

SENATE BILL NO. 376—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 23, 2009

Referred to Committee on Government Affairs

SUMMARY—Makes various changes relating to the prevailing wage requirements. (BDR 28-730)

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

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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 the prevailing rates of wages in each county; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires the Labor Commissioner to establish the prevailing rate
2 of wages for public works performed in each county. In determining the prevailing
3 rate of wages for a county for a particular year, the Labor Commissioner is required
4 to survey contractors who have performed work in the county during the preceding
5 year. (NRS 338.030) **Section 1** of this bill: (1) clarifies that the survey encompasses
6 private and public nonresidential construction work; (2) specifies the classes of
7 workmen for which the Labor Commissioner is required to survey; (3) if the
8 prevailing rate of wages for a craft or type of work is a wage that has been
9 collectively bargained, requires the Labor Commissioner to recognize the rate for
10 the classes and subclasses of workmen and certain premium pay established in the
11 collective bargaining agreement and adjust to the rate of wages in the agreement
12 that are in effect and on file with the Labor Commissioner by a specified deadline;
13 and (4) clarifies the circumstances in which the Labor Commissioner is required to
14 hold a hearing in a locality concerning an objection to or information received on a
15 rate of prevailing wage that has been determined. These requirements apply
16 initially to the process of determining and issuing the prevailing rate of wages that
17 will become effective on October 1, 2010.

18 Under existing law, agencies of the Executive Branch of the State Government,
19 unless specifically exempted, are required to comply with the Nevada
20 Administrative Procedure Act when adopting administrative regulations or
21 adjudicating contested cases. (NRS 233B.039) **Section 2** of this bill exempts the
22 Labor Commissioner from compliance with the Act only in the process of
23 determining and issuing the prevailing rate of wages and subclassifications in each
24 county.



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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 recognize and survey*
17 *only for the following classes of workmen:*

- 18 (a) *Alarm Installer;*
- 19 (b) *Boilermaker;*
- 20 (c) *Bricklayer, including, without limitation, Stone Mason;*
- 21 (d) *Carpenter;*
- 22 (e) *Cement Mason;*
- 23 (f) *Electrician-Communication Technician;*
- 24 (g) *Electrician-Lineman/Groundman/Operator;*
- 25 (h) *Electrician-Neon Sign;*
- 26 (i) *Electrician-Wireman;*
- 27 (j) *Elevator Constructor;*
- 28 (k) *Fence Erector;*
- 29 (l) *Floor Coverer;*
- 30 (m) *Glazier;*
- 31 (n) *Highway Striper;*
- 32 (o) *Hod Carrier-Brick Mason Tender;*
- 33 (p) *Hod Carrier-Plasterer Tender;*
- 34 (q) *Ironworker;*
- 35 (r) *Laborer;*
- 36 (s) *Mechanical Insulator;*
- 37 (t) *Millwright;*
- 38 (u) *Operating Engineer, including, without limitation, Survey*
39 *Technician, Equipment Greaser, and Soils and Materials Tester;*
- 40 (v) *Painter;*
- 41 (w) *Piledriver (nonequipment);*
- 42 (x) *Plasterer;*



- 1 (y) *Plumber-Pipefitter;*
- 2 (z) *Refrigeration Technician;*
- 3 (aa) *Roofer (excluding metal roofs);*
- 4 (bb) *Sheet Metal Worker, including, without limitation, Air*
- 5 *Balance Technician;*
- 6 (cc) *Sprinkler Fitter;*
- 7 (dd) *Taper;*
- 8 (ee) *Tile Setter-Terrazzo Worker-Marble Mason, including,*
- 9 *without limitation, Tile Setter-Terrazzo Worker-Marble Mason*
- 10 *Finisher;*
- 11 (ff) *Truck Driver; and*
- 12 (gg) *Well Driller.*

13 4. Within 30 days after the determination *of the prevailing*

14 *wages in a county* is issued:

15 (a) A public body or person entitled under subsection ~~[5]~~ 7 to be

16 heard may submit an objection to the Labor Commissioner with

17 evidence to substantiate that a different wage prevails; and

18 (b) Any person may submit information to the Labor

19 Commissioner that would support a change in the prevailing wage

20 of a craft or type of work by 50 cents or more per hour in any

21 county.

22 ~~[3.—The]~~

23 5. *Except as otherwise provided in this subsection, the* Labor

24 Commissioner shall hold a hearing in the locality in which the work

25 is to be executed if he:

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

27 (b) Receives an objection or information pursuant to *paragraph*

28 *(a) or (b) of* subsection ~~[2.]~~ 4, *unless the prevailing wage to which*

29 *the objection or information pertains can be corrected by the*

30 *Labor Commissioner through administrative action, including,*

31 *without limitation, the correction of a clerical error.*

32 ➔ The Labor Commissioner may hold only one hearing a year on

33 the prevailing wage of any craft or type of work in any county.

34 ~~[4.]~~ 6. Notice of the hearing must be advertised in a newspaper

35 nearest to the locality of the work once a week for 2 weeks before

36 the time of the hearing.

37 ~~[5.]~~ 7. At the hearing, any public body, the crafts affiliated

38 with the State Federation of Labor or other recognized national

39 labor organizations, and the contractors of the locality or their

40 representatives must be heard. From the evidence presented, the

41 Labor Commissioner shall determine the prevailing wage.

42 ~~[6.]~~ 8. *If the Labor Commissioner determines that the*

43 *prevailing rate of wages for a craft or type of work is a wage which*

44 *has been collectively bargained, the Labor Commissioner shall:*

45 (a) *Recognize:*



1 ***(1) The rate for the classes and subclasses of workmen***
2 ***established in the collective bargaining agreement; and***

3 ***(2) Any premium pay established in the collective***
4 ***bargaining agreement for subsistence, traveling to another zone or***
5 ***area or similar purposes.***

6 ***(b) Adjust the prevailing rate of wages for the classes and***
7 ***subclasses of workmen to the rate of wages established in the***
8 ***collective bargaining agreement that are in effect and on file with***
9 ***the Labor Commissioner on or before September 1 of the year in***
10 ***which the determination of the prevailing rate of wages is made.***

11 ***9.*** The wages so determined ***pursuant to this section*** must be
12 filed by the Labor Commissioner and must be available to any
13 public body which awards a contract for any public work.

14 ~~7~~ ***10.*** Nothing contained in NRS 338.020 to 338.090,
15 inclusive, may be construed to authorize the fixing of any wage
16 below any rate which may now or hereafter be established as a
17 minimum wage for any person employed upon any public work, or
18 employed by any officer or agent of any public body.

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

20 233B.039 1. The following agencies are entirely exempted
21 from the requirements of this chapter:

22 (a) The Governor.

23 (b) The Department of Corrections.

24 (c) The Nevada System of Higher Education.

25 (d) The Office of the Military.

26 (e) The State Gaming Control Board.

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

29 (g) The Division of Welfare and Supportive Services of the
30 Department of Health and Human Services.

31 (h) The Division of Health Care Financing and Policy of the
32 Department of Health and Human Services.

33 (i) The State Board of Examiners acting pursuant to chapter 217
34 of NRS.

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

37 (k) The Division of Industrial Relations of the Department of
38 Business and Industry acting to enforce the provisions of
39 NRS 618.375.

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

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



1 *(n) The Labor Commissioner only in the process of*
2 *determining and issuing the prevailing rate of wages and*
3 *subclasses of workmen in each county pursuant to NRS 338.030,*
4 *including, without limitation, the conduct of annual surveys.*

5 2. Except as otherwise provided in subsection 5 and NRS
6 391.323, the Department of Education, the Board of the Public
7 Employees' Benefits Program and the Commission on Professional
8 Standards in Education are subject to the provisions of this chapter
9 for the purpose of adopting regulations but not with respect to any
10 contested case.

11 3. The special provisions of:

12 (a) Chapter 612 of NRS for the distribution of regulations by
13 and the judicial review of decisions of the Employment Security
14 Division of the Department of Employment, Training and
15 Rehabilitation;

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

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

20 (d) Chapter 91 of NRS for the judicial review of decisions of the
21 Administrator of the Securities Division of the Office of the
22 Secretary of State; and

23 (e) NRS 90.800 for the use of summary orders in contested
24 cases,

25 ➤ prevail over the general provisions of this chapter.

26 4. The provisions of NRS 233B.122, 233B.124, 233B.125 and
27 233B.126 do not apply to the Department of Health and Human
28 Services in the adjudication of contested cases involving the
29 issuance of letters of approval for health facilities and agencies.

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

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

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

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

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

44 **Sec. 2.5.** The provisions of NRS 338.030, as amended by
45 section 1 of this act, apply initially to the process of determining and



- 1 issuing the prevailing rate of wages that will become effective on
2 October 1, 2010.
3 **Sec. 3.** 1. This section and section 2 of this act become
4 effective on July 1, 2009.
5 2. Sections 1 and 2.5 of this act become effective on January 1,
6 2010.

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