

SENATE BILL NO. 16—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE LABOR COMMISSIONER)

PREFILED DECEMBER 13, 2010

Referred to Committee on Government Affairs

SUMMARY—Makes various changes relating to the establishment of prevailing wages. (BDR 28-478)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

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

AN ACT relating to labor; making various changes relating to the establishment of prevailing wages in each county; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Under existing law, the Labor Commissioner is required to determine and file  
2 annually in October the prevailing rate of wages to be paid to workers employed on  
3 public works in each county. To establish a prevailing wage in each county, the  
4 Labor Commissioner is required to survey contractors who have performed work in  
5 the county during the preceding year. (NRS 338.030; NAC 338.010-338.090)  
6 **Section 1** of this bill specifies that the annual survey of contractors is required to  
7 address private and public nonresidential construction work. In addition, when  
8 establishing the prevailing wages, **section 1** requires that if the prevailing rate of  
9 wages for a craft or type of work is a wage that has been collectively bargained, the  
10 Labor Commissioner must recognize the rate for the classes and subclasses of  
11 workers established in the collective bargaining agreement, excluding certain  
12 premium pay, and adjust the prevailing rate of wages to the rate of wages in the  
13 agreement that is in effect and on file with the Labor Commissioner by a specified  
14 date.

15 Within 30 days after the issuance of the determination of the prevailing wage in  
16 a county, a public body and certain persons are authorized under existing law to  
17 submit objections or information that would support a different prevailing wage. If  
18 the Labor Commissioner is in doubt as to the prevailing wage or receives such an  
19 objection or information, the Labor Commissioner is required to hold a hearing in  
20 the locality. (NRS 338.030) **Section 1** of this bill provides an exception to this  
21 hearing requirement if the Labor Commissioner addresses the objection or  
22 information through administrative action.

23 Under existing law, agencies of the Executive Branch of State Government,  
24 unless specifically exempted, are required to comply with the procedural



25 requirements of the Nevada Administrative Procedure Act when adopting  
26 administrative regulations to carry out their regulatory powers. (NRS 233B.039)  
27 The Nevada Supreme Court has ruled that the Labor Commissioner is inherently  
28 obligated to classify different jobs as part of the process of determining prevailing  
29 wages. (*City Plan Dev. v. Labor Comm'r*, 121 Nev. 419, 432 (2005)) The Nevada  
30 Supreme Court has also held that in the absence of an express exemption from the  
31 Nevada Administrative Procedure Act, the Labor Commissioner is required to  
32 comply with the Act when adding, deleting or substantially modifying a worker  
33 classification in the annual published list of prevailing wages. (*Labor Comm'r v.*  
34 *Littlefield*, 123 Nev. 35 (2007)) **Section 1** codifies this holding by requiring the  
35 Labor Commissioner to establish by regulation the classes of workers that will be  
36 included in the annual survey of contractors. Because no express exemption to the  
37 Nevada Administrative Procedure Act is included in this bill, the Labor  
38 Commissioner is required to comply with the Act when establishing those classes  
39 of workers. However, **section 2** of this bill exempts the Labor Commissioner from  
40 the Act when determining and issuing the prevailing rate of wages and establishing  
41 subclasses of workers to be surveyed in each county.

42 **Section 3** of this bill makes the requirements of the bill apply initially to the  
43 process of determining and issuing the prevailing wages that will become effective  
44 on October 1, 2012.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 338.030 is hereby amended to read as follows:  
2 338.030 1. The public body awarding any contract for public  
3 work, or otherwise undertaking any public work, *and any person*  
4 *who wishes to bid on a public work* shall ascertain from the Labor  
5 Commissioner the prevailing wage in the county in which the public  
6 work is to be performed for each craft or type of work.

7 2. To establish a prevailing wage in each county, including  
8 Carson City, the Labor Commissioner shall, annually, survey  
9 contractors who have performed *private or public nonresidential*  
10 *construction* work in the county. *As used in this subsection,*  
11 *“nonresidential construction work” means any type of*  
12 *construction other than the construction of multifamily residences*  
13 *which are less than four stories in height and the construction of*  
14 *single-family residences.*

15 3. *For the purpose of a survey conducted pursuant to*  
16 *subsection 2, the Labor Commissioner shall establish by*  
17 *regulation the classes of workers to be included in the survey.*

18 4. Within 30 days after the determination *of the prevailing*  
19 *wage in a county* is issued:

20 (a) A public body or person entitled under subsection ~~5~~ 7 to be  
21 heard may submit an objection to the Labor Commissioner with  
22 evidence to substantiate that a different wage prevails; and

23 (b) Any person may submit information to the Labor  
24 Commissioner that would support a change in the prevailing wage



1 of a craft or type of work by 50 cents or more per hour in any  
2 county.

3 ~~[3.—The]~~

4 **5. Except as otherwise provided in this subsection, the** Labor  
5 Commissioner shall hold a hearing in the locality in which the work  
6 is to be executed if the Labor Commissioner:

7 (a) Is in doubt as to the prevailing wage; or

8 (b) Receives an objection or information pursuant to **paragraph**  
9 **(a) or (b) of subsection ~~[2.] 4, unless the objection or information~~**  
10 **is addressed by the Labor Commissioner through administrative**  
11 **action, including, without limitation, the correction of a technical**  
12 **or clerical error.**

13 **↪ The Labor Commissioner may hold only one hearing a year on**  
14 **the prevailing wage of any craft or type of work in any county.**

15 ~~[4.] 6.~~ Notice of the hearing must be advertised in a newspaper  
16 nearest to the locality of the work once a week for 2 weeks before  
17 the time of the hearing.

18 ~~[5.] 7.~~ At the hearing, any public body, the crafts affiliated with  
19 the State Federation of Labor or other recognized national labor  
20 organizations, and the contractors of the locality or their  
21 representatives must be heard. From the evidence presented, the  
22 Labor Commissioner shall determine the prevailing wage.

23 ~~[6.] 8.~~ **If the Labor Commissioner determines that the**  
24 **prevailing rate of wages for a craft or type of work is a wage which**  
25 **has been collectively bargained, the Labor Commissioner shall:**

26 **(a) Recognize the rate for the classes and subclasses of**  
27 **workers established in the collective bargaining agreement,**  
28 **excluding any premium pay established in the collective**  
29 **bargaining agreement for:**

30 **(1) Subsistence, traveling to another zone or area or similar**  
31 **purposes;**

32 **(2) Shift differential;**

33 **(3) Overtime; or**

34 **(4) Work performed on a weekend or holiday; and**

35 **(b) Adjust the prevailing rate of wages for the classes and**  
36 **subclasses of workers to the rate of wages established in the**  
37 **collective bargaining agreement that is in effect and on file with**  
38 **the Labor Commissioner on or before September 1 of the year in**  
39 **which the determination of the prevailing rate of wages is made.**

40 **9.** The wages ~~[se]~~ determined **pursuant to this section** must be  
41 filed by the Labor Commissioner and must be available to any  
42 public body which awards a contract for any public work.

43 ~~[7.] 10.~~ Nothing contained in NRS 338.020 to 338.090,  
44 inclusive, may be construed to authorize the fixing of any wage  
45 below any rate which may now or hereafter be established as a



1 minimum wage for any person employed upon any public work, or  
2 employed by any officer or agent of any public body.

3 **Sec. 2.** NRS 233B.039 is hereby amended to read as follows:

4 233B.039 1. The following agencies are entirely exempted  
5 from the requirements of this chapter:

6 (a) The Governor.

7 (b) Except as otherwise provided in NRS 209.221, the  
8 Department of Corrections.

9 (c) The Nevada System of Higher Education.

10 (d) The Office of the Military.

11 (e) The State Gaming Control Board.

12 (f) Except as otherwise provided in NRS 368A.140, the Nevada  
13 Gaming Commission.

14 (g) The Division of Welfare and Supportive Services of the  
15 Department of Health and Human Services.

16 (h) Except as otherwise provided in NRS 422.390, the Division  
17 of Health Care Financing and Policy of the Department of Health  
18 and Human Services.

19 (i) The State Board of Examiners acting pursuant to chapter 217  
20 of NRS.

21 (j) Except as otherwise provided in NRS 533.365, the Office of  
22 the State Engineer.

23 (k) The Division of Industrial Relations of the Department  
24 of Business and Industry acting to enforce the provisions of  
25 NRS 618.375.

26 (l) The Administrator of the Division of Industrial Relations of  
27 the Department of Business and Industry in establishing and  
28 adjusting the schedule of fees and charges for accident benefits  
29 pursuant to subsection 2 of NRS 616C.260.

30 (m) The Board to Review Claims in adopting resolutions to  
31 carry out its duties pursuant to NRS 590.830.

32 *(n) The Labor Commissioner only in the process of*  
33 *determining and issuing the prevailing rate of wages and*  
34 *establishing subclasses of workers in each county pursuant to*  
35 *NRS 338.030.*

36 2. Except as otherwise provided in subsection 5 and NRS  
37 391.323, the Department of Education, the Board of the Public  
38 Employees' Benefits Program and the Commission on Professional  
39 Standards in Education are subject to the provisions of this chapter  
40 for the purpose of adopting regulations but not with respect to any  
41 contested case.

42 3. The special provisions of:

43 (a) Chapter 612 of NRS for the distribution of regulations by  
44 and the judicial review of decisions of the Employment Security



1 Division of the Department of Employment, Training and  
2 Rehabilitation;

3 (b) Chapters 616A to 617, inclusive, of NRS for the  
4 determination of contested claims;

5 (c) Chapter 703 of NRS for the judicial review of decisions of  
6 the Public Utilities Commission of Nevada;

7 (d) Chapter 91 of NRS for the judicial review of decisions of the  
8 Administrator of the Securities Division of the Office of the  
9 Secretary of State; and

10 (e) NRS 90.800 for the use of summary orders in contested  
11 cases,

12 ▶ prevail over the general provisions of this chapter.

13 4. The provisions of NRS 233B.122, 233B.124, 233B.125 and  
14 233B.126 do not apply to the Department of Health and Human  
15 Services in the adjudication of contested cases involving the  
16 issuance of letters of approval for health facilities and agencies.

17 5. The provisions of this chapter do not apply to:

18 (a) Any order for immediate action, including, but not limited to,  
19 quarantine and the treatment or cleansing of infected or infested  
20 animals, objects or premises, made under the authority of the State  
21 Board of Agriculture, the State Board of Health, or any other agency  
22 of this State in the discharge of a responsibility for the preservation  
23 of human or animal health or for insect or pest control;

24 (b) An extraordinary regulation of the State Board of Pharmacy  
25 adopted pursuant to NRS 453.2184; or

26 (c) A regulation adopted by the State Board of Education  
27 pursuant to NRS 392.644 or 394.1694.

28 6. The State Board of Parole Commissioners is subject to the  
29 provisions of this chapter for the purpose of adopting regulations but  
30 not with respect to any contested case.

31 **Sec. 3.** The provisions of NRS 338.030, as amended by  
32 section 1 of this act, apply initially to the process of determining  
33 and issuing the prevailing wages that will become effective on  
34 October 1, 2012.

35 **Sec. 4.** 1. This section and section 1 of this act become  
36 effective upon passage and approval for the purpose of adopting  
37 regulations and performing any other preparatory administrative  
38 tasks that are necessary to carry out the provisions of this act and on  
39 October 1, 2011, for all other purposes.

40 2. Sections 2 and 3 of this act become effective on October 1,  
41 2011.

