediate effects:** Determinations will be addressed more quickly.
- d. **Long Term effects:** Determinations will be processed in a more expeditious and focused manner.

4. The estimated cost to the agency for enforcement of the proposed regulation.

It is not anticipated that the agency will see any increased costs as a result of these changes.

5. A description of and citation to any regulations of other state or local governmental 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 regulations would not duplicate the regulations of any other state or federal agency. and would eliminate the duplication that currently exists between NAC 607 and NAC 610, the

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

The proposed regulations are not required pursuant to federal law.

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

The proposed regulations are not more stringent than federal regulations governing the same activities.

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

The proposed regulation does not establish a new fee nor increases an existing fee.

Persons wishing to comment upon the proposed action of Office of the Labor Commissioner may appear at the scheduled public workshop or hearing or may address their comments, data, views, or arguments, in written form, to Terry Johnson, Nevada Labor Commissioner, 555 E. Washington Avenue Suite 4100, Las Vegas, Nevada 89101. Written submissions must be received by the Labor Commissioner on or before **November 8, 2002**. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Labor Commissioner may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted 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 adopted will be available at the Labor Commissioner's website located at www.laborcommissioner.com, at the offices of the Labor Commissioner, located at 555 E. Washington Avenue, Suite 4100, Las Vegas, Nevada and 675 Fairview Drive, Suite 226, Carson City, Nevada, respectively, 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.

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

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

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

Grant Sawyer State Office Building (Lobby)
555 E. Washington Avenue
Las Vegas, NV

Legislative Building
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675 Fairview Drive, Suite 226
Carson City, Nevada 89701

State of Nevada Bradley Building
2501 Sahara Avenue
Las Vegas, NV

TERRY JOHNSON
Nevada Labor Commissioner

By: _____
MICHAEL TANCHEK
Deputy Labor Commissioner

Date _____

PROPOSED TEMPORARY REGULATION OF THE OFFICE OF THE LABOR COMMISSIONER

OCTOBER 11, 2002

EXPLANATION- Matter that is *italicized* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-5, NRS 338.012, NRS 233B.040-050; §2, NRS 338.020; §§3-5, NRS 338.015, 338.060, 338.070, 338.090

Section 1. Chapter 338 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 through and 5 of this regulation.

Section 2. NAC 338.0095 is hereby amended to read as follows:

NAC 338.0095 Workmen and apprentices: Payment based on type of work actually performed and in accordance with recognized class of workmen; identification of employer. (NRS 338.012, 338.020, 338.050)

1. For the purposes of NRS 338.010 to 338.090, inclusive, and NAC 338.005 to 338.125, inclusive:

(a) A workman employed on a public work must be paid *the applicable prevailing wage rate* based on 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. 3. NAC 338.110 is hereby amended to read as follows:

NAC 338.110 Determination by awarding body: Procedure; factors for consideration; objections; action by labor commissioner. (NRS 338.012, 338.070)

1. Upon its own initiative or upon notice 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 NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, was committed in the

course of the execution of a contract for a public work that was awarded by the awarding body. *Upon commencing an investigation upon its own initiative, the awarding body shall notify the labor commissioner in writing as soon as is practicable.* 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.

2. An 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, and shall transmit a copy of the determination to the labor commissioner~~[-],~~ *the contractor and, if the contractor is a subcontractor, then to the prime contractor and any intermediate subcontractors, and any person who filed a claim or complaint with the labor commissioner relating to the investigation* ~~[in writing of its determination and resulting actions].~~

5. If, after an investigation, an awarding body determines 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]~~ *transmit a copy of the determination to* the labor commissioner, *the contractor and, if the contractor is a subcontractor, then to the prime contractor and any intermediate subcontractors, and any person who filed a claim or complaint with the labor commissioner relating to the investigation* ~~[in writing of its determination and resulting actions].~~

6. In addition to transmitting a copy of its determination to the labor commissioner pursuant to subsections *4 and 5*, an awarding body shall transmit to the labor commissioner the following information pertaining to the determination:

(a) A detailed narrative of the findings of the investigation;

(b) The name and address of the contractor or subcontractor and its responsible officers *and, if the contractor is a subcontractor, then the prime contractor and any intermediate subcontractors*;

(c) 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) Copies of any claims or complaints received by the awarding body from the labor commissioner relating to the investigation;

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

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

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

(h) The awarding body shall make the information set forth in subsections (a) through (g) available on request to the other parties to the proceeding.

7. A person who has been served a copy of a determination pursuant to subsection 5 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 awarding body shall insert language to this effect in the determination.

~~7~~8. Within ~~20~~ 30 days after receipt of a determination issued by an awarding body pursuant to subsections 4 *and* 5, 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 ~~and~~;

(c) Set the matter for an administrative hearing; or

(d) Decline to assert any further jurisdiction over the matter.

Sec. 4. NAC 338.112 is hereby amended to read as follows:

NAC 338.112 Determination by awarding body: Service by labor commissioner; filing of objection; hearing; disposition. (NRS 338.012, 338.015)

1. If, pursuant to paragraph (b) of subsection ~~7~~8 of NAC 338.110, the labor commissioner affirms or 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. A person who has been served a copy of a determination 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.

3. Except as otherwise provided in subsection 4, if an objection to a determination issued by an awarding body is filed with the labor commissioner within the period for objection prescribed in 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 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 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 to him by the awarding body pursuant to subsection 6 of NAC 338.110.

4. If:

(a) An objection is filed with the labor commissioner within the period for objection prescribed in 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 determination of the awarding body 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 an awarding body, the labor commissioner finds that a contractor or subcontractor violated NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, 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. 5. NAC 338.114 is hereby amended to read as follows:

NAC 338.114 Determination by labor commissioner: Issuance and service; filing of objection; hearing; disposition. (NRS 338.012, 338.015)

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 NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, 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 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.

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 shall insert language to this effect in the determination.*

3. Except as otherwise provided in subsection 4, 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 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 is filed with the labor commissioner within the period for objection prescribed in 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 determination issued by the labor commissioner pursuant to this section 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 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 NRS 338.010 to 338.090, inclusive, or NAC 338.005 to 338.125, inclusive, 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.