

LCB File No. R115-01

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

STATE OF NEVADA

KENNY C. GUINN
Governor

SYDNEY WICKLIFFE
Director

TERRY JOHNSON
Labor Commissioner



**DEPARTMENT OF BUSINESS & INDUSTRY
OFFICE OF THE LABOR COMMISSIONER**
555 E. Washington Avenue Suite 4100
Las Vegas, Nevada 89101
(702) 486-2650
Fax (702) 486-2660

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption of Regulations of the
Office of the Nevada Labor Commissioner

The Office of the Nevada Labor Commissioner will hold a public hearing at 10:00AM, on September 14, 2001 at 555 E. Washington Avenue, Room 4401, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the Adoption 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 clarify the respective duties of the Labor Commissioner and Awarding Bodies in the enforcement of public works and prevailing wage. As well, additional information will be required of contractors engaged on public works projects to ensure compliance with the provisions thereof.

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 Either the terms or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.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

Proposed Definitions

“At the site of a public work”

“Necessary to the execution of a contract for public work”

“Certified Payroll Report”

“Non performance payroll report”

“Apprentice”

“Awarding Body”

Notification to Labor Commissioner of subcontractors (NRS 338.013)

Requirements for submitting certified payroll reports

Conduct of investigations by awarding bodies; Determinations issued thereafter; objections related thereto.

Clarification of enforcement activities by the labor commissioner

Scopes of work descriptions

Revisions to date of availability of prevailing wage determinations

Revisions to sliding scale of penalties forfeited by a contractor to an awarding body

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

Adverse Effects: Contractors will be required to increase their levels of cooperation with awarding bodies that are seeking to assure compliance with the prevailing wage laws. Additionally, contractors will bear the burden of proof in substantiating that they have filed the appropriate notices of subcontractors with the Labor Commissioner. Finally, with regards to certified payroll reports, additional documentation may be required of contractors when submitting such to the awarding bodies that had not previously been require.

Beneficial Effects: Contractors will be able to compete in a regulatory environment that has appropriate levels of oversight and accountability. Second, by publishing long established scopes of work determinations, contractors will be able to better calculate anticipated payroll costs when preparing bid documentation. The scopes of work determinations will also assist awarding bodies in the enforcement of the terms of their public works contracts requiring workmen employed thereunder to paid based on the rates prevailing in their communities for the “craft or type of work” performed.

Immediate effects: Upon finalization of the proposed regulations, guidelines will be in effect that set forth how investigative determinations of awarding bodies will be administered. Depending on the circumstances, contractors and other parties will have the right to object to such determinations.

Long Term effects: Long term, there should be a better regulatory climate that will benefit not only contractors and the labor they employ, but also taxpayers in general. Moreover, public works projects will be built in greater adherence with the laws and regulations governing such.

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

In all likelihood, the greatest costs to the agency will be in the form of increased administrative hearings. By clarifying the duties of awarding bodies to investigate possible violations of the public works laws, detection of violations will increase. As a result, this will require additional administrative hearings to render decisions upon the facts and evidence available.

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 do not overlap or duplicate regulations of other state or local governmental agencies.

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

While Nevada's prevailing wage laws are patterned after the federal Davis Bacon and Related Acts (DBRA), 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. However, in many areas, the federal guidelines were used as a model.

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 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 **September 28, 2001**. 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 <http://labor.state.nv.us/nac338/NAC338regs.html>, at the offices of the Labor Commissioner, located at 555 E. Washington Avenue, Ste. 4100, Las

Vegas, Nevada and 1445 Hot Springs Road Ste. 109, 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 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
401 S. Carson Street
Carson City, NV

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

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

LCB File No. R115-01

PROPOSED REGULATION OF THE OFFICE OF LABOR COMMISSIONER

(Proposed changes are in bold italics)

CHAPTER 338 PUBLIC WORKS PROJECTS

338.005 Definitions.....
338.007 "Recognized class of workmen" defined.....
338.010 Method of determination. [Effective through June 30, 2001.].....
338.010 Method of determination. [Effective July 1, 2001.].....
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.....
338.090 Hearing to determine need for new recognized class of workmen.....

AUTHORITY: §§1-12, NRS 338.012, except subsections 1 and 2 of section 2, which is NRS 338.040; §13, NRS 338.060

Section 1. Chapter 338 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 through 13 of this regulation.

Sec. 2 Chapter 338 of NAC is hereby amended by adding thereto a new section to read as follows:

1. "Employed at the site of a public work" defined. (NRS 338.040) "Employed at the site of a public work" means performing work called for in the contract for the public work at the physical place or places designated for such. Not included in the "site" are permanent home offices, branch plant establishments, fabrication plants, and tool yards of an employer whose locations and continuance in operation are determined without regard to a particular project for public work. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, or other like locations, of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids are not included in the "site of a public work."

2. "Necessary in the execution of the contract for the public work" defined. (NRS 338.040) "Necessary in the execution of the contract for the public work" means to perform duties required to facilitate construction, alteration, or repair of the public work.

3. "Certified payroll report" defined. (NRS 338.012) "Certified payroll report" means the record required to be compiled, maintained, and submitted by a contractor or subcontractor to an awarding body pursuant to the provisions of NRS 338.070(4-5).

4. "Non Performance Payroll Report" defined. (NRS 338.012) "Non performance payroll report" means the report required to be submitted pursuant to NAC _____ (Subsection 2 of Section 4 of proposed regulation) whenever a contractor engaged on a public work does not employ any workmen in connection with the public work.

5. "Apprentice" defined. (NRS 338.012) "Apprentice" means a person employed and individually registered in a bona fide apprenticeship program with:

(a) The U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training; or

(b) The Nevada State Apprenticeship Council pursuant to Chapter 610 of NRS or regulations adopted thereunder.

6. "Awarding body" defined. (NRS 338.012) "Awarding body" means a public body as defined in NRS 338.010(9), or an authorized agent or representative thereof.

Sec. 3 Chapter 338 of NAC is hereby amended by adding thereto a new section to read as follows:

Notification to labor commissioner of subcontractors (NRS 338.012)

1. A contractor required to report the name and address of each subcontractor pursuant to NRS 338.013 shall also include:

(a) The name of the owner or principal;

(b) The phone and facsimile number, if any, of the subcontractor; and

(c) The scope of work to be performed by the subcontractor in connection with the public work.

2. The contractor bears the burden of proof in substantiating that any notice of subcontractors was properly provided to the labor commissioner.

3. The labor commissioner shall prescribe the form to be used to report subcontractors and shall make copies of such forms available for the use of the public.

Sec. 4 Chapter 338 of NAC is hereby amended by adding thereto a new section to read as follows:

Certified Payroll Reports (NRS 338.012)

1. Certified payroll reports required pursuant to NRS 338.070(4-5) or non performance payroll reports required pursuant to this chapter shall be accompanied by a statement of compliance certifying as to the truthfulness and accuracy of the reports. The labor commissioner shall prescribe the form to be used for the statement of compliance and shall make available copies of such forms to the public.

2. A contractor engaged on a public work that does not employ any workmen in the course of a calendar month shall submit a non performance payroll report in the time frame required for submission of certified payroll reports. The labor commissioner shall prescribe the form to be used for non performance payroll report and shall make available copies of such forms to the public.

3. Contractors shall report workmen on certified payroll reports based on:

(a) The type of work actually performed by such workmen; and

(b) In accordance with classifications recognized by the labor commissioner pursuant to NAC _____ (Section 9 of proposed regulation)

Reporting of such workmen shall be limited to the public work project in which the contractor is engaged.

4. *The awarding body in receipt of the certified payroll reports or non performance payroll report shall cause to be affixed to the reports the actual date on which the reports were received by the awarding body.*

5. *The reports in the possession of the awarding body shall be submitted upon request to the labor commissioner.*

6. *Contractors engaged on a public work shall provide upon request payroll and other such records deemed necessary by the awarding body in the process of verifying the accuracy of information contained in certified payroll reports.*

7. *Any worker employed on a public work as an apprentice or listed on a certified payroll report as such, who is not registered with the U.S. Department of Labor or the Nevada State Apprenticeship Council, shall be paid not less than the applicable wage rate for the classification of work actually performed. Additionally, any person designated as an apprentice performing work at the site of a public work in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate for the classification of work actually performed.*

8. *A contractor submitting certified payroll reports with apprentices listed therein shall accompany the first of any such reports with registration information to substantiate that each apprentice listed is properly registered with a qualifying entity.*

Sec. 5 Chapter 338 of NAC is hereby amended by adding thereto a new section to read as follows:

Investigations by Awarding Bodies (NRS 338.012)

1. *Upon its own initiative or upon notice of possible violations, an awarding body shall cause such investigations to be made as may be necessary to assure compliance with this chapter and the provisions of NRS 338.010 to 338.090, inclusive. Any such investigations shall commence and conclude within a reasonable period of time, but shall not otherwise exceed 30 days unless notice is provided to the labor commissioner of the need for additional time to conduct the investigation.*

2. *Review of certified payroll reports. The awarding body shall cause such examinations of the certified payroll reports of a contractor as may be necessary to assure compliance with the provisions of this chapter and NRS 338.010 to 338.090, inclusive. Such examinations may include, but not be limited to, verifications with employees of the contractor, review of payroll data and other payroll records of the contractor, verification of apprentice registration and evidence of payments to fringe benefit plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices.*

3. *An awarding body may request of the labor commissioner the issuance of subpoenas to aid in their investigation.*

4. *The awarding body shall issue a Determination upon conclusion of an investigation. A copy of the Determination must be forwarded to the labor commissioner, the contractor, and prime contractor if applicable, and to the claimant, complainant, and any other such parties that may reasonably be affected by the Determination. In preparing such Determinations, the awarding body shall consider:*

(a) Information contained in any claims or complaints received;

(b) Oral or written statements made by employees or witnesses in the course of interviews conducted by the awarding body;

(c) Information contained in certified payroll reports applicable to the public works project; and

(d) Any other information which could reasonably assist in determining whether a violation has occurred.

5. If after an investigation, an awarding body determines that a contractor has failed to pay the correct wages to workmen employed by him in connection with the public work, the awarding body will withhold and retain the wages due and owing, along with penalties forfeited, and shall immediately forward notice of such to the labor commissioner.

6. In providing the notice of Determination to the labor commissioner, the awarding body shall include, at a minimum, the following:

(a) A detailed narrative of the investigation findings;

(b) The name and address of the contractor and its responsible officials;

(c) A copy of the public works contract, including information identifying the respective bid and award dates;

(d) Copies of any claims or complaints received;

(e) Copies of the applicable certified payroll reports;

(f) If applicable, signed interview statements of employees; and

(g) If applicable, computations of penalties and back wages for each workman, including the worker's name, address, and social security number

7. Upon receipt of a Determination issued by the awarding body, the labor commissioner shall:

(a) Affirm the Determination issued by the awarding body and direct the awarding body to forward withheld monies to the labor commissioner for disbursement to the workmen;

(b) Modify the Determination issued by the awarding body and notify the affected parties of such;

(c) Return the Determination to the awarding body with a directive for additional information; or

(d) Schedule the matter for an administrative hearing

Sec. 6 Chapter 338 of NAC is hereby amended by adding thereto a new section to read as follows:

Enforcement by labor commissioner (NRS 338.012)

1. The existence of a contract between the awarding body and the contractor shall not be a bar to enforcement by the labor commissioner of the provisions of NRS 338.010 to 338.090, or regulations adopted pursuant hereto.

2. In lieu of any other remedies available to him, the labor commissioner may issue a letter of reprimand to any person believed to have violated the provisions of NRS 338.010 to 338.090, inclusive, or regulations adopted pursuant hereto. In issuing the letter of reprimand, the labor commissioner may provide for corrective measures that must be taken by the violating party.

3. Upon findings of a violation, the labor commissioner may issue a Determination to the violating party identifying the relevant facts and applicable laws that led to the Determination. A copy of the Determination shall be served upon the violating party and any other persons that may reasonably be affected by the Determination.

Sec. 7 Chapter 338 of NAC is hereby amended by adding thereto a new section to read as follows:

Objections to Determinations (NRS 338.012)

1. Any person aggrieved by a Determination of an awarding body may file an objection to the labor commissioner with evidence to substantiate that either a violation has occurred or that the Determination filed was otherwise in error.

2. If a Determination issued pursuant to this chapter contains:

(a) An assessment of back wages due unto workmen;

(b) An administrative penalty; or

(c) An imposition of a period of disqualification from public works against a contractor or subcontractor pursuant to NRS 338.017,

the labor commissioner shall schedule a hearing upon receipt of a timely filed objection by the contractor or subcontractor. At the hearing, the contractor or subcontractor shall be afforded the opportunity to submit or refute evidence regarding the Determination. From the information presented or officially noticed, the labor commissioner shall issue findings of fact and conclusions of law developed at the hearing.

3. A Determination issued pursuant to this chapter is deemed a final order of the labor commissioner if an objection thereto is not filed by the contractor with the labor commissioner.

Sec. 8 Chapter 338 of NAC is hereby amended by adding thereto a new section to read as follows:

Disqualifications of violating contractors (NRS 338.012)

1. If multiple periods of disqualifications are imposed against a contractor or subcontractor pursuant to NRS 338.017, such periods of disqualification shall run consecutively.

2. The labor commissioner shall maintain a list of contractors that have been temporarily disqualified from public works contracting and shall make such information available to the public upon request, including via the Internet or its successor, if any .

Sec. 9 Chapter 338 of NAC is hereby amended by adding thereto a new section to read as follows:

Scope of Work Provisions (NRS 338.012) For the purposes of Nevada's public works laws, the following scopes of work provisions shall apply.

1. Workmen employed on public works projects must be paid based on the type of work performed and in accordance with the scope of work descriptions contained herein.

2. The scope of work descriptions established herein shall supersede any and all previous descriptions issued or agreed upon by the office of labor commissioner.

3. Journeyman defined. Journeyman means a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman performing a craft or type of work.

4. Foreman defined. Foreman means an individual who works with and supervises one or more workmen performing a craft or type of work.

5. General Foreman. General foreman means an individual who works with and supervises one or workmen performing a craft or type of work, including one or more general foreman.

6. Air Balance Technician. Duties of an air balance technician include, but are not limited to inspecting, testing, adjusting and balancing heating, cooling, and ventilation systems using

specialized tools and test equipment, to attain performance standards specified in system design;

7. Alarm Installer. Duties of an alarm installer include, but are not limited to, installing electrical protective signaling systems used to provide notification of fire, burglary, or other irregularities on subscriber's premises; installing wires and signaling units, following blueprints of electrical layouts and building plans and using hand tools, power tools and soldering iron; repairing of signaling systems.

8. Asbestos Worker-Mechanical Insulator. Duties of an asbestos worker-mechanical insulator include, but are not limited to, covering and lining structures with asbestos, cork, canvas, tar paper, magnesia, and related insulating materials, using saws, knives, rasps, trowels, and other tools and implements. May also specialize in providing blown-in insulation.

9. Boilermaker. Duties of a boilermaker include, but are not limited to, constructing, assembling, maintaining, repairing stationary steam boilers and boiler house auxiliaries; aligning structures or plate sections to assemble boiler frame tanks or vats, following blueprints; use of hand and power tools, plumb bobs, levels, wedges, dogs, or turnbuckles; assisting in testing assembled vessels, directing cleaning of boilers and boiler furnaces, and inspecting and repairing of boiler fittings, such as safety valves, regulators, automatic-control mechanisms, water columns, and auxiliary machines.

10. Bricklayer. Duties of a bricklayer include, but are not limited to, laying materials, such as brick, structural tile, and concrete cinder, glass, gypsum, and terra cotta block (except stone) to construct or repair walls, partitions, arches, sewers, and other structures; laying and aligning bricks, blocks, or tiles to build or repair structures or high temperature equipment, such as cupola, kilns, ovens, or furnaces; fastening or fusing brick or other building material to structure with wire clamps, anchor holes, torch, or cement; breaking or cutting bricks, tiles, or blocks to size, using edge of trowel, hammer or power saw.

11. Carpenter. Duties of a carpenter include, but are not limited to, constructing, erecting, installing, and repairing structures and fixtures of wood, plywood, and wallboard, using carpenter's hand tools and power tools; building or repairing cabinets, doors, framework, floors, and other wooden fixtures; performing work in connection with the installation, erection, or application of drywall, lathing, wall partitions, EFIS panels, pre-cast concrete and concrete form work such as layout, fabrication, constructing, placing, erection, rigging and hoisting, stripping and removing of all forms; constructing wood panel forms and frame walls; plywood decking, including the carrying, stacking, installation and removal of such; cutting, setting, removing, relocating, and stacking of beam sides and soffits, bracing and pads; handling, building, erecting and disassembling of self-supporting scaffolds over fourteen feet in height.

12. Cement Mason. Duties of a cement mason include, but are not limited to, smoothing and finishing surfaces of poured concrete floors, walls, sidewalks, or curbs to specified textures, using hand tools or power tools, including floats, trowels, and screeds; moving discharge chute to direct concrete into forms; removing rough or defecting spots from concrete surfaces, using power grinder or chisel and hammer, and patching holes with fresh concrete or epoxy compound; molding expansion joints and edges, using edging tools, jointers, and straightedge; mixing cement, using hoe or concrete mixing machine.

13. Communication Technician Installer. Duties of a communication technician installer include, but are not limited to, pulling cable and trimming devices on field circuits and loops;

Communication technician installers do not energize or perform work on any energized circuits, loops, or other equipment.

14. Communication Technician. Duties of a communication technician include, but are not limited to, installing, examining or testing of equipment to determine defects, using blueprints and electrical measuring instruments; assembling and installing data communication lines and equipment, computer systems, and antennas and towers, using hand tools; disassembling equipment to adjust, repair, or replace parts using hand tools; system start-up and programming and documentation; installing cable, device trim, mounting and termination; measuring, cutting, splicing, connecting, soldering and installing wires and cables.

15. Electrician Lineman. Duties of an electrician lineman include, but are not limited to, erecting and repairing wood poles and prefabricated light duty metal towers, cable and related equipment to construct transmission and distribution power lines used to conduct electrical energy between generating stations, sub-stations and consumers; directing and assisting groundmen in attaching cross arms, insulators, lightning arresters, switches, wire conductors and auxiliary equipment to poles preparatory to erection; climbing erected poles or towers and installing equipment such as transformers;

16. Electrician Groundman. Duties of an electrician groundman include, but are not limited to, working under the direct supervision of linemen including the operation of jack-hammers, man-hauls, and the loading and unloading of materials and equipment. A groundman does not climb poles, towers or other structures or work in the proximity of energized lines or equipment.

17. Electrician-Neon Sign. Duties of an electrician-neon sign, include, but are not limited to, installing, servicing, and repairing plastic, neon and illuminated signs;

18. Elevator Constructor. Duties of an elevator constructor include, but are not limited to, assembling, installing, repairing, and maintaining electric and hydraulic freight and passenger elevators, escalators, and dumbwaiters.

19. Ironworker. Duties of an ironworker include, but are not limited to, performing duties to raise, place, and unite girders, columns, and other structural steel members to forms completed structures or structure frameworks, working as a member of a crew; setting up hoisting equipment for raising and placing structural steel members; fastening steel members to cable of hoist, using chain, cable, or rope; forcing members into final position, using turnbuckles, crowbars, jacks, and hand tools; aligning rivet holes in member with corresponding holes in previously placed member by driving drift pins or handle of wrench through holes; bolting aligned members to keep them in position until they can be permanently riveted, bolted or welded in place; cutting and welding steel members; installation or repair of gates, iron doors, monorails, cableways, tramways, flagpoles and iron fences; roof decking; corrugated sheets when attached to steel frames, including insulation; installation of metal forms; stud welding of all iron, steel, and metal; loading, unloading, hoisting, handling, signaling, placing and erection of all pre stressed, post stressed, and precast materials; installation of insulated and non-insulated panels; handling and setting of all types of steel and metal joists; handling, racking sorting, cutting, bending, hoisting, placing, burning, welding, and tying of all material used to reinforce concrete construction.

20. Fence Erector. Duties of a fence erector include, but are not limited to, erecting and repairing chain link and wooden fences using hand power tools; mixing and pouring concrete around base of post or tamps soils into post hole to embed post; digging of post holes with

spade, post hole digger, or power driven auger; aligning posts, using line or by sighting, and verifying vertical alignment of posts with plumb bob or spirit level.

21. Floor Coverer. Duties of a floor coverer include, but are not limited to, applying blocks, strips, or sheets of shock-absorbing, sound-deadening, or decorative covering to floors, walls, and cabinets; measuring and cutting covering materials, such as rubber, linoleum or cork tile, and foundation material, such as felt, using rule, straightedge, linoleum knife, and snips; spreading adhesive cement over floor to cement foundation material to floor for sound-deadening, and to prevent covering from wearing at board joints; rolling finished floor to smooth it and press cement into base and covering.

22. Glazier. Duties of a glazier include, but are not limited to, the installation of glass in windows, doorways, showers or bathtubs, skylights, and display cases, or on surfaces, such as building fronts, interior walls, ceilings, and tabletops; installing pre-assembled framework for windows or doors designed to be fitted with glass panels, including stained glass windows, using hand tools; covering mirrors with protective material to prevent damage; loading, unloading, and arranging mirrors on trucks;

23. Highway Striper. Duties of a highway striper include, but are not limited to, erecting and repairing guardrails, highway markers, and snow fences, using hand tools and nails, and power tools; painting of highway, street, and parking surfaces using either manually propelled or mechanically propelled machines, brushes, rollers, or spray guns; installation of any device or application of any material used in lieu of paint for traffic direction such as buttons, tapes, plastics, rumble bars, or other like materials.

24. Hod Carrier-Brick Mason Tender. Duties of a hod carrier-brick mason tenderer include, but are not limited to, assisting brick masons, bricklayers, and stonemasons by performing duties of lesser skill than such classifications; mixing, packing, wheeling and tempering of mortar and fire clay mixing, supplying, and holding materials or tools; mixing, handling and conveying of all other materials used by bricklayers and masons; building of scaffolds, trestles, boxes and swinging staging; hanging of cables and placing of putlogs; carrying bricks and mortar in a hod; and cleaning work area and equipment.

25. Hod Carrier-Plaster Tender. Duties of a hod carrier-plasterer tender include, but are not limited to, serving plasterers in any capacity, handling of all materials after delivery as used by plasterers; building and handling all necessary trestle, scaffolding and planking of scaffolding for plasterers and lathers; and building mortar boxes, mortar boards and stands.

26. Laborer. Duties of a laborer include, but are not limited to, performing tasks in accordance with classifications and skill levels recognized in a jurisdiction and as published by the labor commissioner in the determination of the prevailing rates of wages; tending to or assisting skilled craftsmen. The duties of a laborer shall not include tasks otherwise classified herein.

27. Millwright. Duties of a millwright include, but are not limited to, installing machinery and equipment according to layout plans, blueprints, and other drawings in industrial establishments, using hoists, lift trucks, hand tools, and power tools; dismantling machines, using hammers, wrenches, crowbars, and other handtools; moving machinery and equipment, using hoists, dollies, rollers, and trucks; assembling and installing equipment, such as shafting, conveyors, and tram rails, using hand tools and power tools; constructing foundations for machines, using hand tools and building materials, such as wood, cement, and steel; assembling machines, and bolts, welds, rivets, otherwise fastening them to

foundation or other structures, using hand tools and power tools; repairing and lubricating machines and equipment.

28. Operating Engineer. Duties of an operating engineer include, but are not limited to, performing tasks in accordance with classifications and skill levels recognized in a jurisdiction and as published by the labor commissioner in the determination of the prevailing rates of wages; operating several types of power construction equipment, such as compressors, pumps, hoists, derricks, cranes, shovels, tractors, scrapers, or motor graders, to excavate, move and grade earth, erect structures, or pour concrete or other hard surface pavement; repairing and maintaining the equipment used in the performance of duties.

29. Painter. Duties of a painter include, but are not limited to, painting walls, equipment, buildings, bridges, and other structural surfaces, using brushes, rollers, and spray guns; removing old paint to prepare surface prior to painting; mixing colors or oils to obtain desired color or consistency; sanding surfaces between coats and polishing final coat to specified finish; cutting stencils, and brushing and spraying lettering and decorations on surfaces; washing and treating surfaces with oil, turpentine, mildew remover, or other preparations; filling cracks, holes, and joints with caulk putty, plaster, or other filler, using caulking gun or putty knife; erecting scaffolding or setting up ladders used to work above ground level.

30. Piledriver. Duties of a piledriver include, but are not limited to, operating pile drivers mounted on skids, barge, crawler treads, or locomotive crane to drive piling as foundations for structures, such as buildings, bridges, and piers.

31. Plasterer. Duties of a plasterer include, but are not limited to, applying coats of plaster onto interior or exterior walls, ceilings, or partitions of buildings to produce a finished surface according to blueprints, architect's drawings, or oral instructions; creating decorative textures in finish coat, using sand, pebbles, or stones; mixing mortar to desired consistency and erecting scaffolding; installing guide wires on exterior surface of buildings to indicate thickness of plaster or stucco; applying weatherproof, decorative covering to exterior surfaces of building; molding and installing ornamental plaster pieces, panels, and trim; directing workers to mix plaster to desired consistency.

32. Plumber. Duties of a plumber include, but are not limited to, assembling, installing and repairing pipes, fittings, and fixtures of heating, water, and drainage systems; repairing and maintaining plumbing by replacing defective washers, repairing or mending broken pipes, and opening clogged drains; assembling pipe sections, tubing and fittings, using screws, bolts, solder, plastic solvent, and caulking; installing pipe assemblies, fittings, valves, and fixtures, such as sinks, toilets and tubs, using hand and power tools; cutting openings in structures to accommodate pipe and pipe fittings, using hand and power tools; filling pipes or plumbing fixtures with water or air and observing pressure gauges to detect and locate leaks.

33. Refrigeration mechanic. Duties of a refrigeration mechanic include, but are not limited to, installing and repairing industrial and commercial refrigeration systems; mounting compressor, condenser, and other components in specified location on frame, using hand tools and acetylene welding equipment; assembling structural and functional components, such as controls, switches, gauges, wiring harness, valves, pumps, compressors, condensers, cores, and pipes; installing expansion and control valves, using acetylene torch and wrenches; cutting, bending, threading, and connecting pipe to functional components and water, power, or refrigeration systems; fabricating and assembling components and structural portions of refrigeration system, using hand tools, powered tools, and welding equipment.

34. Roofer. Duties of a roofer include, but are not limited to, installing or covering roofs of structures with slate, asphalt, wood, and related materials, except sheet metal, using brushes, knives, punches, hammers, and other tools; spraying roofs, sidings, and walls with material to bind, seal, insulate, or soundproof sections of structures

35. Sheet Metal Worker. Duties of a sheet metal worker include, but are not limited to, planning, laying out, fabricating, assembling, installing, and repairing sheet metal roofs, parts, equipment, and products; setting up and operating fabricating machines to cut, bend, and straighten sheet metal; shaping metal over anvils, blocks, or forms using hammer; operating soldering and welding equipment to join sheet metal parts; inspecting, assembling and smoothing seams and joints of burred surfaces; welding, soldering, bolting, rivets, screwing, clipping, caulking, or bonding component parts to assemble products, using hand tools, power tools, and equipment; installing assemblies in supportive framework according to blueprints, using hand tools, power tools, and lifting and handling devices.

36. Sprinkler Fitter. Duties of a sprinkler fitter include, but are not limited to, the installation, dismantling, maintenance, repair, adjustment, and correction of all fire protection and fire control systems including the the installation of all piping or tubing, appurtenances and equipment pertaining thereto, including both overhead and underground water mains, fire hydrants and hydrant mains, standpipes and hose connections to sprinkler systems, sprinkler tank heaters, air lines and thermal systems used in connection with sprinkler and alarm systems.

37. Surveyor. Duties of a surveyor include, but are not limited to, performing tasks in accordance with classifications and skill levels recognized in a jurisdiction and as published by the labor commissioner in the determination of the prevailing rates of wages; planning ground surveys designed to establish base lines, elevations, and other geodetic measurements; compiling data relevant to the shape, contour, gravitation, location, elevation, or dimension of land or land features on or near the earth's surface for engineering, map making, mining, land evaluation, construction and other purposes; surveying water bodies to determine navigable channels and to secure data for construction of breakwaters, piers, and other marine structures; computing data necessary for driving and connecting underground passages, underground storage, and volume of underground deposits

38. Taper. Duties of a taper include, but are not limited to, sealing joints between plasterboard or other wallboards to prepare wall surface for painting or papering; mixing sealing compound by hand or with portable electric mixer, and spreading compound over joints between boards, using trowel, broad knife, or spatula; filling cracks and holes in walls and ceiling with sealing compound; installing metal molding at corners in lieu of sealant and tape; applying texturing compound and primer to walls and ceiling preparatory to final finishing using brushes, roller, or spray gun; countersinking nails or screws below surface of wall prior to applying sealing compound, using hammer or screwdriver.

39. Tile, Terrazzo, and Marble Finisher. Duties of a tile, terrazzo, and marble finisher include, but are not limited to, supplying and mixing construction materials for marble setter, terrazzo worker, and tile setter; applying grout and finishing surface of installed marble, terrazzo, and tile; mixing mortar and grout, moving mortar and grout by hand or machine; cleaning installed marble, terrazzo, and tile surfaces; renovating and filling chipped, cracked, or broken pieces; grinding and polishing surfaces; assisting marble setter, terrazzo worker, and tile setter.

40. Tile Setter. Duties of a tile setter include, but are not limited to, applying tile and materials made for tile in tile like units to walls, floors, ceilings and promenade roof decks following design specifications; applying glazed, unglazed, mosaic and other ceramic tiles, which are used as a surface on floors, walls, ceilings and other surfaces and which must be set to a specified grade; applying and floating all setting beds into which these tiles are set; leveling and plumbing tiles to the specified grade.

41. Marble Mason. Duties of a marble mason include, but are not limited to, cutting, tooling, and setting marble slabs in floors and walls of buildings and renovating and polishing slab previously set in buildings. Trims, faces and cuts marble to specified size using power sawing, cutting and facing equipment and hand tools; drills holes in slab and attaches bracket; spreads mortar on bottom of slab and on sides of adjacent slabs; sets block in positions, tamps it into place, and anchors bracket attachment with wire; fills joints with grout; removes excess grout from marble with sponge; cleans and bevels cracks or chips on slabs, using hand tools and power tools; heats cracked or chipped area with blowtorch and fills defect with composition mastic that matches grain of marble; polishes marble and other ornamental stone to high luster, using power tools or by hand.

42. Terrazzo Worker. Duties of a terrazzo worker include, but are not limited to, applying cement, sand, pigment, and marble chips to floors, stairways, and cabinet fixtures to attain durable and decorative surfacing according to specifications or drawings; spreading mixture of sand, cement and water over surface with trowel to form terrazzo; cutting metal division strips and presses them into terrazzo base so that top edges form desired design or pattern and define level of finished floor surface; spreading mixture of marble chips, cement, pigment, and water over terrazzo base to form finished surface, using float and trowel; pre-casting terrazzo blocks in wooden forms.

43. Truck Driver. Duties of a truck driver include, but are not limited to, performing tasks in accordance with classifications and skill levels recognized in a jurisdiction and as published by the labor commissioner in the determination of the prevailing rates of wages; driving of a tractor trailer combination or a truck with a capacity of at least 3 ton, to transport goods or materials to specified destinations.

44. Well Driller. Duties of a well driller include, but are not limited to, setting and operating portable drilling rig machinery and related equipment to drill wells; extending stabilizing jackscrews to support and level drill rig; drilling of wells for industrial water supplies, irrigation water supplies, or water supplies for any other purpose; dewatering, or similar purposes; exploration drilling, hole drilling for geologic or hydrologic information; core drilling for geologic information; and installing water well pumps.

45. Electrician Wireman. Duties of an electrician wireman include, but are not limited to, laying out of plans, installing, testing, or repairing wiring, electrical fixtures, apparatus and control equipment; measuring, cutting, bending, threading, assembling, and installing electrical conduit, using tools, such as hacksaw, pipe threader and conduit bender; pulling wiring through conduit; splicing wires by stripping insulation from terminal leads, using knife or pliers, twisting or soldering wires together, and applying tape or terminal caps; connecting wiring to lighting fixtures and power equipment using hand tools; installing control and distribution apparatus, such as switches, relays, and circuit breaker panels, fastening in place with screws or bolts, using hand tools and power tools; connecting power cables to equipment, such as electric range or motor, and installs grounding leads; testing continuity of circuit to ensure electrical compatibility and safety of components, using testing instruments, such

ohmmeter, battery and buzzer, and oscilloscope. Electrician wiremen may cut and weld steel structural members, using flame cutting and welding equipment.

46. Pipefitter. Duties of a pipefitter include, but are not limited to, laying out, assembling, installing, and maintaining pipe systems, pipe supports, and related hydraulic and pneumatic equipment for steam, hot water, heating, cooling, lubricating, sprinkling, and industrial production and processing systems; cutting, threading, and hammering pipe to specifications, using tools such as saws, cutting torches, and pipe threaders and benders; attaching pipes to walls, structures and fixtures, such as radiators or tanks, using brackets, clamps, tools or welding equipment; modifying and maintaining pipe systems and related machines and equipment components using hand tools and power tools; coating non-ferrous piping materials by dipping in mixture of molten tin and lead to prevent erosion, or galvanic and electrolytic action; cutting and boring holes in structures, such as bulkheads, decks, walls, and mains, using hand and power tools, prior to pipe installation; operating motorized pumps to remove water from flooded manholes, basements, or facility floors.

NAC 338.005 Definitions. (NRS 338.012) As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 338.010 and NAC 338.070 have the meanings ascribed to them in those sections.

NAC 338.007 “Recognized class of workmen” defined. (NRS 338.012) “Recognized class of workmen” means a class of workmen recognized by the labor commissioner as being a distinct craft or type of work for purposes of establishing prevailing rates of wages. The term includes a class of workmen for which the labor commissioner has traditionally established a prevailing rate of wages and any other class of workmen the labor commissioner determines to be a distinct craft or type of work either on his own accord or after conducting a hearing pursuant to NAC 338.090.

Sec. 10 NAC 338.010 is hereby amended to read as follows: (NRS 338.012)

~~**[NAC 338.010 Method of determination. (NRS 338.012) [Effective through June 30, 2001.]**~~

~~—1. Based on the information described 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:~~

~~—(a) Where the rate of wages is the same for the majority of the total hours worked by a recognized class of workmen who are employed in the locality on construction similar to the proposed construction, that rate will be determined as the prevailing rate.~~

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

~~—(1) The rate of wages paid for the greater number of hours worked by the recognized class of workmen if that number constitutes 30 percent or more of the total number of hours worked by the recognized class of workmen; or~~

~~—(2) The average rate of wages paid per hour, based on the number of hours worked per rate, to a recognized class of workmen who are employed if the number of hours paid at the same rate is less than 30 percent of the total number of hours worked by the recognized class of workmen.~~

~~—(c) 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 this state.~~

~~—2. If the labor commissioner determines that the prevailing rate of wages for a recognized class of workmen is a wage which has been collectively bargained, the labor commissioner may consider wage and benefit adjustments and classifications of workmen established in the collective bargaining agreement and may adjust the prevailing rate of wages for the recognized class of workmen in accordance with wage and benefit adjustments and classifications of workmen in the collective bargaining agreement.]~~

NAC 338.010 Method of determination. (NRS 338.012) [Effective July 1, 2001.]

1. Based on the information described 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:

(a) Where the rate of wages is the same for the majority of the total hours worked by a recognized class of workmen who are employed in the locality on construction similar to the proposed construction, that rate will be determined as the prevailing rate.

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

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

(2) The average rate of wages paid per hour, based on the number of hours worked per rate, to a recognized class of workmen 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 workmen.

(c) 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 this state.

2. If the labor commissioner determines that the prevailing rate of wages for a recognized class of workmen is a wage which has been collectively bargained, the labor commissioner may consider wage and benefit adjustments and classifications of workmen established in the collective bargaining agreement and may adjust the prevailing rate of wages for the recognized class of workmen in accordance with wage and benefit adjustments and classifications of workmen in the collective bargaining agreement.

Sec. 11 NAC 338.020 is hereby amended to read as follows: (NRS 338.012)

NAC 338.020 Compilation of information for use in determining prevailing rates. (NRS 338.012)

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 include:

(a) Statements showing rates of wages 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, dates of construction and types of projects;

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

and

(4) The respective rates of wages paid to each recognized class of workmen employed on each project.

(b) Signed collective bargaining agreements *on file with the labor commissioner not later than September 1 of each year preceding the annual 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. When determining prevailing rates of wages, the labor commissioner may exclude from consideration any information submitted to him that is duplicative, incomplete or otherwise determined by the labor commissioner to be unverifiable.

4. 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.

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. (NRS 338.012)

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 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. 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, 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.

NAC 338.050 Correction of clerical error in determination. (NRS 338.012) 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. A correction is applicable to all projects bid after the correction becomes effective.

Sec. 12 NAC 338.060 is hereby amended to read as follows: (NRS 338.012)

NAC 338.060 Copies of determinations. (NRS 338.012) 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 ~~September 20~~ **October 1** of each year.

NAC 338.070 Doubt concerning prevailing rate of wages. (NRS 338.012) 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 recognized class of workmen in the locality.

Sec. 13 NAC 338.080 is hereby amended to read as follows: (NRS 338.060)

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~~ **20** for each calendar day or portion thereof.

(b) If the monetary limit is \$250,000 or more but less than \$500,000, ~~\$15~~ **30** for each calendar day or portion thereof.

(c) If the monetary limit is \$500,000 or more but less than \$750,000, ~~\$20~~ **40** for each calendar day or portion thereof.

(d) If the monetary limit is \$750,000 or more, ~~\$25~~ **50** 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~~ **50** for each calendar day or portion thereof.

NAC 338.090 Hearing to determine need for new recognized class of workmen. (NRS 338.012) Upon his 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 may conduct a hearing to determine the need for a new recognized class of workmen if he is in doubt as to the adequacy of an existing recognized class of workmen.