

1                   **BEFORE THE NEVADA STATE LABOR COMMISSIONER**  
2                                   **CARSON CITY, NEVADA**

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6   **IN RE:**  
7   **NOTICE OF INTENT TO ACT UPON**  
8   **REGULATIONS AND HEARING AGENDA**  
9   **Re: NAC 338: Rules of Practice Before**  
10   **the Labor Commissioner**

11                                   **REGULATION HEARING TRANSCRIPT**

12           A hearing on the Notice of Intent to Act Upon Regulations, Nevada  
13   Administrative Code Chapter 338, was held before Labor Commissioner, Shannon M.  
14   Chambers, on April 27, 2020, at 9:00 a.m. The Labor Commissioner was present at  
15   1818 College Parkway, Suite 102, Carson City, Nevada, 89706.

16           On March 22, 2020, Governor Sisolak issued Emergency Directive 006,  
17   suspending certain requirements of Nevada’s Open Meeting Law. The requirement  
18   that there be a designated physical location for meetings of public bodies where  
19   members of the public could be permitted to attend and participate at the physical  
20   location was suspended.

21   [https://nvhealthresponse.nv.gov/wp-content/uploads/2020/03/Declaration-of-  
22   Emergency-Directive-006-re-OML.3-21-20.pdf](https://nvhealthresponse.nv.gov/wp-content/uploads/2020/03/Declaration-of-Emergency-Directive-006-re-OML.3-21-20.pdf)

23           The meeting was noticed so that members of the public could attend and  
24   participate by phone and through a WebEx meeting. The Labor Commissioner also  
25   extended the time for additional public comment to May 1, 2020.

26   [http://labor.nv.gov/Meetings/2015/Workshops and Hearings\(1\)/](http://labor.nv.gov/Meetings/2015/Workshops%20and%20Hearings(1)/)

Pages 1 through 13.

Shannon Chambers:

I am going to go ahead and officially start the public hearing on regulation package R018-18. This is a regulation package of the Office of the Labor Commissioner. This package has been in the works since 2018. There have been several public hearings on it and written comments have been submitted and we are at the stage now where we are going to again go over the proposed changes and then we will take public comments. Depending on the public comments and the written comments that have already been received into the record, this package will then go over to the Legislative Commission for potential approval. I will tell you in advance that we will have the hearing today, but I will also leave the record open until Friday, May 1, 2020, to take additional written comments. That will be the final day for written comments. I will provide information on how to do that at the end. With that I am going to go ahead and get started with the regulation package and for those that have not seen it, it is available on our website and was sent out as part of the hearing notice. So hopefully all of you have seen it, and with that, we will go ahead and get started. Just to give the bigger framework here, these changes were started in 2018, but obviously with the 2019 Legislative Session, many bills were passed during that session relating to public works projects and prevailing wage.

1 Because of the bills passed during the 2019 Legislative  
2 Session, there was a need to make some adjustments to  
3 the Nevada Administrative Code (NAC) 338 regulations.

4 With that, I am going to turn to section 1 of the regulations  
5 and this is page 4 in the actual regulations package. In this  
6 section, it is adding new language into section 1 of Chapter  
7 338, to address the filing of a complaint with the Office of  
8 the Labor Commissioner and the time period to file an  
9 answer, when a complaint is filed. If no answer is filed, the  
10 Labor Commissioner potentially has the authority to issue  
11 a default decision, and this provides the specific language  
12 in this section to do this. Nevada Administrative Code  
13 section 607 already has this authority, but 338 deals  
14 specifically with public works and prevailing wage, so this  
15 new language is to provide the authority to issue a default  
16 specifically upon the filing of a complaint alleging a  
17 violation of law relating to public works and prevailing  
18 wage.

19 On page 5, section 2 of the package, this language just  
20 clarifies the definition of apprentice for purposes of Senate  
21 Bill 207 passed during the 2019 legislative session, also  
22 known as the Apprenticeship Utilization Act.

23 Section 3 adds some language for the Labor  
24 Commissioner to enforce public works and prevailing wage  
25 laws even if there is no contract between an awarding  
26 body and a contractor. It is just adding some additional  
27 authority to pursue potential violations involving public  
28 works and prevailing wage law.

1 Section 4 of the regulations clarify that when there's work  
2 being done that is for a specific period of time or does not  
3 fall within a typical job classification, or job description  
4 under prevailing wage, or the work is incidental and  
5 ancillary to the actual construction, repair, or reconstruction  
6 of the public work, that prevailing wage would not apply.  
7 This is codifying some of the intent of the Advisory Opinion  
8 that was issued on service providers, or clarifying those  
9 instances where the actual work or the services that are  
10 being provided don't fall within the typical public works or  
11 prevailing wage job classification and job description.

12 Section 5 of the regulation adds some new language again  
13 about apprentices, so this is again tied to Senate Bill 207  
14 passed during the 2019 legislative session. This again  
15 clarifies throughout the regulation what the definition of an  
16 apprentice is and how the Labor Commissioner will  
17 interpret that. It also adds some language about  
18 jurisdictional disputes. And I will note for the record, I have  
19 received some public comment about this section, so the  
20 Labor Commissioner will review the language in this  
21 section again. There is already existing authority in  
22 Nevada Revised Statutes section 338 that provides that  
23 work can be assigned according to area practice, and  
24 again the Labor Commissioner has no intention of getting  
25 involved in jurisdictional disputes and that was the intent of  
26 this language. I will go back and look at this to make sure  
27 that is clear, and I do appreciate the public comment on  
28 this section.

1 Section 6 adds new language regarding how the prevailing  
2 wage will be calculated, and recognizes Senate Bill 243,  
3 which established the different regions for prevailing wage  
4 in the State of Nevada. The prevailing wage rates are now  
5 established by region and they last for a period of two  
6 years. Now, there is the potential for adjustments to those  
7 rates based on changes to collective bargaining  
8 agreements. For those rates that are non-union rates that  
9 prevail, Senate Bill 243 provides that those rates will be  
10 adjusted based on a consumer price index. This language  
11 is implementing Senate Bill 243 and it is also implementing  
12 many provisions of Assembly Bill 190 that was also passed  
13 during the 2019 legislative session. If the prevailing wage  
14 rate is a rate that is a collectively bargained rate, the Labor  
15 Commissioner will recognize that rate and will also  
16 recognize those job descriptions in that collective  
17 bargaining agreement. This language clarifies those  
18 provisions, and it is also clarifying what is going to be  
19 included as far as construction, and what the definitions of  
20 construction will be for the purposes of the survey. So  
21 again, just implementing many of the new provisions of  
22 Senate Bill 243 and Assembly Bill 190.

23 Section 7 of the regulation again just makes conforming  
24 changes on how the Labor Commissioner will calculate  
25 prevailing wage, and what type of information will be used.

26 Section 8 is adding some new language related to truck  
27 drivers. I will note for the record that written comments  
28 have been received on this section and that the Labor

1 Commissioner will go back and review this language and  
2 will also discuss this with our Deputy Attorney General.  
3 There was a Nevada Supreme Court decision that was  
4 issued also known as the *Granite* case, and the language  
5 that came back from the Legislative Counsel Bureau, the  
6 new language in Section 8, subpart 3, may not be in  
7 compliance with the *Granite* decision. The Labor  
8 Commissioner will go back and review the language  
9 considering the Granite decision. Noting for the record that  
10 there was written comment received about the proposed  
11 new language relating to truck driver.

12 Section 9 of the regulation adds some language again  
13 about what the Labor Commissioner will consider when  
14 calculating prevailing wages and doing the survey. This  
15 language just clarifies what is going to be used, when the  
16 prevailing wages will be effective, the different information  
17 that can be used, and again just making some conforming  
18 changes to tie into some of the previous sections of the  
19 regulation.

20 Section 10 implements the language that provides the  
21 authority for the Labor Commissioner to adjust the  
22 prevailing wage Rates. Senate Bill 243 provided that the  
23 prevailing wage Rates would be in effect for two years.  
24 However, with Assembly Bill 190 there was a recognition  
25 that if there were adjustments in the collective bargaining  
26 agreements, that the Labor Commissioner could take note  
27 of those and adjust the prevailing wage rates based on  
28 those collective bargaining agreements. It also clarifies

1 when those adjustments will become effective and  
2 recognizes the prevailing wage rates by the region.

3 Section 11 again clarifies some of the authority of the  
4 Labor Commissioner to correct the prevailing wage rates if  
5 there is a clerical error and when the correction becomes  
6 effective.

7 Section 12 clarifies the language about the regions now  
8 and not referring to localities and the authority for the  
9 Labor Commissioner to correct prevailing wage rates if  
10 there's doubt, and again those corrections would be based  
11 on region by region.

12 Section 13 of the regulation provides some additional  
13 language clarifying when a contract is awarded and who  
14 needs to be reported for purposes of the certified payroll  
15 reports.

16 Section 14 recognizes the passage of Senate Bill 231 and  
17 the submission of certified payroll reports electronically and  
18 what needs to be included on those certified payroll  
19 reports. Senate Bill 231 provided the authority for the  
20 Labor Commissioner to implement regulations regarding  
21 electronic filing and reporting of prevailing wage rates.  
22 This language is setting forth how certified payroll reports  
23 can be submitted electronically and what must be included  
24 on them. The language about the bona fide fringe benefits  
25 reflect the language of Senate  
26 Bill 190, which clarified what bona fide fringe benefits were  
27 and how they had to be reported. There's additional  
28 language in this section about apprentices and the

1 information and documentation that needs to be reported  
2 concerning apprentices. Again, this is tied to Senate Bill  
3 207 - Apprenticeship Utilization Act.

4 Section 15 clarifies more about what needs to be included  
5 on certified payroll reports and the electronic submission of  
6 certified payroll reports. It also requires the awarding body  
7 to verify those certified payroll reports, to correct those  
8 certified payroll reports, and to potentially report those  
9 corrections and adjustments and potential problems to the  
10 Labor Commissioner. So, it provides that if an awarding  
11 body is going to use an electronic certified payroll system  
12 they do need to have the checks, balances, and  
13 verifications in place to ensure that those certified payroll  
14 reports have the required information pursuant to section  
15 15.

16 Section 16 of the regulation talks about non-submission of  
17 certified payroll reports if work has not been performed for  
18 a certain period. It adds some additional language and  
19 creates some timeframes upon which a certified payroll  
20 report may not be required based upon non-performance.

21 Section 17 just makes a conforming change.

22 Section 18 of the regulation clarifies the complaint process  
23 for purposes of Nevada Administrative Code section 338. If  
24 a complaint is filed alleging a potential violation of not only  
25 Nevada Administrative Code section 338, but also Nevada  
26 Revised Statutes section 338, this section clarifies what  
27 needs to be included in the filing of the complaint. It also  
28 clarifies the time period upon which the Labor



1 Commissioner can act upon a complaint. This has been  
2 sort of a "grey" area that has been out there. I know that  
3 since I became the Commissioner, this has been an open  
4 question. The time frame now is going to be 24 months.  
5 So if a complaint is going to be filed, the act or omission  
6 has to have occurred within the past 24 months. This is  
7 consistent not only with several statutes of limitations, but  
8 also consistent with the complaint filing process under  
9 Nevada Administrative Code section 607. This section  
10 also provides that the Labor Commissioner can act upon  
11 anonymous complaints. The Labor Commissioner has  
12 been challenged on that on certain occasions. This  
13 clarifies that if there is an anonymous complaint, the Labor  
14 Commissioner can act upon it and investigate it.

15 Section 19 of the regulation clarifies the determination  
16 process and what needs to be included in a determination.  
17 It also provides the authority for the Labor Commissioner  
18 to conduct inspections and to issue subpoenas. So again,  
19 providing additional authority and investigative tools for the  
20 Labor Commissioner to investigate potential violations of  
21 Nevada Administrative Code section 338 and Nevada  
22 Revised Statutes section 338, as well. It also provides the  
23 express language for an awarding body to not issue a  
24 determination if it's simply a matter of a late certified  
25 payroll report. The reason for this is there is an automatic,  
26 statutory \$1,000 forfeiture penalty for the late submission  
27 of a certified payroll report that goes up to \$5,000 for  
28 additional violations. This is just reflecting that statutory

1 authority and eliminating undue work for the awarding body  
2 or the Labor Commissioner because again, for late  
3 certified payroll reports the statute already provides for  
4 specific language on what the forfeiture and penalty will be  
5 for that particular violation.

6 Section 20 is adding some additional authority and power  
7 to the Labor Commissioner that can be used when  
8 investigating. It also specifies the information that can be  
9 included in the determination issued by the Labor  
10 Commissioner. There is also new language regarding who  
11 can actually dispute a determination. This provides  
12 authority for the parties, trade organizations, and different  
13 entities who have the authority and power to file a  
14 complaint to also dispute a determination that is issued not  
15 only by the Labor Commissioner, but also by the awarding  
16 body.

17 Section 21 clarifies who can dispute a determination  
18 issued by the Labor Commissioner like section 20.

19 Section 22 clarifies the hearing process on determinations  
20 issued by the awarding body or the Labor Commissioner.  
21 It provides that the Labor Commissioner will use the  
22 procedures in Chapter 233B of the Nevada Revised  
23 Statutes, also known as the Administrative Procedure Act,  
24 along with the procedures set forth in 607 of the Nevada  
25 Administrative Code. It also specifies that if there is a  
26 complaint filed pursuant to 338.107 of the Nevada  
27 Administrative Code, the Labor Commissioner shall hold a  
28 hearing on the matter. In 607.300 of the Nevada

1 Administrative Code outside of public works and prevailing  
2 wage, the Labor Commissioner does have the authority to  
3 issues orders without conducting a hearing. This language  
4 says that if it is a complaint specifically related to Nevada  
5 Administrative Code 338.107 and potential violations of  
6 public works and prevailing wage, that the Labor  
7 Commissioner must hold a hearing.

8 So those are the sections that will be amended and the  
9 new language that will be added to Nevada Administrative  
10 Code section 338. These changes and additions  
11 implement the bills passed during the 2019 Legislative  
12 Session relating to collective bargaining agreements and  
13 prevailing wage rates, Senate Bill 207-Apprenticeship  
14 Utilization Act, Senate Bill 243 the calculation of the  
15 prevailing wage by region, and some further clarification on  
16 the complaint process and the statute of limitations on the  
17 filing complaints.

18 I am going to go ahead and close my portion of this. I will  
19 go ahead now at this point and ask if there is any public  
20 comment, and again please use chat feature if you can so  
21 that makes it easier and clearer for the record. It looks like  
22 the person we have is Brian Dowd. Mr. Dowd if you could  
23 unmute your mike and go ahead and provide whatever  
24 public comment you like.

25 Brian Dowd: Can you hear me?

26 Shannon Chambers: I can hear you, go ahead.

27 Brian Dowd: I am sorry, okay. I was happy to hear you say that you  
28 were going to be reviewing subsection 3 of

1 Section 8 regarding the wage rate for truckers. I am a  
2 representative of Granite Construction, and we were a  
3 party to the Supreme Court ruling in 2002, and the way it is  
4 worded right now it seems like it is in direct conflict with  
5 that ruling. It sounds like you are going to be looking at  
6 that subsection and I appreciate that. Thank you.

7 Shannon Chambers:

8 Thank you. It looks like the next public comment, who  
9 wants to make a public comment, is the Nevada  
10 Associated General Contractors. Mr. Dowd, you did the  
11 right thing and said who you were, so if I could have you  
12 identify yourself and your organization just for the record.  
13 The Nevada Associated General Contractors submitted  
14 written comment about the truck driver language and  
15 shared the same concerns as Mr. Dowd.

16 As I said earlier, I will hold the record open until May 1,  
17 2020 to receive any additional public comment. You can  
18 submit that to [mail1@labor.nv.gov](mailto:mail1@labor.nv.gov). Again, that is that is  
19 mail, the number 1, at labor.nv.gov. Public comment  
20 needs to be received by then. At that point, the Labor  
21 Commissioner will evaluate the public comments and  
22 review that along with all the other public comments that  
23 have been received and determine what changes if any  
24 need to be made to regulation package R018-18. Once  
25 that is completed, the final package will be sent over to the  
26 Legislative Counsel Bureau. It will then go before the  
27 Legislative Commission, and parties, and awarding bodies,  
28 and contractors and subcontractors will at that point have  
another opportunity to go before the Legislative

1 Commission to give testimony as to whether they're for or  
2 against some of the proposed changes to Nevada  
3 Administrative Code section 338. We are going to go  
4 ahead and close the hearing on  
5 R018-18. Thank you all for being flexible and for  
6 cooperating with this technology. These are new times  
7 and interesting times. I appreciate the turnout and like I  
8 said please get those public comments in by this Friday,  
9 May 1, 2020. We will go ahead and adjourn the hearing on  
10 regulation package R018-18. Thank you.


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13 Shannon M. Chambers  
14 Labor Commissioner  
15 State of Nevada  
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**CERTIFICATION OF TRANSCRIPTS**

I, Rosiland M. Hooper, do hereby certify that the foregoing page 1 through 13 contain a true and correct transcript of the proceedings held April 27, 2020.

DATED this 28th day of April, 2020.



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Rosiland M. Hooper, Chief Assistant  
Office of the Labor Commissioner

Transcribed by:  
Rosiland M. Hooper  
Chief Assistant  
Office of the Labor Commissioner