

SENATE BILL NO. 243—SENATOR HARDY

FEBRUARY 28, 2019

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to prevailing wages.
(BDR 28-768)

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 public construction; revising the procedure for determining the prevailing rate of wages; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires that mechanics and workers employed on certain public construction projects be paid at least the wage prevailing in the county in which the project is located for the type of work that the mechanic or worker performs. (NRS 338.020) The prevailing rate of such wages for each county is determined by the Labor Commissioner pursuant to a procedure prescribed in existing statute and regulation. This procedure requires the Labor Commissioner to annually survey contractors who have performed work in a county and base his or her determination of the prevailing wage for each craft or type of work on the results of this survey. (NRS 338.030) Based on responses to this survey, existing regulations require the Labor Commissioner to determine the prevailing rate of wages paid to each class of workers who perform a craft or type of work to be the rate of wages paid to a class of workers if the rate of wages is the same for the majority of the total hours worked by such workers in the locality on construction similar to the proposed construction. Existing regulations also prescribe the procedure for determining the prevailing wage for a craft or type of work where there is no such majority or if no similar construction has been performed within the region in the past year. (NAC 338.010)

Section 3 of this bill changes the geographical area for which the prevailing rate of wages is determined from a county to a region. **Section 1** of this bill establishes four such regions: (1) the Washoe Prevailing Wage Region; (2) the Northern Rural Prevailing Wage Region; (3) the Clark Prevailing Wage Region; and (4) the Southern Rural Prevailing Wage Region. **Section 2** of this bill makes a conforming change. Thus, mechanics and workers employed on public construction projects on which prevailing wages are required to be paid must be paid at least the wage prevailing in the region in which the project is located for their craft or type of work.

Section 2 also revises the procedure for determining the prevailing rate of wages for each region by: (1) reducing the frequency by which the Labor Commissioner is required to survey contractors from annually to biennially; and (2) codifying in



statute certain requirements currently prescribed in regulation concerning this determination. **Section 2** also requires the Labor Commissioner to include in his or her determination of the prevailing rate of wages any wage and benefit adjustments in the collective bargaining agreement for a class of workers who perform the class or type of work if the Labor Commissioner determines that the prevailing rate of wages for a class or type of workers who perform the craft or type of work is a wage which has been collectively bargained. **Section 2** requires the Labor Commissioner to issue a determination of the prevailing rate of wages on October 1 of the year in which the survey was conducted and makes this rate effective for 2 years unless the rate is adjusted by the Labor Commissioner. Finally, **section 2** requires the Labor Commissioner to adjust the prevailing rate of wages on October 1 of each odd-numbered year and reissue the rate if: (1) the collective bargaining agreement provides for such an adjustment; or (2) any change in the Consumer Price Index for All Urban Consumers, West Region (All Items) has occurred since October 1 of the previous year.

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

Section 1. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

For the purpose of determining the prevailing rate of wages pursuant to NRS 338.030, four prevailing wage regions are hereby established in this State as follows:

1. The Washoe Prevailing Wage Region consisting of Washoe County;

2. The Northern Rural Prevailing Wage Region consisting of Carson City and the counties of Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Storey, Pershing and White Pine;

3. The Clark Prevailing Wage Region consisting of Clark County; and

4. The Southern Rural Prevailing Wage Region consisting of the counties of Esmeralda, Lincoln and Nye.

Sec. 2. NRS 338.020 is hereby amended to read as follows:

338.020 1. Every contract to which a public body of this State is a party, requiring the employment of skilled mechanics, skilled workers, semiskilled mechanics, semiskilled workers or unskilled labor in the performance of public work, must contain in express terms the hourly and daily rate of wages to be paid each of the classes of mechanics and workers. The hourly and daily rate of wages must:

(a) Not be less than the rate of such wages then prevailing in the ~~county~~ *region* in which the public work is located, which prevailing rate of wages must have been determined in the manner provided in NRS 338.030; and

(b) Be posted on the site of the public work in a place generally visible to the workers.



2. When public work is performed by day labor, the prevailing wage for each class of mechanics and workers so employed applies and must be stated clearly to such mechanics and workers when employed.

3. Except as otherwise provided in subsection 4, a contractor or subcontractor shall pay to a mechanic or worker employed by the contractor or subcontractor on the public work not less than one and one-half times the prevailing rate of wages applicable to the class of the mechanic or worker for each hour the mechanic or worker works on the public work in excess of:

(a) Forty hours in any scheduled week of work by the mechanic or worker for the contractor or subcontractor, including, without limitation, hours worked for the contractor or subcontractor on work other than the public work; or

(b) Eight hours in any workday that the mechanic or worker was employed by the contractor or subcontractor, including, without limitation, hours worked for the contractor or subcontractor on work other than the public work, unless by mutual agreement the mechanic or worker works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

4. The provisions of subsection 3 do not apply to a mechanic or worker who is covered by a collective bargaining agreement that provides for the payment of wages at not less than one and one-half times the rate of wages set forth in the collective bargaining agreement for work in excess of:

(a) Forty hours in any scheduled week of work; or

(b) Eight hours in any workday unless the collective bargaining agreement provides that the mechanic or worker shall work a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

5. The prevailing wage and any wages paid for overtime pursuant to subsection 3 or 4 to each class of mechanics or workers must be in accordance with the jurisdictional classes recognized in the ~~locality~~ *region* where the work is performed.

6. Nothing in this section prevents an employer who is signatory to a collective bargaining agreement from assigning such work in accordance with established practice.

Sec. 3. 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, shall ascertain from the Labor Commissioner the prevailing wage in the ~~county~~ *region established pursuant to section 1 of this act* in which the public work is to be performed for each craft or type of work.

2. The prevailing wage in each ~~county, including Carson City,~~ *such region* must be ~~established~~ *determined* as follows:



(a) The Labor Commissioner shall, ~~[annually.]~~ *in each even-numbered year*, survey contractors who have performed work in the ~~[county.]~~ *region*.

(b) Based on the survey conducted pursuant to paragraph (a), where the rate of wages is the same for ~~[more than 50 percent]~~ *a majority* of the total hours worked by each craft or type of work in that ~~[county]~~ *region* on construction similar to the proposed construction, that rate will be determined as the prevailing wage.

(c) Where *there is* no such ~~[rate can be determined.]~~ *majority*, the prevailing wage for a craft or type of work will be determined as ~~[the]~~ :

(1) The rate of wages paid for the greater number of hours worked by the class of workers who perform the craft or type of work if that number constitutes 40 percent or more of the total number of hours worked by those workers; or

(2) The average rate of wages paid per hour based on the number of hours worked per rate, to ~~[that craft or type]~~ *a class* of ~~[work]~~.

~~—(d) The Labor Commissioner shall determine the prevailing wage to be 90 percent of the rate determined pursuant to paragraphs (a), (b) and (c) for:~~

~~—(1) Any contract for a public work or any other construction, alteration, repair, remodeling or reconstruction of an improvement or property to which a school district or the Nevada System of Higher Education is a party; and~~

~~—(2) A public work of, or constructed by, a school district or the Nevada System of Higher Education, or any other construction, alteration, repair, remodeling or reconstruction of an improvement or property of or constructed by a school district or the Nevada System of Higher Education.]~~ *workers who perform the craft or type of work if the number of hours paid at the same rate is less than 40 percent of the total number of hours worked by those workers.*

(d) If no similar construction has been performed within the region in the immediately preceding 2 years, the Labor Commissioner shall consider wage rates paid on the nearest similar project of construction in this State.

3. If the Labor Commissioner determines pursuant to subsection 2 that the prevailing rate of wages for a class of workers who perform the craft or type of work is a wage which has been collectively bargained, the Labor Commissioner shall include in his or her determination of that prevailing wage any wage and benefit adjustments in the collective bargaining agreement.

4. Within 30 days after the determination is issued:



(a) A public body or person entitled under subsection ~~[6]~~ 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-]~~ *region.*

~~[4-]~~ 5. The Labor Commissioner shall hold a hearing in the ~~[locality]~~ *region* in which the work is to be executed if the Labor Commissioner:

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

(b) Receives an objection or information pursuant to subsection 3.

➤ The Labor Commissioner may hold only one hearing a year on the prevailing wage of any craft or type of work in any ~~[county-]~~ *region.*

~~[5-]~~ 6. Notice of the hearing must be advertised in a newspaper ~~[nearest to the locality of]~~ *in the region in which the work is to be executed* once a week for 2 weeks before the time of the hearing.

~~[6-]~~ 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]~~ *region* or their representatives must be heard. From the evidence presented, the Labor Commissioner shall determine the prevailing wage.

~~[7-]~~ 8. The wages so determined must be ~~[filed]~~ :

(a) *Issued by the Labor Commissioner on October 1 of the year in which the survey was conducted and, except as otherwise provided in subsection 9, remain effective for 2 years after that date; and* ~~[must be]~~

(b) *Made available by the Labor Commissioner* to any public body which awards a contract for any public work.

~~[8-]~~ 9. *On October 1 of each odd-numbered year, the Labor Commissioner shall:*

(a) *Adjust the prevailing rate of wages:*

(1) *If the Labor Commissioner determines that the prevailing rate of wages for a class of workers who perform the craft or type of work is a wage which has been collectively bargained pursuant to subsection 3, in accordance with the signed collective bargaining agreement that is on file with the Labor Commissioner, if the collective bargaining agreement provides for such an adjustment on or before October 1 of that odd-numbered year; or*

(2) *In accordance with the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the United States Department of Labor or, if that index ceases to be published by the United States Department of Labor, the published index that most closely resembles that index, as determined by the*



Labor Commissioner, if any change in that index has occurred since October 1 of the previous year; and

(b) Reissue the prevailing rate of wages for each class of workers who perform the craft or type of work, including any rates required to be adjusted pursuant to paragraph (a).

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

Sec. 4. (Deleted by amendment.)

Sec. 5. The provisions of NRS 338.030, as amended by section 3 of this act, apply to any rate of prevailing wages determined by the Labor Commissioner pursuant to that section on or after July 1, 2019.

Sec. 6. The amendatory provisions of this act do not apply to any contract to which the provisions of NRS 338.020 to 338.090, inclusive, apply, that is awarded before July 1, 2019.

Sec. 7. This act becomes effective on July 1, 2019.

