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WORK SESSION DOCUMENT

ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

FRIDAY, MARCH 14, 2003

The following measures will be considered for action during the work session. Possible amendments are noted; these were either suggested during testimony or submitted in writing and do not necessarily have the approval of the Committee, but are merely compiled here to assist the Committee in its deliberations.

• **Assembly Bill 32 (Heard in Committee on 2/10/03—NACT)**

Revises provisions governing payment and collection of certain taxes, fees and assessments relating to purchase of natural gas or energy, capacity or ancillary services under certain circumstances. (BDR 58-626)

The following amendments to A.B. 32 have been proposed:

1. Require "providers of discretionary natural gas service" to pay applicable taxes, fees, and assessments using language substantially similar to that in existing Sections 1 and 4 of the bill.
2. Require necessary records to be kept by the entities addressed by A.B. 32. Require such records to be provided to the Public Utilities Commission of Nevada (PUCN) and affected local governments. Require the PUCN and affected local governments to keep such records confidential if designated as confidential by the entity providing the records.
3. Expressly require that the applicable taxes, fees, and assessments not only be collected, but also be remitted to the appropriate governmental entity.
4. Revise Section 4(2) to require only the amount specified in Section 4(1)(b) to be set forth separately on an eligible customer's utility bill.

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ASSEMBLY COMMERCE & LABOR 1810
DATE: 3/14/03 ROOM: 4100 EXHIBIT C
SUBMITTED BY: Legislative Counsel Bureau

5. Provide civil penalties, substantially similar to those in *Nevada Revised Statutes* (NRS) 703.380, for the entities addressed by A.B. 32 for violations of Chapters 704 and 704B of NRS, as applicable.
6. Provide that affected local governments may petition the PUCN to suspend or revoke the license or other applicable authority of an entity addressed by A.B. 32.
7. In addition, Dave Noble, PUCN, suggested that civil penalties be imposed for violations of Chapter 703 of NRS.

• **Assembly Bill 140** (Heard in Committee on 3/3/03—NACT)

Provides penalty for failure to comply with order to cease business operations at place of employment for failure to maintain or provide industrial insurance. (BDR 53-437)

No amendments to this bill have been proposed.

• **Assembly Bill 144** (Heard in Committee on 3/10/03—NACT)

Prohibits employer of pharmacist from disciplining pharmacist for refusing to fill or refill prescription under certain circumstances. (BDR 54-210)

Assemblywoman Giunchigliani proposed to amend the bill by deleting the bill as a whole and inserting the following paragraph:

A pharmacist must be held to a duty to dispense a prescription as prescribed. If a pharmacist suspects that a prescription is fraudulent or has been issued contrary to state or federal law, the pharmacist may refuse to dispense the prescription. If a prescription appears to be contraindicated or if the pharmacist believes the prescription may endanger the health of the patient, the pharmacist must consult with the prescribing practitioner.

• **Assembly Bill 190** (Heard in Committee on 3/10/03—NACT)

Makes various changes related to contractors. (BDR 54-406)

Assemblyman Parks proposed that the bill be amended as indicated in the attached mock-up (Exhibit A).

• **Assembly Bill 231 (Heard in Committee on 3/12/03—NACT)**

*Authorizes State Board of Podiatry to issue limited license to practice podiatry.
(BDR 54-997)*

No amendments to this bill have been proposed.

• **Assembly Bill 232 (Heard in Committee on 3/10/03—NACT)**

Requires establishment of registry of certain telephone numbers and prohibits telephone solicitors from making unsolicited telephone calls to telephone numbers included in registry under certain circumstances. (BDR 52-1073)

Assemblyman Conklin proposed the following amendments:

1. Amend the bill to shift responsibilities for the administration of (a) the no-call list program and (b) the Registry Fund from the Attorney General to the Consumer's Advocate within the Bureau of Consumer Protection, Office of the Attorney General.
2. Amend the bill to provide consumers with an option to either (a) not receive calls unless an established business relationship exists or (b) not receive calls even if an established business relationship exists. Current exemptions in the bill (e.g., a charitable organization, a political party, or a candidate for public office) would still be applicable regardless of the option chosen by the consumer.

MOCK-UP

 PROPOSED AMENDMENT TO
 ASSEMBLY BILL NO. 190

PREPARED FOR ASSEMBLYMAN DAVID PARKS
 MARCH 14, 2003

PREPARED BY THE RESEARCH DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~green bold double strikethrough~~ is language proposed to be deleted in this amendment and (5) ~~green bold dashed underlining~~ is deleted language in the original bill that is proposed to be retained in this amendment.

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

- 1 **Section 1.** NRS 624.165 is hereby amended to read as follows:
 2 624.165 1. The Board shall:
 3 (a) Designate one or more of its employees for the investigation of
 4 constructional fraud;
 5 (b) Cooperate with other local, state or federal investigative and law
 6 enforcement agencies, and the Attorney General;
 7 (c) Assist the Attorney General or any official of an investigative or a
 8 law enforcement agency of this state, any other state or the Federal
 9 Government who requests assistance in investigating any act of
 10 constructional fraud; and
 11 (d) Furnish to those officials any information concerning its
 12 investigation or report on any act of constructional fraud.
 13 2. The Board may obtain records of a law enforcement agency or any
 14 other agency that maintains records of criminal history, including, without
 15 limitation, records of:
 16 (a) Arrests;
 17 (b) Guilty pleas;

1 (c) Sentencing;
2 (d) Probation;
3 (e) Parole;
4 (f) Bail;
5 (g) Complaints; and
6 (h) Final dispositions,
7 for the investigation of constructional fraud.
8 3. For the purposes of this section, constructional fraud occurs if a
9 person engaged in construction knowingly:
10 (a) Misapplies money under the circumstances described in
11 NRS 205.310;
12 (b) Obtains money, property or labor by false pretense as described in
13 NRS 205.380;
14 (c) Receives payments and fails to state his own true name, or states a
15 false name, contractor's license number, address or telephone number of
16 the person offering a service;
17 (d) Commits any act of theft, forgery, fraud or embezzlement, in
18 connection with a construction project, that violates a criminal statute of
19 this state;
20 (e) Acts as a contractor without:
21 (1) Possessing a contractor's license issued pursuant to this chapter;
22 or
23 (2) Possessing any other license required by this state or a political
24 subdivision of this state; ~~{or}~~
25 (f) *In any report relating to a contract for a public work, submits*
26 *false information concerning a payroll to a public officer or agency; or*
27 (g) Otherwise fails to disclose a material fact.
28 **Sec. 2.** NRS 624.212 is hereby amended to read as follows:
29 624.212 1. The Executive Officer, on behalf of the Board, shall
30 issue an order to cease and desist to any person:
31 (a) Acting as a contractor ~~{;}~~, *including, without limitation,*
32 *commencing work as a contractor; or*
33 (b) Submitting a bid on a job situated in this state,
34 without ~~{a license as a contractor}~~ *an active license of the proper*
35 *classification* issued pursuant to this chapter. The order must be served
36 personally or by certified mail and is effective upon receipt.
37 2. If it appears that any person has engaged in acts or practices which
38 constitute a violation of this chapter or the violation of an order issued
39 pursuant to subsection 1, the Board may request the Attorney General, the
40 district attorney of the county in which the alleged violation occurred or
41 the district attorney of any other county in which that person maintains a
42 place of business or resides to apply on behalf of the Board to the district
43 court for an injunction restraining him from acting in violation of this
44 chapter. Upon a proper showing, a temporary restraining order, a
45 preliminary injunction or a permanent injunction may be granted. The

1 Board as plaintiff in the action is not required to prove any irreparable
2 injury.

3 3. In seeking injunctive relief against any person for an alleged
4 violation of NRS 624.700, it is sufficient to allege that the person did, upon
5 a certain day, and in a certain county of this state:

6 (a) Act as a contractor ~~{}~~, *including, without limitation, commence*
7 *work as a contractor;* or

8 (b) Submit a bid on a job situated in this state,
9 without having ~~{a license to do so,}~~ *an active license of the proper*
10 *classification issued pursuant to this chapter,* without alleging any further
11 or more particular facts concerning the matter.

12 4. The issuance of a restraining order or an injunction does not relieve
13 the person against whom the restraining order or injunction is issued from
14 criminal prosecution for practicing without a license.

15 5. If the court finds that a person willfully violated an order issued
16 pursuant to subsection 1, it shall impose a fine of not less than \$250 nor
17 more than \$1,000 for each violation of the order.

18 **Sec. 3.** NRS 624.270 is hereby amended to read as follows:

19 624.270 1. Before issuing a contractor's license to any applicant,
20 the Board shall require that the applicant:

21 (a) File with the Board a surety bond in a form acceptable to the Board
22 executed by the contractor as principal with a corporation authorized to
23 transact surety business in the State of Nevada as surety; or

24 (b) In lieu of such a bond, establish with the Board a cash deposit as
25 provided in this section.

26 2. Before granting renewal of a contractor's license to any applicant,
27 the Board shall require that the applicant file with the Board satisfactory
28 evidence that his surety bond or cash deposit is in full force, unless the
29 applicant has been relieved of the requirement as provided in this section.

30 3. Failure of an applicant or licensee to file or maintain in full force
31 the required bond or to establish the required cash deposit constitutes cause
32 for the Board to deny, revoke, suspend or refuse to renew a license.

33 4. Except as otherwise provided in subsection 6, the amount of each
34 bond or cash deposit required by this section must be fixed by the Board
35 with reference to the contractor's financial and professional responsibility
36 and the magnitude of his operations, but must be not less than \$1,000 or
37 more than \$500,000. The bond must be continuous in form and must be
38 conditioned that the total aggregate liability of the surety for all claims is
39 limited to the face amount of the bond irrespective of the number of years
40 the bond is in force. A bond required by this section must be provided by a
41 person whose long-term debt obligations are rated "A" or better by a
42 nationally recognized rating agency. The Board may increase or reduce the
43 amount of any bond or cash deposit if evidence supporting such a change
44 in the amount is presented to the Board at the time application is made for
45 renewal of a license or at any hearing conducted pursuant to NRS

1 624.2545 or 624.291. Unless released earlier pursuant to subsection 5, any
2 cash deposit may be withdrawn 2 years after termination of the license in
3 connection with which it was established, or 2 years after completion of all
4 work authorized by the Board after termination of the license, whichever
5 occurs later, if there is no outstanding claim against it.

6 5. After a licensee has acted in the capacity of a licensed contractor in
7 the State of Nevada for not less than 5 consecutive years, the Board may
8 relieve the licensee of the requirement of filing a bond or establishing a
9 cash deposit if evidence supporting such relief is presented to the Board.
10 The Board may at any time thereafter require the licensee to file a new
11 bond or establish a new cash deposit as provided in subsection 4:

12 (a) If evidence is presented to the Board supporting this requirement;

13 (b) Pursuant to subsection 6, after notification of a final written
14 decision by the Labor Commissioner; or

15 (c) Pursuant to subsection 7.

16 If a licensee is relieved of the requirement of establishing a cash deposit,
17 the deposit may be withdrawn 2 years after such relief is granted, if there is
18 no outstanding claim against it.

19 6. If the Board is notified by the Labor Commissioner pursuant to
20 NRS 607.165 or otherwise receives notification that three substantiated
21 claims for wages have been filed against a contractor within a 2-year
22 period, the Board shall require the contractor to file a bond or establish a
23 cash deposit in an amount fixed by the Board. The contractor shall
24 maintain the bond or cash deposit for the period required by the Board.

25 7. If a contractor who engages in the repair, restoration, improvement
26 or construction of a residential pool or spa:

27 (a) Becomes licensed pursuant to this chapter on or after July 1, 2001;

28 (b) Is determined by the Board to have violated one or more of the
29 provisions of NRS 624.301 to 624.305, inclusive;

30 (c) Enters into a contract on or after July 1, 2001, that is later found to
31 be void and unenforceable against the owner pursuant to subsection 5 of
32 NRS 597.719 or pursuant to any regulation adopted by the Board with
33 respect to contracts for the repair, restoration, improvement or construction
34 of a residential pool or spa; or

35 (d) Has five valid complaints filed against him with the Board within
36 any 15-day period,
37 the contractor shall comply with the provisions of subsection 8.

38 8. A contractor described in subsection 7 shall, before commencing
39 work for the repair, restoration, improvement or construction of a
40 residential pool or spa, obtain:

41 (a) A performance bond in an amount equal to not less than 50 percent
42 of the amount of the contract, conditioned upon the faithful performance of
43 the contract in accordance with the plans, specifications and conditions set
44 forth in the contract. The performance bond must be solely for the
45 protection of the owner of the property to be improved.

1 (b) A payment bond in an amount equal to not less than 50 percent of
 2 the amount of the contract. The payment bond must be solely for the
 3 protection of persons supplying labor or materials to the contractor, or to
 4 any of his subcontractors, in carrying out the provisions of the contract.
 5 A bond required pursuant to this subsection must be provided by a person
 6 whose long-term debt obligations are rated "A" or better by a nationally
 7 recognized rating agency. The contractor shall maintain the bond for the
 8 period required by the Board. The contractor shall furnish to the building
 9 department of the city or county, as applicable, in which the work will be
 10 carried out, a copy of any bond.

11 9. As used in this section, "substantiated ~~{claims for wages}~~ ~~claim~~"
 12 has the meaning ascribed to it in NRS 607.165.

1. Return wording in
 subsection 9 of Section 3
 to the wording in the
 current statute.

13 **Sec. 4.** NRS 624.300 is hereby amended to read as follows:

14 624.300 1. Except as otherwise provided in ~~{subsection 3,}~~
 15 ~~subsections 3 and 4,~~ the Board may:

- 16 (a) Suspend or revoke licenses already issued;
- 17 (b) Refuse renewals of licenses;
- 18 (c) Impose limits on the field, scope and monetary limit of the license;
- 19 (d) Impose an administrative fine of not more than \$10,000;
- 20 (e) Order a licensee to repay to the account established pursuant to
 21 NRS 624.470, any amount paid out of the account pursuant to NRS
 22 624.510 as a result of an act or omission of that licensee;

23 (f) Order the licensee to take action to correct a condition resulting
 24 from an act which constitutes a cause for disciplinary action, at the
 25 licensee's cost, that may consist of requiring the licensee to:

- 26 (1) Perform the corrective work himself;
- 27 (2) Hire and pay another licensee to perform the corrective work; or
- 28 (3) Pay to the owner of the construction project a specified sum to
 29 correct the condition; or

30 (g) Reprimand or take other less severe disciplinary action, including,
 31 without limitation, increasing the amount of the surety bond or cash
 32 deposit of the licensee,
 33 if the licensee commits any act which constitutes a cause for disciplinary
 34 action.

35 2. If the Board suspends or revokes the license of a contractor for
 36 failure to establish financial responsibility, the Board may, in addition to
 37 any other conditions for reinstating or renewing the license, require that
 38 each contract undertaken by the licensee for a period to be designated by
 39 the Board, not to exceed 12 months, be separately covered by a bond or
 40 bonds approved by the Board and conditioned upon the performance of
 41 and the payment of labor and materials required by the contract.

42 3. If a licensee violates the provisions of NRS 624.3014 or subsection
 43 3 of NRS 624.3015, the Board may impose an administrative fine of not
 44 more than \$20,000.

2. In subsection 4 of Section 4, change "shall" to "may."

1 4. *If a licensee is prohibited from being awarded a contract for a*
2 *public work pursuant to NRS 338.017, the Board ~~shall~~ may suspend the*
3 *license of the licensee for the period of the prohibition.*

4 5. If a licensee commits a fraudulent act which is a cause for
5 disciplinary action under NRS 624.3016, the correction of any condition
6 resulting from the act does not preclude the Board from taking disciplinary
7 action.

8 {5-} 6. If the Board finds that a licensee has engaged in repeated acts
9 that would be cause for disciplinary action, the correction of any resulting
10 conditions does not preclude the Board from taking disciplinary action
11 pursuant to this section.

12 {6-} 7. The expiration of a license by operation of law or by order or
13 decision of the Board or a court, or the voluntary surrender of a license by
14 a licensee, does not deprive the Board of jurisdiction to proceed with any
15 investigation of, or action or disciplinary proceeding against, the licensee
16 or to render a decision suspending or revoking the license.

17 {7-} 8. If discipline is imposed pursuant to this section, including any
18 discipline imposed pursuant to a stipulated settlement, the costs of the
19 proceeding, including investigative costs and attorney's fees, may be
20 recovered by the Board.

21 {8-} 9. All fines collected pursuant to this section must be deposited
22 with the State Treasurer for credit to the Construction Education Account
23 created pursuant to NRS 624.580.

24 **Sec. 5.** NRS 624.3016 is hereby amended to read as follows:
25 624.3016 The following acts or omissions, among others, constitute
26 cause for disciplinary action under NRS 624.300:

27 1. Any fraudulent or deceitful act committed in the capacity of a
28 contractor {1-}, *including, without limitation, misrepresentation or the*
29 *omission of a material fact.*

30 2. A conviction of a violation of NRS 624.730 or a felony or a crime
31 involving moral turpitude.

32 3. Knowingly making a false statement in or relating to the recording
33 of a notice of lien pursuant to the provisions of
34 NRS 108.226.

35 4. Failure to give a notice required by NRS 108.245 or 108.246.

36 5. Failure to comply with NRS 597.713, 597.716 or 597.719 or any
37 regulations of the Board governing contracts for the construction of
38 residential pools and spas.

39 6. Failure to comply with NRS 624.600.

40 7. Misrepresentation or the omission of a material fact, or the
41 commission of any other fraudulent or deceitful act, to obtain a license.

42 8. Failure to pay an assessment required pursuant to
43 NRS 624.470.

44 9. *Failure to file a certified payroll report that is required for a*
45 *contract for a public work.*

3. In subsection 9 of Section 5, insert the words "certified payroll" before the word "report."

1 10. Submitting false information ~~in any~~ on a prequalification
2 application or certified payroll report that is required for a contract for a
3 public work.

4 **Sec. 6.** NRS 338.017 is hereby amended to read as follows:
5 338.017 If any administrative penalty is imposed against a person for
6 the commission of an offense ~~that~~ :

7 1. That person, and the corporate officers, if any, of that person, may
8 not be awarded a contract for a public work:

9 ~~{1}~~ (a) For the first offense, for a period of 3 years after the date of the
10 imposition of the administrative penalty; and

11 ~~{2}~~ (b) For the second or subsequent offense, for a period of 5 years
12 after the date of the imposition of the administrative penalty.

13 2. The Labor Commissioner shall notify the State Contractors'
14 Board that a contractor has been prohibited from being awarded a
15 contract for a public work.

16 **Sec. 7.** NRS 607.165 is hereby amended to read as follows:

17 607.165 1. The Labor Commissioner shall notify the State
18 Contractors' Board after three substantiated claims for wages have been
19 filed against a contractor within a 2-year period. The notification must
20 include a copy of the final written decision of the Labor Commissioner
21 with regard to each such claim.

22 2. The Labor Commissioner may recommend to the State
23 Contractors' Board the amount of the bond or cash deposit that a
24 contractor should be required to file or establish pursuant to subsection 6
25 of NRS 624.270.

26 3. As used in this section:

27 (a) "Contractor" has the meaning ascribed to it in NRS 624.020.

28 (b) "Employee" means a natural person who receives wages or other
29 remuneration from a contractor for personal services, including, without
30 limitation, commissions, bonuses and remuneration payable in a medium
31 other than cash.

32 (c) "Substantiated ~~claims for wages~~" means ~~claims~~ ~~claim~~ means a
33 ~~claim~~ for wages by an employee against a contractor that the Labor
34 Commissioner determines to be valid after ~~providing~~ :

35 ~~(1) Providing~~ notice and an opportunity for conducting a hearing
36 pursuant to the provisions of this chapter ~~and~~

37 ~~(2) Entering into a compromise or settlement of a claim pursuant~~
38 ~~to the provisions of this chapter.~~

4. In subsection 10 of Section 5, replace the words "in any" with the words "on a prequalification application or certified payroll."

5. In subsection 2 of Section 6, insert at the end of the sentence the words "that a contractor has been prohibited from being awarded a contract for a public work."

6. Return wording in subsection 3(c) of Section 7 regarding claims for wages to the wording in the current statute. Leave the proposed new wording "by an employee" in the bill and add a reference to "an opportunity for" a hearing. Also, delete the new provision at subsection 3(c)(2) of Section 7.

H