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DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE LABOR COMMISSIONER

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MEMORANDUM

TO: Vance A. Hughey, Principal Research Analyst
Legislative Counsel Bureau, Research Division

FROM: Terry Johnson, Labor Commissioner
Office of the Nevada Labor Commissioner

DATE: February 27, 2003

RE: Amendment to Assembly Bill No. 143

Mr. Hughey,

Per our telephone conversation this date, I think it would be helpful to offer clarification, by way of an amendment, of matters being proposed in this session's AB 143.

The major objective of AB 143 is to provide for greater consistency amongst the various statutes enforced by the Labor Commissioner and to give the Labor Commissioner the ability to levy administrative penalties at the administrative hearing level in lieu of seeking criminal prosecutions in court for certain labor law violations. Section 3, Subsection 5 of AB 143 proposes "*All money collected by the Labor Commissioner as an administrative penalty must be deposited in the State General Fund.*" While this language was not included in the agency's bill draft request, we generally have no objections to its inclusion. However, in further reviewing the bill in its entirety, we recently discovered an area that may cause unintended and adverse consequences if not clarified.

Currently, NRS 338.090(2)(a) provides that the Labor Commissioner "Shall assess a person who, after a hearing, is found to have failed to pay the prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive, an amount equal to the difference between the prevailing wages required to be paid and the wages he actually paid." Traditionally, the amounts assessed per NRS 338.090(2)(a) have been awarded to the affected workman. However, the proposed language requiring that administrative penalties "be deposited in the State General Fund" may be interpreted so as to preclude the practice of awarding amounts assessed per NRS 338.090(2)(a) to the affected workman.

ASSEMBLY COMMERCE & LABOR

DATE: 3/12/03 ROOM: 4100 EXHIBIT G

SUBMITTED BY: TERRY JOHNSON

Based on the foregoing, I propose the following amendatory language:

Amend Sec. 3, Subsection 5 by inserting at the beginning of the sentence, "*Except as otherwise provided in NRS 338.090.*" Thus, Sec. 3, Subsection 5 would read as follows:

Except as otherwise provided in NRS 338.090, all money collected by the Labor Commissioner as an administrative penalty must be deposited in the State General Fund.

To provide the required continuity, Section 19 pertaining to NRS 338.090 would then need to be amended by adding the words "payable to the affected workman" in the appropriate place. Thus, Sec. 19, Subsection (2)(a) should be amended to read as follows:

Shall assess a person who, after a hearing, is found to have failed to pay the prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive, an amount, ***payable to the affected workman***, equal to the difference between the prevailing wages required to be paid and the wages ***the person*** actually paid;

I believe that these minor changes will be helpful in clarifying the agency's intent in requesting the subject legislation. Accordingly, I would appreciate if you could apprise Chairman Goldwater of the proposed changes to AB 143 prior to these matters being heard on March 12, 2003.

Thank you for your assistance with this matter.

Cordially,



TERRY JOHNSON
Labor Commissioner