

## Proposed Amendment by Senator Daly to SB 82

### **NRS 338.01165 Requirements relating to use of apprentices on public works; modification or waiver of requirements; apprenticeship agreement; regulations. (Effective January 1, 2024)**

1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor, of whatever tier, 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, of whatever tier, 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.~~

3. On or after January 1, 2021, the Labor Commissioner, in collaboration with the State Apprenticeship Council, may adopt regulations to increase the percentage of total hours of labor required to be performed by an apprentice pursuant to subsection ~~1~~ or 2 by not more than 2 percentage points.

4. An apprentice who graduates from an apprenticeship program while employed on a public work shall:

(a) Be deemed an apprentice on the public work for the purposes of subsections 1 and 2.

(b) Be deemed a journeyman for all other purposes, including, without limitation, the payment of wages or the payment of wages and benefits to a journeyman covered by a collective bargaining agreement.

5. An apprentice who graduates from an apprenticeship program may be deemed an apprentice on a public work for the purposes of subsections 1 and 2 for up to 36 months after graduation provided:

(a) There are no apprentices available from a program in the requested craft or type of work.

(b) The apprenticeship program as applicable agrees to fill a request for an apprentice with a person who has graduated from the program within the previous 36 months.

(c) The contractor or subcontractor, of whatever tier, making the request for an apprentice under this subsection is signatory to a collective bargaining agreement with the union that sponsors the apprenticeship program for an apprenticed craft or type of work.

(d) A person deemed to be an apprentice under this subsection who is employed on a public work 36 months after graduation shall be deemed an apprentice, until the completion of the public work.

(e) A person deemed to be an apprentice on a public work pursuant to this subsection shall be deemed a journeyman for all other purposes, including, without limitation, the payment of wages and benefits to a journeyman covered by a collective bargaining agreement.

6. A contractor or subcontractor, of whatever tier, engaged on a public work is not required to use an apprentice in a craft or type of work performed in a jurisdiction recognized by the State Apprenticeship Council as not having apprentices in that craft or type of work.

~~67. A contractor or subcontractor, of whatever tier, 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 shall be responsible to maintain and provide any supporting documentation, that demonstrates that the contractor or subcontractor, of whatever tier, has made a good faith effort to utilize apprentices pursuant to the requirements of this Section including, without limitation, proof of denial of or failure to approve a request(s) for apprentices pursuant to subparagraph (31(b) of paragraph (d) of subsection 4013.~~

78. Beginning in 2025 a contractor or subcontractor, of whatever tier, who employs a worker on a public work pursuant to section 1 or 2 shall submit an annual report for the previous calendar year not later than February 15 of each year. The Labor Commissioner shall prepare a templet for the annual form that shows:

(a) The total number of hours that were worked on vertical construction, for each apprenticed craft or type of work performed on a public work;

(b) The total number of hours that were worked on horizontal construction, for each apprenticed craft or type of work performed on a public work;

(c) The total number of hours that were worked by apprentices on vertical construction, for each apprenticed craft or type of work performed on a public work;

(d) The total number of hours that were worked by apprentices on horizontal construction, for each apprenticed craft or type of work performed on a public work;

(e) The percentage of the total hours reported that were worked by apprentices on vertical construction

(f) The percentage of the total hours reported that were worked by apprentices on horizontal construction

(g) The report must not include any individual job or project information or any individual employee information.

~~The Labor Commissioner shall issue a determination of whether to grant a modification or waiver requested pursuant to subsection 6 within 15 days after the receipt of such request. The Labor Commissioner may grant such a request if he or she makes a finding that there is good cause to modify or waive the percentage of hours of labor provided by one or more apprentices required pursuant to subsection 1 or 2.~~

89. Based on the information provided pursuant to subsection 8 the Labor commissioner on his or her own initiative or after receiving a complaint, shall after providing an opportunity for a hearing, calculate and assess a penalty, on any contractor or subcontractor of whatever tier that failed to meet the required level of apprentice utilization, for each apprenticed craft or type of work, using the following formula unless the contractor or subcontractor, of whatever tier, can demonstrate that a good faith effort to utilize apprentices was made:

(a) On vertical construction if the contractor or subcontractor, of whatever tier, has an apprentice utilization rate of;

(1) More than 7.5% but less than 10% the contractor or subcontractor, of whatever tier, shall pay a penalty of \$2.00 for each hour below the percentage required or \$5000 whichever is higher,

(2) More than 4% but less than 7.5% the contractor or subcontractor, of whatever tier, shall pay a penalty of \$4.00 for each hour below the percentage required or \$5000 whichever is higher,

(3) Less than 4% the contractor or subcontractor, of whatever tier, shall pay a penalty of \$6.00 for each hour below the percentage required or \$5000 whichever is higher.

(4) A contractor or subcontractor, of whatever tier shall not be found in violation if 10% of the total hours reported pursuant to section 8 for vertical construction would be less than 40 hours for the 12 month reporting period.

(b) On horizontal construction if the contractor or subcontractor, of whatever tier, has an apprentice utilization rate of;

(1) More than 2% but less than 3% the contractor or subcontractor, of whatever tier, shall pay a penalty of \$2.00 for each hour below the percentage required or \$5000 whichever is higher,

(2) More than 1% but less than 2% the contractor or subcontractor, of whatever tier, shall pay a penalty of \$4.00 for each hour below the percentage required or \$5000 whichever is higher,

(3) Less than 1% the contractor or subcontractor, of whatever tier, shall pay a penalty of \$6.00 for each hour below the percentage required or \$5000 whichever is higher.

(4) A contractor or subcontractor, of whatever tier shall not be found in violation if 3% of the total hours reported pursuant to section 8 for horizontal construction would be less than 24 hours for the 12 month reporting period.

(c) Unless the Labor Commissioner allows for good cause shown a complaint based on the information provided pursuant to subsection 8 must be submitted to the Labor Commissioner on or before the last business day in May.

10. In addition to the penalties outlined in subsection 9 if a contractor or subcontractor of whatever tier, failed to provide evidence that the contractor or subcontractor of whatever tier, made the necessary good faith effort or failed to document and provide the annual report pursuant to subsection 8, the Labor Commissioner shall after providing an opportunity for a hearing;

(a) Disqualify the contractor or subcontractor of whatever tier from being awarded a contract for a public work for a period of not less than 180 days or up to 2 years pursuant to NRS 338.017 or;

(b) Assess a minimum penalty of \$10,000 or not less than \$1000 or more than \$2500 for each week or portion thereof that a contractor or subcontractor of whatever tier, employed one or more employees on a public work for an apprenticed craft or type of work or \$75,000 whichever is less.

11. A ~~public body~~, contractor or subcontractor of whatever tier, may request a hearing on the determination of the Labor Commissioner pursuant to subsection 9 or 10 within 10 days after receipt of the determination of the Labor Commissioner. The hearing must be conducted in accordance with regulations adopted by the Labor Commissioner. If the Labor Commissioner does not receive a request for a hearing pursuant to this subsection, the determination of the Labor Commissioner is a final decision for the purposes of judicial review pursuant to chapter 233B of NRS.

912. A contractor or subcontractor of whatever tier, who is not signatory to a collective bargaining agreement with the union sponsoring the apprenticeship program for an apprenticed craft or type of work engaged on a public work shall enter into an apprenticeship agreement for each apprentice on each public work ~~for all apprentices~~ required to be used in the construction of a public work. ~~If the Labor Commissioner granted a modification or waiver pursuant to subsection 7 because the Labor Commissioner finds that a request for apprentices was denied or the request was not approved within 5 business days as described in subparagraph (3) of paragraph (d) of subsection 10 and apprentices are later provided, then the contractor or subcontractor shall enter into an apprenticeship agreement for all apprentices later provided.~~

~~1013.~~ As used in this section:

(a) “Apprentice” means a person enrolled in an apprenticeship program recognized by the State Apprenticeship Council.

(b) “Apprenticed craft or type of work” means a craft or type of work for which there is an existing apprenticeship program recognized by the State Apprenticeship Council.

(c) “Apprenticeship program” means an apprenticeship program recognized by the State Apprenticeship Council.

~~(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.~~

~~Ê The term does not include the refusal of a contractor or subcontractor to enter into an apprenticeship agreement pursuant to subsection 9.~~

(e) “Journeyman” has the meaning ascribed to it in NRS 624.260.

(f) “State Apprenticeship Council” means the State Apprenticeship Council created by NRS 610.030.

(f) “Good Faith” means:

(1) That a contractor or subcontractor of whatever tier, makes an ongoing effort to request apprentices on a form approved by the Labor Commissioner that includes;

(a) Submitting a form to request an apprentice not earlier than 10 days before the contractor or subcontractor of whatever tier, is scheduled to begin work on a public work or later than 5 days after the contractor or subcontractor of whatever tier, has started work on a public work and then except as provided in subsection (b) at least once every 30 days thereafter for as long as the contractors or subcontractors of whatever tier;

(1) Has ongoing work on the public work or

(2) Not less than 10 days before the contractors or subcontractors of whatever tier, is scheduled to resume work on the public work or later than 5 days after the contractor or subcontractor of whatever tier, has restarted work on a public work.

(b) If the contractor or subcontractor, of whatever tier, has one or more apprentices for an apprenticed craft or type of work as applicable employed they will not be required to make a new request at least once every 30 days.

Nothing in this section shall be construed to mean that a contractor or subcontractor, of whatever tier, does not have to document an ongoing effort to request apprentices as needed.

(c) If the contractor or subcontractor of whatever tier has requested apprentices from an apprenticeship program and the request has been denied, the apprenticeship program has not responded to a request for an apprentice within 5 business days or the apprenticeship program has responded but is unable to fill the request within 10 business days. The contractor or subcontractor of whatever tier must continue to make good faith requests as provided in subsection (a) of subsection (f) of this subsection.

(2) The apprenticeship program will provide the apprentice as requested by the employer or if the apprenticeship program needs more time to provide an apprentice the apprenticeship program shall endeavor to provide a notice to the employer requesting an apprentice at least 48 hours’ before an apprentice will be sent to the requesting employer.