

STATE OF NEVADA

JOE LOMBARDO
Governor



DR. KRISTOPHER SANCHEZ
Director

BRETT HARRIS, ESQ.
Labor Commissioner

DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF THE LABOR COMMISSIONER

June 17, 2024

Travis F. Chance, Esq.
Brownstein Hyatt Farber Schreck, LLP
100 North City Parkway, Suite 1600
Las Vegas, NV 89106
Email: tchance@bhfs.com

Re: Request for Advisory Opinion—The Application of NRS 338 to Tourism Improvement Districts Pursuant to NRS 271A

Dear Mr. Chance,

Pursuant to Nevada Administrative Code (“NAC”) Section 607.650, an Advisory Opinion has been requested by you clarifying the applicability of NRS Chapter 338 to a Tourism Improvement District (NRS Chapter 271A). As set forth in NAC 607.650, this Advisory Opinion is limited to the facts and circumstances set forth in the request. This Advisory Opinion shall not apply to any pending administrative, civil, or criminal proceeding and shall not be relied upon by any party, whether a party at issue in the facts or not, in any future proceeding unrelated to the specific and unique facts and circumstances set forth in the request.

APPLICABLE LAW

As you indicate in your Request for Advisory Opinion, when a “Municipality” as defined by NRS 271A.010 sponsors a “Project” as defined by NRS 271A.050 or creates a Tourism Improvement District (“TID”) pursuant to NRS 271A.070, construction on the Project or TID requires compliance with NRS §§ 338.013-338.090 pursuant to NRS 271A.130(3). The duties of NRS §§ 338.013-338.090 are carried out and enforced by the Office of the Labor Commissioner (“OLC”).

The OLC issues public works project numbers to Municipalities for TID Projects and includes TID Projects in its Public Works Project database pursuant to NRS 338.013:

NRS 338.013 Inclusion of identifying number from Labor Commissioner in advertisement or solicitation and bids and other responsive documents; reports by public bodies and contractors to Labor Commissioner.

1. A public body that undertakes a public work shall request from the Labor Commissioner and include in any advertisement or other type of solicitation, an identifying number with a designation of the work. That number must be included in any bid or other document submitted in response to the advertisement or other type of solicitation.

2. Each public body which awards a contract for any public work shall report its award to the Labor Commissioner within 10 days after the award, giving the name and address of the contractor to whom the public body awarded the contract and the identifying number for the public work.

3. Each contractor engaged on a public work shall report to the Labor Commissioner and the public body that awarded the contract the name and address of each subcontractor whom the contractor engages for work on the project within 10 days after the subcontractor commences work on the contract and the identifying number for the public work.

4. The public body which awarded the contract shall report the completion of all work performed under the contract to the Labor Commissioner before the final payment of money due the contractor by the public body.

The OLC also enforces certified payroll reporting from all contractors and subcontractors to the Municipality sponsoring the TID and payment of Nevada prevailing wage. Contractors and subcontractors working on TIDs must submit certified payroll reporting to the Municipality sponsoring the TID in manner and form pursuant to NRS 338.070(5)-(6):

5. A contractor engaged on a public work and each subcontractor engaged on the public work shall keep or cause to be kept:

(a) An accurate record showing, for each worker employed by the contractor or subcontractor in connection with the public work:

(1) The name of the worker;

(2) The occupation of the worker;

(3) The gender of the worker, if the worker voluntarily agreed to specify that information pursuant to subsection 4, or an entry indicating that the worker declined to specify such information;

(4) The ethnicity of the worker, if the worker voluntarily agreed to specify that information pursuant to subsection 4, or an entry indicating that the worker declined to specify such information;

(5) If the worker has a driver's license or identification card, an indication of the state or other jurisdiction that issued the license or card; and

(6) The actual per diem, wages and benefits paid to the worker; and

(b) An additional accurate record showing, for each worker employed by the contractor or subcontractor in connection with the public work who has a driver's license or identification card:

(1) The name of the worker;

(2) The driver's license number or identification card number of the worker; and

(3) The state or other jurisdiction that issued the license or card.

6. The records maintained pursuant to subsection 5 must be open at all reasonable hours to the inspection of the public body awarding the contract. The contractor engaged on the public work or subcontractor engaged on the public work shall ensure that a copy of each record for each calendar month is received by the public body awarding the contract no later than 15 days after the end of the month.

The copy of the record maintained pursuant to paragraph (a) of subsection 5 must be open to public inspection as provided in [NRS 239.010](#). The copy of the record maintained pursuant to paragraph (b) of subsection 5 is confidential and not open to public inspection. The records in the possession of the public body awarding the contract may be discarded by the public body 2 years after final payment is made by the public body for the public work. The Labor Commissioner shall adopt regulations authorizing and prescribing the procedures for the electronic filing of the copies of the records required to be provided monthly by a contractor or subcontractor to a public body pursuant to this subsection.

The rate of pay for skilled mechanics, skilled workers, semiskilled workers, or unskilled labor on a TID Project must not be less than the rate of such wages then prevailing in the region in which the TID is located. NRS 338.020. Applicable rates can be found on the OLC's website at: [Public Works & Prevailing Wages \(nv.gov\)](#). The rate that applies to a TID Project is determined by NRS 338.030(9)(b), which states:

9. If the contract for a public work:

...

(b) Is not to be awarded pursuant to a competitive bidding process, except as otherwise provided in this paragraph, the prevailing rate of wages in effect on the date on which the contractor for the contract is selected by the awarding body must be paid until the completion or termination of the contract or for the 36 months immediately following the date on which the contractor was selected, whichever is earlier. If the contract is not entered into within 90 days after the date of the selection of the contractor, the prevailing rates of wages in effect on the date on which the contract is entered into must be paid until the completion or termination of the contract or for the 36 months immediately following the date on which the contract was entered into, whichever is earlier.

Prevailing wage rates must be posted on the site of the TID and signed acknowledgement of disclosure is required from all workers pursuant to NRS 338.020 and Assembly Bill 210 from the 2023 Nevada Legislative Session. Persons who fail to comply with NRS 338.013-090 are guilty of a misdemeanor and may incur penalties, fees, and disqualification from working on Public Works Projects.

ADVISORY OPINION

In your Request for Advisory Opinion you pose the following questions:

1. Because Chapter 271A only imposes the requirement to pay prevailing wages on contracts for work on “any project that is paid for in whole or in part: ... [f]rom the proceeds of bonds or notes issued pursuant to paragraph (a) of subsection 1 of NRS 271A.120” or “[p]ursuant to an agreement for reimbursement entered into pursuant to paragraph (b) of subsection 1 of NRS 271A.120,” when is the requirement to comply with the prevailing wage statutes under NRS Chapter 338 triggered if construction on a project begins prior to TID approval and the project is later approved as a TID project?

Office of the Labor Commissioner Opinion: NRS Chapter 338 is triggered when the Project is approved as a TID project. However, the requirement to pay prevailing wage applies to the entirety

of the project retroactively upon approval.

2. If construction on a project begins and prevailing wages are not paid prior to TID approval, and the project is later approved as a TID project, will prevailing wages be retroactively enforced for the work performed on the project prior to TID approval?

Office of the Labor Commissioner Opinion: Yes.

3. If construction on a project begins and prevailing wages are not paid prior to TID approval, and the project is later approved as a TID project, will the failure to pay prevailing wages prior to approval be construed as a violation of NRS Chapter 338, in which case penalties could be imposed?

Office of the Labor Commissioner Opinion: Yes, unless retroactive prevailing wage payments are paid as needed.

4. If construction is completed on a project prior to TID approval, and thus only reimbursement is sought under NRS 271A.130(3)(b), and assuming reimbursement is only sought for certain parts of the project, do the prevailing wage statutes under NRS Chapter 338 apply only as to the work that is the subject of the reimbursement?

Office of the Labor Commissioner Opinion: No. NRS 271A.130 requires compliance with NRS 338.013-130 on the entirety of the TID project.

5. In the public works context under NAC Chapter 338, “[a]fter a contract has been awarded, the prevailing rates of wages in effect at the time of the opening of bids remain in effect for the duration of the project.” NAC 338.040(3). If there is no opening of bids for a public works project, “the prevailing rates of wages in effect on the date the contractor for the contract for the public work is selected by the awarding body will be in effect for the duration of the project.” NAC 338.065(1). Because competitive bidding is not required for TID projects, *see* NRS 271A.130, and a contractor on a TID is not “selected by [an] awarding body” for a TID project, *see* NRS 271A.130(3), what is the equivalent triggering event for TID projects that determines which prevailing wages are in effect for the duration of the project?

Office of the Labor Commissioner Opinion: Since there is no bidding process, a TID should apply the prevailing wage rates as described in NRS 338.030(9)(b). That requires workers on the TID Project be paid the prevailing rate of wages in effect on the date on which the contractor is selected to perform work for the TID Project. If a contract is not entered into within 90 days of the date of selection, the prevailing wage rates that apply are the published prevailing wages for the region on the date the contract to perform work is executed.

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Please be advised that this Advisory Opinion is limited to the specific facts and circumstances described herein. The Office of the Labor Commissioner may revisit this issue

through the Administrative Rulemaking Process. Please be further advised that subsequent statutory or administrative rule changes or judicial interpretation of the statutes or rules upon which any opinion is based may require modification or abandonment of this Advisory Opinion.

Thank you for reaching out to the Office of the Labor Commissioner with your questions. We appreciate the opportunity to provide information and education regarding Nevada labor laws and their application. Should you need any additional clarification, please do not hesitate to contact our office at (702) 486-4650.

Sincerely,

A handwritten signature in black ink, appearing to read "Brett K. Harris".

Brett K. Harris, Esq.
Labor Commissioner