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REVISED JANUARY 28, 2020 (Originally issued on November 27, 2019)

Mr. Cole Mortensen
Deputy Director
Nevada Department of Transportation
1263 S. Stewart Street
Carson City, Nevada 89712

**Re: Request for Advisory Opinion – “Definition of Jurisdiction”
Apprenticeship Utilization Act – Senate Bill 2017 (2019 Legislative Session)**

Pursuant to Nevada Administrative Code (NAC) Section 607.650 you have requested an Advisory Opinion on what constitutes/defines a “jurisdiction” for purposes of implementing and interpreting Senate Bill (SB) 207 – the Apprenticeship Utilization Act passed during the 2019 Legislative Session. Specifically, the question/issue presented is whether the Prevailing Wage Regions established by Senate Bill (SB) 243 passed during the 2019 Legislative Session should be utilized as the “jurisdiction(s)” for SB 207 for the purpose of determining if apprentices are available.

RELEVANT PROVISIONS OF SENATE BILL 207

SB 207 states in part in Section 1.7:

“1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor engaged in vertical construction who employs a worker on a public work pursuant to NRS 338.040 shall use one or more apprentices for at least 10 percent of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work for which more than three workers are employed.

2. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor engaged in horizontal construction who employs a worker on a public work pursuant to NRS 338.040 shall use one or more apprentices for at least 3 percent of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work for which more than three workers are employed.

6. A public body may, upon the request of a contractor or subcontractor, submit a request to the Labor Commissioner to modify or waive the percentage of hours of labor provided by one or more apprentices required pursuant to subsection 1 or 2 for good cause. A public body must submit such a request, before an advertisement for bids has been placed, the opening of bids or the award of a contract for a public work or after the public body has commenced work on the public work. Such a request must include any supporting documentation, including, without limitation, proof of denial of or failure to approve a request for apprentices pursuant to subparagraph (3) of paragraph (d) of subsection 10.

Subdivision 10(d) “Good cause” means: (1) There are no apprentices available from an apprenticeship program within the jurisdiction where the public work is to be completed as recognized by the State Apprenticeship Council; (2) The contractor or subcontractor is required to perform uniquely complex or hazardous tasks on the public work that require the skill and expertise of a greater percentage of journeymen; or (3) The contractor or subcontractor has requested apprentices from an apprenticeship program and the request has been denied or the request has not been approved within 5 business days. The term does not include the refusal of a contractor or subcontractor to enter into an apprenticeship agreement pursuant to subsection 9.”

ESTABLISHMENT OF PREVAILING WAGE REGIONS – SENATE BILL 243

Senate Bill 243 states in relevant part. Section 1. Chapter 338 of Nevada Revised Statutes (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.”

Section 2 of Senate Bill 243 also revised the language of NRS section 338.020(1)(a) to reflect the “region” as opposed to the county.

APPLICABLE PREVAILING WAGE LAWS – NRS SECTION 338 AND NAC SECTION 338

NRS 338.020 Hourly and daily rate of wages must not be less than prevailing wage in county; rate must be included in contract and posted on-site; payment of overtime; wages paid in accordance with jurisdictional classes recognized in locality.

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 (now “region” pursuant to Senate Bill 243) 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 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.

NRS 338.080 [In Relevant Part] Exemptions. Except as otherwise provided in [NRS 408.55086](#), none of the provisions of [NRS 338.020](#) to [338.090](#), inclusive, apply to:

1. Any work, construction, alteration, repair or other employment performed, undertaken or carried out, by or for any railroad company or any person operating the same, whether such work, construction, alteration or repair is incident to or in conjunction with a contract to which a public body is a party, or otherwise.

2. Apprentices recorded under the provisions of [chapter 610](#) of NRS.

NAC section 338.0095 subdivision (1)(a) and (b) and subdivision (2) set forth the requirements for payment of the prevailing wage on public works projects.

1.(a) A worker employed on a public work must be paid the applicable prevailing rate of wage for the type of work that the worker actually performs on the public work and in accordance with the recognized class of the worker; and

(b) Each contractor and subcontractor shall be deemed to be the employer of each worker and apprentice who performs work directly for that contractor or subcontractor in the execution of a contract for a public work, whether the worker or apprentice is employed directly by the contractor or subcontractor or is furnished to the contractor or subcontractor by or through another person or entity such as an employee leasing company or equipment rental business.

2. Any person employed on a public work as an apprentice or listed as an apprentice who is not registered with the Bureau of Apprenticeship and Training of the Office of Apprenticeship, Training, Employer and Labor Services of the Employment and Training Administration of the United States Department of Labor or its successor and the State Apprenticeship Council must not be paid less than the applicable wage rate for the type of work actually performed by the person and in accordance with the applicable recognized class of workers.

DISCUSSION

Consistent with the statutory and regulatory provisions set forth above, and consistent with the intent of SB 243 and SB 207, the Labor Commissioner will interpret a “jurisdiction” for purposes of SB 207 to be the same “region/regions” established pursuant to SB 243.

Those region/regions are:

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.”

Therefore, and pursuant to Subdivision 10(d)(1) of SB 207, “Good cause” can be established if there are no recognized/registered apprentice/apprenticeship programs within the jurisdiction, interpreted as region, pursuant to SB 243 where the public work is to be completed as recognized by the Nevada State Apprenticeship Council.

In addition, the Labor Commissioner does not currently interpret the intent and plain language of SB 207 and SB 243 to require the request of apprentices from another jurisdiction/region outside of the jurisdiction/region where the public work is to be completed. However, the Labor Commissioner would also not interpret the intent and plain language of SB 207 and SB 243 as not prohibiting an apprentice from working in multiple regions. In addition, a contractor/subcontractor can always utilize their own apprentices or apprentices that they may be able to have dispatched to them in a different region.

REGIONS WHERE CERTAIN APPRENTICE/APPRENTICESHIP PROGRAMS ARE NOT ACTIVE AND/OR RECOGNIZED/REGISTERED BY THE NEVADA STATE APPRENTICESHIP COUNCIL

WASHOE COUNTY AND NORTHERN RURAL PREVAILING WAGE REGION

For the Washoe Prevailing Wage Region consisting of Washoe County and 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, the following apprentice/apprenticeship Programs are not active and/or are not recognized/registered with the Nevada State Apprenticeship Council based on information provided to the Labor Commissioner.

Boilermaker	Heat & Frost Insulators
Fence Erector*	Landscaper*
Field Soils and Material Tester	Roofer
Glazier	Truck Driver
Bricklayer	Well Driller

*May be part of Laborers but not a separate recognized/registered apprenticeship program.

CLARK COUNTY AND SOUTHERN RURAL PREVAILING WAGE REGION

For the Clark Prevailing Wage Region consisting of Clark County and the Southern Rural Prevailing Wage Region consisting of the counties of Esmeralda, Lincoln and Nye, the following apprentice/apprenticeship Programs are not active and/or are not recognized/registered with the Nevada State Apprenticeship Council based on information provided to the Labor Commissioner.

Boilermaker
Truck Driver
Well Driller

IS A REQUEST FOR WAIVER STILL REQUIRED?

Because the apprentice/apprenticeship programs listed above are not active and/or are not recognized/registered with the State Apprenticeship Council in those regions, “Good Cause” can be established pursuant to Subdivision 10(d)(1) of SB 207. A Request for Waiver is still required.

However, the Labor Commissioner will NOT require a Request for Waiver for the Truck Driver Job Classification in the State of Nevada based on the fact that there currently is no recognized/registered apprenticeship program for Truck Drivers in the State of Nevada, and because of the volume of waivers that could be generated simply for the Truck Driver Job Classification. In addition, the public/awarding bodies and Labor Commissioner can track the number of Truck Drivers per public works project based on their Job Classification and certified payroll reports.

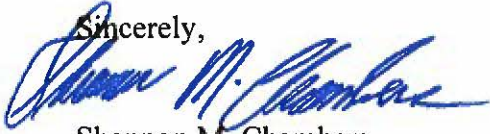
A Request for Waiver would still be required for other Job Classifications that trigger the utilization of apprentices pursuant to Section 1.7 of SB 207 and where active and/or recognized/registered apprenticeship programs exist.

CONCLUSION:

Please be advised that this Advisory Opinion is limited to the specific facts and circumstances described herein and attempts to clarify the intent and plain language of SB 207 and SB 243. Please be further advised that subsequent statutory or administrative rule changes, judicial interpretation, or legislative interpretation of the bills, legislative history/intent, statutes, and regulations or rules upon which any opinion is based may require that this Advisory Opinion be modified or rescinded.

Should you need any additional clarification, please do not hesitate to contact me at your earliest opportunity at (775) 684-1890.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shannon M. Chambers".

Shannon M. Chambers
Labor Commissioner
Office of the Labor Commissioner
Department of Business and Industry
State of Nevada
