

LCB File No. R216-05

**PROPOSED REGULATION OF THE
STATE APPRENTICESHIP COUNCIL**

**Notice of Workshop to Solicit Comments on Proposed Regulations
Notice of Intent to Act Upon Regulation**

The Office of the Labor Commissioner is proposing to adopt regulations pertaining to Chapter 610 of Nevada Administrative Code. Workshops will be held on January 26, 2006 in Carson City and Las Vegas Nevada for the purpose of soliciting comments and information from interested persons. A copy of the proposed regulations is attached hereto.

A public hearing will be held on February 16, 2006 at 9:00 a.m. at the Grant Sawyer State Office Building located at 555 E. Washington Ave., Room 4401, Las Vegas, Nevada and teleconferenced to the Nevada Legislature Building located at 401 S. Carson St., Room 3138, Carson City, Nevada.

The purpose of the hearing is to solicit testimony from all interested persons regarding the adoption of regulations that pertain to Chapter 610 of NAC. The due date for submitting written information will be February 16, 2006.

A copy of all materials relating to the proposal may be obtained by contacting the Office of the Labor Commissioner, 555 E. Washington Avenue, Suite 4100, Las Vegas, NV 89101 or by calling (702) 486-2650.

This Notice of Hearing and Intent to Act upon Regulations has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Office of the Labor Commissioner
555 W. Washington Avenue Suite 4100
Las Vegas, NV

Carson City District Courthouse
885 E. Musser Street
Carson City, NV

Grant Sawyer State Office Building
(Lobby)
555 E. Washington Avenue
Las Vegas, NV

Legislative Building
401 S. Carson Street
Carson City, NV

Office of the Labor Commissioner
675 Fairview Drive, Suite 226
Carson City, Nevada 89701

State of Nevada Bradley Building
2501 Sahara Avenue
Las Vegas, NV

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation or amendment.

As a part of the Council's recognition by the Department of Labor a review for compliance was conducted by the DOL's Office of Apprenticeship Training, Employer, and Labor Services' (ATELS). The review findings indicated that there were federal regulations that should have been mirrored in the State regulations for apprenticeship.

2. Either the terms or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.

- a. The Council is attempting to have the NAC 610 mirror ATEL's clarify the circumstances under which it will assert jurisdiction over affirmative action plans for each registered apprenticeship program and the complaint procedures for apprentices and apprentice applicants.

3. The estimated economic effect of the regulation on the businesses which it is to regulate and on the public.

- a. **Adverse effects:** There is no adverse impacts anticipated because the regulations will clarify existing language in NAC 610.
- b. **Beneficial effects:** Beneficial effect include better clarification of the expectations of the Council with regards to potential and existing programs of apprenticeship.
- c. **Immediate effects:** Because these regulations merely reflect on the existing federal regulations we do not anticipate any immediate effects.
- d. **Long term effects:** There are no long term effects of an adverse nature expected.

4. The estimated cost to the agency for enforcement of the proposed regulation.

It is not anticipated that the agency will see any increased costs as a result of these changes.

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

The proposed regulations would duplicate the regulations enforced by the U.S. Department of Labor, Office of Apprenticeship Training, Employer, and Labor Services' (ATELS) has concurrent jurisdiction in some aspects.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

The proposed regulations are required pursuant to 29 CFR parts 29 and 30.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

The proposed regulations are not more stringent than federal regulations governing the same activities.

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

The proposed regulation does not impose any new fee or increase any existing fee.

Persons wishing to comment upon the proposed action of Office of the Labor Commissioner may appear at the scheduled hearing or may address their comments, data, views, or arguments, in written form, to Michael Tanchek, Nevada Labor Commissioner, 555 E. Washington Avenue Suite 4100, Las Vegas, Nevada 89101. Written submissions must be received by the Labor Commissioner on or before February 16, 2005. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Labor Commissioner may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at the Labor Commissioner's website located at www.laborcommissioner.com, at the offices of the Labor Commissioner, located at 555 E. Washington Avenue, Suite 4100, Las Vegas, Nevada and 675 Fairview Drive, Suite 226, Carson City, Nevada, respectively, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

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EXPLANATION – Matter in *italics* is new, matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY:: §§1-2, NRS 610.090; §2, NAC 610.110, 610.490

Section 1. Chapter 610 of NAC is amended by adding thereto a new section to read as follows:

1. Under a program proposed for registration by an employer or employers' association, where the standards, collective bargaining agreement or other instrument provided for participation by a union in any manner in the operation of the substantive matters of the apprenticeship program, and such participation is exercised, written acknowledgment of union agreement or no objection is required. Where no such participation is evidenced and practiced, the employer or employers' association shall simultaneously furnish to the union, if any, which is the collective bargaining agent of the employees to be trained, a copy of its application for registration and of the apprenticeable program. The Council shall provide a reasonable time period of not less than 30 days nor more than 60 days for receipt of union comments if any, before final action on the application for registration and/or approval.

Sec. 2 NAC 610.610 is hereby amended to read as follows:

1. Except as provided in NAC 610.570, ~~each sponsor shall adopt a plan for affirmative action in employment.~~ *a sponsor's commitment to equal opportunity in recruitment, selection, employment, and training of apprentices shall include the adoption of a written affirmative action plan.*

Sec. 3 NAC 610.620 is hereby amended to read as follows:

1. ~~[A plan for]~~ *An acceptable* affirmative action *plan* must *also* include adequate provision for *positive outreach and positive* recruitment ~~[which might]~~ *that would* reasonably be expected to increase ~~[the]~~ *minority and female* participation ~~[of minority persons and women in a program]~~

~~of~~ in apprenticeship~~]~~ *by expanding the opportunity of minorities and women to become eligible for apprenticeship selection.*

1. In order to achieve the objectives, sponsors shall undertake a significant number of activities such as those listed in NAC 610.625 to 610.665, inclusive. ~~[No sponsor is required to include all of the listed activities in its program for affirmative action.]~~ *It is not contemplated that each sponsor necessarily will include all the listed activities in its affirmative action program. The scope of the affirmative action program will depend on all the circumstances including the size and type of the program and its resources.*

3. *The affirmative action plan shall set forth the specific steps the sponsor intends to take in the areas listed below pursuant to NAC 610.*

Sec. 4 NAC 610.750 is hereby amended to read as follows:

1. The sponsor's determination of whether goals and timetables are required must be based upon an analysis of at least the following factors:

(a) The size of the population of working-age women and minority persons in the labor market of the area in which the sponsor operates;

(b) The size of the minority and female (minority and nonminority) labor force in the program sponsor's labor market area;

(c) ~~[(b)]~~ *The percentage of minority persons and females participating as apprentices in the particular craft, as compared with the percentage of women and minority persons in the labor force in the area in which the sponsor operates;*

(d) ~~[(e)]~~ The percentage of minority persons and females participating as journeymen employed by the employer or employers participating in the program, as compared with the percentage of minority persons and women in the area in which the sponsor operates, and the extent to which the sponsor should be expected to correct any deficiencies through the achievement of goals and timetables for the selection of apprentices; and

(e) ~~[(d)]~~ The availability of women and minority persons with capacity for apprenticeship in the area in which the sponsor operates.

2. The analysis must be reduced to writing and included in the plan for affirmative action.

Sec. 5 NAC 610.835 is hereby amended to read as follows:

1. Oral interviews may not be used as a standard for qualification for admission into a pool.
2. An applicant who is listed in a pool may be required to submit to an oral interview before being selected as an apprentice.
3. Oral interviews may include questions which are required to determine the fitness of applicants to enter a program of apprenticeship, but may not include questions which are related to qualifications previously determined in gaining entrance into the pool.
4. Each interviewer at an oral interview shall record his questions, the general nature of the answers and a summary of his conclusions.
5. Each applicant who is rejected from the pool on the basis of an oral interview must be given a written statement of rejection containing the reasons for the rejection and a statement of ~~his right to appeal the rejection.~~ *appeal rights available to the applicant.*

Sec. 6 Chapter 610 of NAC is amended by adding thereto a new section (NAC 610.846) to read as follows:

NAC 610.846 Goals and timetables. The sponsor shall establish where required by Section 5 (d), percentage goals and timetables for the admission of minorities and women into the pool of eligibles, in accordance with the provisions of Section 5 (d), (e) and (f).

Sec. 7 Chapter 610 of NAC is amended by adding thereto a new section NAC 610.750 to read as follows:

NAC 610.750 Compliance. A sponsor shall be deemed to be in compliance with its commitments under section 6 (NAC 610.846) it meets its goals or timetables or if it makes a good faith effort to meet these goals and timetables. In the event of the failure of the sponsor to meet its goal and timetables, if it shall be given an opportunity to demonstrate that it has made every good faith effort to meet its commitments. All the action of the sponsor shall be reviewed and evaluated in determining whether such good faith efforts have been made.

Sec. 8 NAC 610.850 is hereby amended to read as follows:

NAC 610.850 Random selection from pool of applicants. (NRS 610.090, 610.144)

1. After obtaining the approval of the Council, a sponsor may select apprentices from a pool of eligible applicants on a random basis. An impartial person or persons selected by the sponsor and

not associated with the administration of the program of apprenticeship shall supervise the selection process.

2. The time and place of the selection and the number of apprentices to be selected must be announced in advance, and the place of the selection must be open to all applicants and the public.
3. The names of apprentices drawn by this method must be posted at the sponsor's place of business immediately after the selection.
4. A sponsor who adopts the random method of selecting apprentices shall meet the requirements of NAC 610.815 to 610.840, inclusive.
5. The sponsor shall, ~~if~~ *where* required by NAC 610.720, 610.730 and 610.740, establish percentage goals and timetables for the admission of women and minority persons into the pool in accordance with the provisions of NAC 610.710 to 610.760, inclusive.
6. The sponsor's compliance with its obligations under these regulations will be determined in accordance with the provisions of NAC 610.760.

Sec. 9 NAC 610.855 is hereby amended to read as follows:

1. A sponsor may select apprentices from a pool of the workers already employed by ~~him~~ *the program sponsor* in a manner prescribed by any collective bargaining agreement or established policy of the sponsor regarding promotion.
2. The sponsor who adopts this method of selecting apprentices shall establish goals and timetables for the selection of female and minority apprentices, unless the sponsor concludes, in accordance with the provisions of NAC 610.710 to 610.760, inclusive, that it does not have deficiencies in the numbers of women and minority persons in the crafts represented by its program of apprenticeship.
3. The sponsor's compliance with its obligations under these regulations will be determined under the provisions of NAC 610.760.

Sec. 10 NAC 610.860 is hereby amended to read as follows:

1. A sponsor may select apprentices by any other method, including its present selection method, if the sponsor meets the requirements of this section.

2. By January 6, 1980, the sponsor shall establish the method of selection it proposes to use and submit it to the Council, together with the rest of its written program for affirmative action. If required by NAC 610.710 to 610.760, inclusive, the sponsor must include its percentage goals and timetables for the selection of female and minority applicants for apprenticeship and its written analysis upon which such goals and timetables, or lack thereof, are based.
3. The sponsor may not use any method of selection allowed by subsection 1 until the Council approves it as meeting the requirements of subsection 4 and approves the remainder of its program for affirmative action, including its goals and timetables.
4. If the Council fails to act upon the method of selection and the program for affirmative action within 30 days after its submission, the sponsor may begin to use the selection method.
5. Apprentices must be selected on the basis of objective and specific standards of qualification. Standards may include fair aptitude tests, diplomas from schools or their equivalent, a minimum and maximum age, essential requirements of health and strength, fair interviews, grades achieved in schools and previous experiences of working. If interviews are used as a standard for qualification, adequate records must be kept and must include a brief summary of each interview and the conclusions reached regarding each of the specific factors used at the interview, including the applicant's motivation, ambition and willingness to accept direction. The program sponsor shall meet the requirements set forth in 41 C.F.R. Part 60-3 when ~~he applies~~ *applying* the standards listed in this subsection.
6. The sponsor's compliance with its obligations under these regulations will be determined under the provisions of NAC 610.760. A sponsor must also meet the following requirements:
 - (a) If a sponsor fails to meet its goals and timetables within a reasonable period of time and has made efforts in good faith to do so, the Council may require the sponsor to make appropriate changes in its program for affirmative action to the extent necessary to attain its goals.
 - (b) The sponsor may also be required to develop and adopt an alternative method of selection, including a method prescribed by the Council, if the Council determines that the failure of the sponsor to meet its goals is attributable in substantial part to its present method of selection.
 - (c) If the sponsor's failure to meet its goals is attributable in substantial part to its use of a standard of qualification which has adversely affected the opportunities of women and minority persons for apprenticeship, the Council may require the sponsor to demonstrate that the standard of qualification is directly related to the performance of the job.

Sec. 11 NAC 610.865 is hereby amended to read as follows:

1. If a sponsor which has adopted a method of selection under NAC 610.845, 610.850 or 610.860 determines that there are fewer women or minority persons on its existing lists of eligible persons than should reasonably be expected using the analysis described in NAC 610.750, it shall discard all existing lists of eligible persons upon the adoption of one of the permitted methods of selection. After discarding existing lists, the sponsor must establish a new pool of eligible persons and a list thereof must be posted at the sponsor's place of business.
2. A sponsor shall establish a reasonable period of at least 2 weeks for accepting applications for admission to a program of apprenticeship. *There shall be at least 30 days of public notice in advance of the earliest dated for application for admission to the apprenticeship program.*

Sec. 12 NAC 610.955 is hereby amended to read as follows:

- 1. Any apprentice or applicant for apprenticeship who believe that he has been discriminated against on the basis of race, color, religion, sex, sexual orientation, age, disability or national origin with regard to an apprenticeship, or that the standards for equal opportunity with respect to his selection have not been followed in the operation of a program of apprenticeship, may, personally or through an authorized representative, file a complaint with the Council* or, at the apprentice's or applicant's election, with a private review body established pursuant to paragraph 3 of this section.
2. A complaint must be in writing, signed by the complainant, and include the name, address and telephone number of the person allegedly discriminated against, the name of the sponsor involved, and a brief description of the circumstances of the alleged failure to apply the standards of equal opportunity required by NAC 610.510 to 610.990, inclusive.
3. A complaint must be filed not later than 180 days after the alleged occurrence of the discrimination or the alleged failure to follow equal opportunity standards; *and in the case of complaints filed directly with review bodies designated by program sponsors to review such complaints, any referrals of such complaint by the complainant to the Council must occur within the time limitation stated above or 30 days from the final decision of such review body, whichever is later. The time may be extended by the Council for good cause shown.*

Sec. 13 Chapter 610.of NAC is hereby amended by adding thereto a new section NAC 610.960 to read al follows:

NAC 610.960 Creation of private review bodies; submission of complaints; hearing; written notice of provisions.

1. One or more sponsors within a community may establish a private review body which uses fair, speedy and effective procedures to consider complaints which allege a failure to follow the standard of equal opportunity. The body must consist of at least three members who:

- a. Reside in the community where the sponsor is located.*
- b. Service without compensation; and*
- c. Are not directly associated with the administration of any program of apprenticeship.*

2. The Council will present every complaint it receives to an appropriate private review body established pursuant to subsection 1, unless:

- a. The complainant indicates in his complaint that he does not desire review by a private body; or
- b. The Council has determined that the appropriate private review body will not effectively enforce the standards of equal opportunity.

3. The Council will, within 30 days after referring a complaint to a private review body, obtain from the private review body a record of the body's disposition of the complaint. If the Council accepts the disposition and finds that there was no failure to follow the standards of equal opportunity, the compliant is deemed denied by the Council.

4. The Council may conduct a hearing on any compliant which:

- a. A public review body fails to resolve within 90 days after receiving the compliant from the Council; or
- b. Is resolved in favor of a sponsor by a private review body but which presents evidence that a practice of equal opportunity used in a program of apprenticeship violates the provisions of NAC 610.510 to NAC 610.990, inclusive.

5. Every sponsor shall give written notice of the provisions of this section to every applicant for an apprenticeship and to every apprentice.

Sec. 14 Chapter 610 of NAC is hereby amended by adding thereto a new section NAC 610.965 to read as follows:

NAC 610.965 Complaints: Special processing. If the Council decides that a particular situation warrants special action and an expedited or extended determination, it will permit such a determination upon finding that no person affected thereby will be prejudiced.

Sec. 15 Chapter 610 of NAC is hereby amended by adding thereto a new section NAC 610.967 to read as follows:

NAC 610.967 Hearing officers; notice; finding and decisions.

- 1. The Director shall appoint a hearing officer within 10 days after receipt of a request for a hearing.*
- 2. The notice required by NRS 233B.121 to be sent to all affected parties must be sent by certified mail with return receipt requested.*
- 3. A hearing officer must base his findings and decisions upon the record and report them to the Director.*

Sec. 16 NAC 610.970 is hereby amended to read as follows:

If the Council, as a result of a review for compliance or otherwise, determines that there is reasonable cause to believe that a program of apprenticeship is not operating in accordance with NAC 610.510 to 610.990, inclusive, and that voluntary action to correct deficiencies has not been taken by the sponsor, the Council will:

- 1. Institute deregistration proceeding* ~~[to withdraw the registration of the program of apprentice; pr]~~ that shall be conducted in accordance with the following procedures:
 - (a) The Council shall notify the sponsor, in writing, by certified mail to the last known address or by personal delivery, that a determination of reasonable cause has been made and that the apprenticeship program may be deregistered unless within 15 days of the service of the notice, the sponsor requests a hearing. The notice shall specify the facts on which the determination is based. Notification of the sponsor shall be effective on the date of actual receipt or three days from mailing, whichever is earlier.
 - (b) If within 15 days of the receipt of the notice provided for in paragraph (a) of this section the sponsor mails a request for a hearing, the Council, or a hearing officer selected by it, shall convene a hearing in accordance with NRS 233B.121.

(c) The Council shall make a final decision on the basis of the record, which shall consist of the compliance review file and other evidence presented and, if a hearing was conducted pursuant to before a hearing officer, the proposed findings and recommended decision of the hearing officer. The Council may allow a sponsor a reasonable time to achieve voluntary corrective action. If the Council's decision is that the apprenticeship program is not operating in accordance with this section, the apprenticeship program shall be deregistered. In each case in which deregistration is ordered, the Council shall make public notice of the order and shall notify the sponsor and the complainant, if any; *or refer the matter to the Equal Employment Opportunity Commission for submission to the Attorney General of the United States with recommendations for the institution of an action under Title VII of the Civil Rights Act of 1964 or under any other federal law.*