

Amendment No. 319

Senate Amendment to Senate Bill No. 376

(BDR 28-730)

Proposed by: Senate Committee on Government Affairs**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) **blue bold italics** is new language in the original bill; (2) **green bold italic underlining** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) ~~orange double underlining~~ is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold dashed underlining** is newly added transitory language.

DDE/EGO



Date: 4/14/2009

S.B. No. 376—Makes various changes relating to the prevailing wage requirements. (BDR 28-730)



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:

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

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

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

Section 1. NRS 338.030 is hereby amended to read as follows:

338.030 1. The public body awarding any contract for public work, or otherwise undertaking any public work, *and any person who wishes to bid on a public work* shall ascertain from the Labor Commissioner the prevailing wage in the county in which the public work is to be performed for each craft or type of work.

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

3. For the purpose of a survey conducted pursuant to subsection 2, the Labor Commissioner shall recognize and survey only for the following classes of workmen:

- (a) ~~Air Balance Technician;~~
- ~~(b)~~ Alarm Installer;
- ~~(c)~~ ~~(b)~~ Boilermaker;
- ~~(d)~~ ~~(c)~~ Bricklayer, including, without limitation, Stone Mason;
- ~~(e)~~ ~~(d)~~ Carpenter;
- ~~(f)~~ ~~(e)~~ Cement Mason;
- ~~(g)~~ ~~(f)~~ Electrician-Communication Technician;
- ~~(g)~~ Electrician-Lineman/Groundman/Operator;
- (h) Electrician-Neon Sign;
- (i) Electrician-Wireman;
- (j) Elevator Constructor;
- (k) Fence Erector;
- (l) Floor Coverer;
- (m) Glazier;
- (n) Highway Stripper;
- (o) Hod Carrier-Brick Mason Tender;
- (p) Hod Carrier-Plasterer Tender;
- (q) Ironworker;
- (r) Laborer;
- (s) Mechanical Insulator;
- (t) Millwright;
- (u) Operating Engineer, including, without limitation, Survey Technician, Equipment Greaser, and Soils and Materials Tester;
- (v) Painter;
- (w) Piledriver (nonequipment);
- (x) Plasterer;
- (y) Plumber-Pipefitter; ~~including, without limitation,~~
- ~~(z)~~ Refrigeration Technician;
- ~~(aa)~~ ~~(aa)~~ Roofer (excluding metal roofs);
- ~~(aa)~~ ~~(bb)~~ Sheet Metal Worker; ~~including,~~
- ~~(bb)~~ ~~including, without limitation, Air Balance Technician;~~
- ~~(cc)~~ Sprinkler Fitter;
- ~~(cc)~~ ~~(dd)~~ Taper;

~~(dd)~~ (ee) Tile Setter-Terrazzo Worker-Marble Mason, including, without limitation, Tile Setter-Terrazzo Worker-Marble Mason Finisher;

~~(ee)~~ (ff) Truck Driver; and

~~(ff)~~ (gg) Well Driller.

4. ~~For the purpose of a survey pursuant to subsection 2, the Labor Commissioner shall recognize and survey only for the following subclasses of workmen:~~

~~(a) Foreman;~~

~~(b) General Foreman; and~~

~~(c) Journeyman.~~

~~5.~~ Within 30 days after the determination *of the prevailing wages in a county* is issued:

(a) A public body or person entitled under subsection ~~15~~ ~~19~~ 7 to be heard may submit an objection to the Labor Commissioner with evidence to substantiate that a different wage prevails; and

(b) Any person may submit information to the Labor Commissioner that would support a change in the prevailing wage of a craft or type of work by 50 cents or more per hour in any county.

~~3. The~~

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

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

(b) Receives an objection or information pursuant to paragraph (a) or (b) of subsection ~~2~~ ~~5~~ 4, unless the prevailing wage to which the objection or information pertains can be ~~addressed~~ corrected to the rate of wages requested in the objection or information by the Labor Commissioner through administrative action, including, without limitation, the correction of a clerical error. ~~15 or~~

~~(c) Receives information pursuant to paragraph (b) of subsection 5.~~

~~7.~~ The Labor Commissioner may hold only one hearing a year on the prevailing wage of any craft or type of work in any county.

~~4.~~ ~~7.~~ 6. Notice of the hearing must be advertised in a newspaper nearest to the locality of the work once a week for 2 weeks before the time of the hearing.

~~5.~~ ~~9.~~ 7. At the hearing, any public body, the crafts affiliated with the State Federation of Labor or other recognized national labor organizations, and the contractors of the locality or their representatives must be heard. From the evidence presented, the Labor Commissioner shall determine the prevailing wage.

~~6.~~ ~~9.~~ 8. *If the Labor Commissioner determines that the prevailing rate of wages for a craft or type of work is a wage which has been collectively bargained, the Labor Commissioner shall:*

(a) Recognize:

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

(2) *Any premium pay established in the collective bargaining agreement for:*

(I) *Subsistence, traveling to another zone or area or similar purposes;*

(II) *Shift differential; and*

(III) *Overtime, weekends or holiday.*

(b) *Adjust the prevailing rate of wages for the classes and subclasses of workmen to the rate of wages ~~including, without limitation, premium pay,~~*

1 *established in the collective bargaining agreement that are in effect on the*
2 *effective date of the determination.*

3 ~~10.9~~ 9. The wages so determined *pursuant to this section* must be filed by
4 the Labor Commissioner and must be available to any public body which awards a
5 contract for any public work.

6 ~~7.7~~ ~~11.7~~ 10. Nothing contained in NRS 338.020 to 338.090, inclusive, may
7 be construed to authorize the fixing of any wage below any rate which may now or
8 hereafter be established as a minimum wage for any person employed upon any
9 public work, or employed by any officer or agent of any public body.

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

11 233B.039 1. The following agencies are entirely exempted from the
12 requirements of this chapter:

13 (a) The Governor.

14 (b) The Department of Corrections.

15 (c) The Nevada System of Higher Education.

16 (d) The Office of the Military.

17 (e) The State Gaming Control Board.

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

20 (g) The Division of Welfare and Supportive Services of the Department of
21 Health and Human Services.

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

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

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

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

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

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

34 *(n) The Labor Commissioner only in ~~establishing~~ the process of*
35 *determining and issuing the prevailing rate of wages in each county pursuant to*
36 *NRS 338.030 ~~11~~, including, without limitation, the conduct of annual surveys.*

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

42 3. The special provisions of:

43 (a) Chapter 612 of NRS for the distribution of regulations by and the judicial
44 review of decisions of the Employment Security Division of the Department of
45 Employment, Training and Rehabilitation;

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

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

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

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

53 ➤ prevail over the general provisions of this chapter.

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

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

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

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

13 (c) A regulation adopted by the State Board of Education pursuant to NRS
14 392.644 or 394.1694.

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

18 **Sec. 2.5. The provisions of NRS 338.030, as amended by section 1 of this**
19 **act, apply initially to the process of determining and issuing the prevailing rate**
20 **of wages that will become effective on October 1, 2010.**

21 **Sec. 3. 1. This ~~act becomes~~ section and section 2 of this act become**
22 **effective on July 1, 2009.**

23 **2. Sections 1 and 2.5 of this act become effective on January 1, 2010.**