

Amendment No. 12

Senate Amendment to Senate Bill No. 50 (BDR 54-387)

Proposed by: Senate Committee on Commerce, Labor and Energy**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

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

RAE/JRS



Date: 3/27/2015

S.B. No. 50—Makes various changes to the regulation of contractors by the State Contractors' Board. (BDR 54-387)



SENATE BILL NO. 50—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

(ON BEHALF OF THE STATE CONTRACTORS' BOARD)

PREFILED DECEMBER 20, 2014

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Makes various changes to the regulation of contractors by the State Contractors' Board. (BDR 54-387)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to contractors; deleting the requirement that the State Contractors' Board establish an advisory committee concerning the classification of licensure of persons who install or maintain building shell insulation or thermal system insulation; revising the circumstances under which a natural person may qualify on behalf of another for more than one active contractor's license; requiring such a person to possess good character; expanding the acts which constitute cause for disciplinary action against a licensee to include certain international codes; expanding the circumstances under which an injured person is not eligible for recovery from the Recovery Fund; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires that the State Contractors' Board establish an advisory committee to make recommendations to the Board concerning the licensure of persons who install and maintain building shell or thermal system installation. (NRS 624.100) **Section 1** of this bill deletes this requirement.

Existing law requires an applicant for a license as a contractor to demonstrate certain experience or knowledge. Existing law also provides that an applicant may qualify in regard to such knowledge and experience by the appearance of another person on behalf of the applicant, ~~but, subject to certain exceptions, another person may only do so on behalf of one active licensee.~~ (NRS 624.260) **Section 2** of this bill ~~provides that this limitation does not apply to a licensee that is a corporation for public benefit.~~ **authorizes the Board to inquire into and consider that other person's previous experience and certain legal actions against them.**

Existing law requires that the Board establish the financial responsibility of an applicant or licensee seeking renewal. (NRS 624.236) **Section 3** of this bill allows the Board to inquire into and consider the financial responsibility of a person who qualifies on behalf of the applicant or licensee in making a determination of financial responsibility. Existing law requires that the Board establish the good character of an applicant or licensee seeking

renewal. (NRS 624.265) **Section 4** of this bill allows the Board to request certain information from any person who qualifies on behalf of an applicant or licensee in making a determination of good character.

Existing law provides that workmanship by a licensee that is not commensurate with certain codified standards is grounds for disciplinary action. (NRS 624.3017) **Section 5** of this bill adds certain international building codes to those standards.

Existing law provides that, subject to certain exceptions, certain persons who suffer actual damages as a result of the acts or omissions of a licensee may be eligible to recover damages from the Recovery Fund maintained by the Board. (NRS 624.510) **Section 6** of this bill adds certain exceptions to the eligibility to recover from the Recovery Fund.

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

Section 1. NRS 624.100 is hereby amended to read as follows:

624.100 1. The Board may appoint such committees and make such reasonable bylaws, rules of procedure and regulations as are necessary to carry out the provisions of this chapter.

2. ~~Except as otherwise provided in subsection 3, the~~ **The** Board may establish advisory committees composed of its members or employees, homeowners, contractors or other qualified persons to provide assistance with respect to fraud in construction, or in any other area that the Board considers necessary.

3. ~~The Board shall establish an advisory committee to make recommendations to the Board concerning the classification of licensure of persons who install or maintain building shell insulation or thermal system insulation, including, without limitation, recommendations relating to training and continuing education.~~

~~4.~~ If an advisory committee is established, the Board shall:

(a) Select five members for the committee from a list of volunteers approved by the Board; and

(b) Adopt rules of procedure for informal conferences of the committee.

~~5.~~ 4. If an advisory committee is established, the members:

(a) Serve at the pleasure of the Board.

(b) Serve without compensation, but must be reimbursed for travel expenses necessarily incurred in the performance of their duties. The rate must not exceed the rate provided for state officers and employees generally.

(c) Shall provide a written summary report to the Board, within 15 days after the final informal conference of the committee, that includes recommendations with respect to actions that are necessary to reduce and prevent the occurrence of fraud in construction, or on such other issues as requested by the Board.

~~6.~~ 5. The Board is not bound by any recommendation made by an advisory committee.

~~7. As used in this section:~~

~~(a) "Building shell insulation" means a product that is used as part of the building which insulates a boundary between indoor and outdoor space or conditioned and unconditioned space, including, without limitation, walls, ceilings or floors.~~

~~(b) "Thermal system insulation" means a product that is used in a heating, ventilating, cooling, plumbing or refrigeration system to insulate any hot or cold surface, including, without limitation, a pipe, duct, valve, boiler, flue or tank, or equipment on or in a building.~~

1 **Sec. 2.** NRS 624.260 is hereby amended to read as follows:

2 624.260 1. The Board shall require an applicant or licensee to show such a
3 degree of experience, financial responsibility and such general knowledge of the
4 building, safety, health and lien laws of the State of Nevada and the administrative
5 principles of the contracting business as the Board deems necessary for the safety
6 and protection of the public.

7 2. An applicant or licensee may qualify in regard to his or her experience and
8 knowledge in the following ways:

9 (a) If a natural person, the applicant or licensee may qualify by personal
10 appearance or by the appearance of his or her responsible managing employee.

11 (b) If a copartnership, a corporation or any other combination or organization,
12 it may qualify by the appearance of the responsible managing officer or member of
13 the personnel of the applicant firm.

14 ➤ If an applicant or licensee intends to qualify pursuant to this subsection by the
15 appearance of another person, the applicant or licensee shall submit to the Board
16 such information as the Board determines is necessary to demonstrate the duties
17 and responsibilities of the other person so appearing with respect to the supervision
18 and control of the operations of the applicant or licensee relating to construction.

19 3. The natural person qualifying on behalf of another natural person or firm
20 under paragraphs (a) and (b) of subsection 2 must prove that he or she is a bona fide
21 member or employee of that person or firm and when his or her principal or
22 employer is actively engaged as a contractor shall exercise authority in connection
23 with the principal or employer's contracting business in the following manner:

24 (a) To make technical and administrative decisions;

25 (b) To hire, superintend, promote, transfer, lay off, discipline or discharge
26 other employees and to direct them, either by himself or herself or through others,
27 or effectively to recommend such action on behalf of the principal or employer; and

28 (c) To devote himself or herself solely to the principal or employer's business
29 and not to take any other employment which would conflict with his or her duties
30 under this subsection.

31 4. If, pursuant to subsection 2, an applicant or licensee intends to qualify by
32 the appearance of another person, the Board may inquire into and consider any
33 previous business experience of, and any prior and pending lawsuits, liens and
34 judgments against, the other person.

35 5. A natural person may not qualify on behalf of another for more than one
36 active license unless:

37 (a) One person owns at least 25 percent of each licensee for which the person
38 qualifies; or

39 (b) One licensee owns at least 25 percent of the other licensee. ~~for~~

40 ~~(c) One licensee is a corporation for public benefit.~~

41 ~~5.1~~ 6. Except as otherwise provided in subsection 6, in addition to the other
42 requirements set forth in this section, each applicant for licensure as a contractor
43 must have had, within the 10 years immediately preceding the filing of the
44 application for licensure, at least 4 years of experience as a journeyman, foreman,
45 supervising employee or contractor in the specific classification in which the
46 applicant is applying for licensure. Training received in a program offered at an
47 accredited college or university or an equivalent program accepted by the Board
48 may be used to satisfy not more than 3 years of experience required pursuant to this
49 subsection.

50 ~~6.1~~ 7. If the applicant who is applying for licensure has previously qualified
51 for a contractor's license in the same classification in which the applicant is
52 applying for licensure, the experience required pursuant to subsection 5 need not be
53 accrued within the 10 years immediately preceding the application.

1 ~~77~~ 8. As used in this section, "journeyman" ~~+~~
2 ~~(a) "Corporation for public benefit" has the meaning ascribed to it in NRS~~
3 ~~82.021.~~

4 ~~(b) "Journeyman"~~ means a person who:

5 ~~(a) ~~77~~~~ Is fully qualified to perform, without supervision, work in the
6 classification in which the person is applying for licensure; or

7 ~~(b) ~~77~~~~ Has successfully completed:

8 ~~(1) ~~77~~~~ A program of apprenticeship for the classification in which the
9 person is applying for licensure that has been approved by the State Apprenticeship
10 Council; or

11 ~~(2) ~~77~~~~ An equivalent program accepted by the Board.

12 **Sec. 3.** NRS 624.263 is hereby amended to read as follows:

13 624.263 1. The financial responsibility of a licensee or an applicant for a
14 contractor's license must be established independently of and without reliance on
15 any assets or guarantees of any owners or managing officers of the licensee or
16 applicant ~~+~~ or any person who qualifies on behalf of the licensee or applicant
17 pursuant to subsection 2 of NRS 624.260, but the financial responsibility of ~~any~~
18 ~~owners or managing officers of the licensee or applicant~~ the following persons
19 may be inquired into and considered as a criterion in determining the financial
20 responsibility of the licensee or applicant ~~+~~ :

21 (a) Any owner of the licensee or applicant;

22 (b) Any managing officer of the licensee or applicant; or

23 (c) Any person who qualifies on behalf of the licensee or applicant pursuant
24 to subsection 2 of NRS 624.260.

25 2. The financial responsibility of an applicant for a contractor's license or of a
26 licensed contractor may be determined by using the following standards and criteria
27 in connection with each applicant or contractor and each associate or partner
28 thereof:

29 (a) Amount of net worth.

30 (b) Amount of liquid assets.

31 (c) Amount of current assets.

32 (d) Amount of current liabilities.

33 (e) Amount of working capital.

34 (f) Ratio of current assets to current liabilities.

35 (g) Fulfillment of bonding requirements pursuant to NRS 624.270.

36 (h) Prior payment and credit records.

37 (i) Previous business experience.

38 (j) Prior and pending lawsuits.

39 (k) Prior and pending liens.

40 (l) Adverse judgments.

41 (m) Conviction of a felony or crime involving moral turpitude.

42 (n) Prior suspension or revocation of a contractor's license in Nevada or
43 elsewhere.

44 (o) An adjudication of bankruptcy or any other proceeding under the federal
45 bankruptcy laws, including:

46 (1) A composition, arrangement or reorganization proceeding;

47 (2) The appointment of a receiver of the property of the applicant or
48 contractor or any officer, director, associate or partner thereof under the laws of this
49 State or the United States; or

50 (3) The making of an assignment for the benefit of creditors.

51 (p) Form of business organization, corporate or otherwise.

52 (q) Information obtained from confidential financial references and credit
53 reports.

(r) Reputation for honesty and integrity of the applicant or contractor or any officer, director, associate or partner thereof.

3. A licensed contractor shall, as soon as it is reasonably practicable, notify the Board in writing upon the filing of a petition or application relating to the contractor that initiates any proceeding, appointment or assignment set forth in paragraph (o) of subsection 2. The written notice must be accompanied by:

(a) A copy of the petition or application filed with the court; and

(b) A copy of any order of the court which is relevant to the financial responsibility of the contractor, including any order appointing a trustee, receiver or assignee.

4. Before issuing a license to an applicant who will engage in residential construction or renewing the license of a contractor who engages in residential construction, the Board may require the applicant or licensee to establish financial responsibility by submitting to the Board:

(a) A financial statement that is:

(1) Prepared by a certified public accountant; or

(2) Submitted on a form or in a format prescribed by the Board together with an affidavit which verifies the accuracy of the financial statement; and

(b) A statement setting forth the number of building permits issued to and construction projects completed by the licensee during the immediately preceding year and any other information required by the Board. The statement submitted pursuant to this paragraph must be provided on a form approved by the Board.

5. In addition to the requirements set forth in subsection 4, the Board may require a licensee to establish financial responsibility at any time.

6. An applicant for an initial contractor's license or a licensee applying for the renewal of a contractor's license has the burden of demonstrating financial responsibility to the Board, if the Board requests the applicant or licensee to do so.

Sec. 4. NRS 624.265 is hereby amended to read as follows:

624.265 1. An applicant for a contractor's license or a licensed contractor, ~~and~~ each officer, director, partner and associate thereof, *and any person who qualifies on behalf of the applicant pursuant to subsection 2 of NRS 624.260* must possess good character. Lack of character may be established by showing that the applicant or licensed contractor, ~~or~~ any officer, director, partner or associate thereof, *or any person who qualifies on behalf of the applicant* has:

(a) Committed any act which would be grounds for the denial, suspension or revocation of a contractor's license;

(b) A bad reputation for honesty and integrity;

(c) Entered a plea of guilty, guilty but mentally ill or nolo contendere to, been found guilty or guilty but mentally ill of, or been convicted, in this State or any other jurisdiction, of a crime arising out of, in connection with or related to the activities of such person in such a manner as to demonstrate his or her unfitness to act as a contractor, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal; or

(d) Had a license revoked or suspended for reasons that would preclude the granting or renewal of a license for which the application has been made.

2. Upon the request of the Board, an applicant for a contractor's license, ~~and~~ any officer, director, partner or associate of the applicant ~~and~~ *and any person who qualifies on behalf of the applicant pursuant to subsection 2 of NRS 624.260* must submit to the Board completed fingerprint cards and a form authorizing an investigation of the applicant's background and the submission of the fingerprints to the Central Repository for Nevada Records of Criminal History and the Federal Bureau of Investigation. The fingerprint cards and authorization form submitted must be those that are provided to the applicant by the Board. The applicant's

fingerprints may be taken by an agent of the Board or an agency of law enforcement.

3. Except as otherwise provided in NRS 239.0115, the Board shall keep the results of the investigation confidential and not subject to inspection by the general public.

4. The Board shall establish by regulation the fee for processing the fingerprints to be paid by the applicant. The fee must not exceed the sum of the amounts charged by the Central Repository for Nevada Records of Criminal History and the Federal Bureau of Investigation for processing the fingerprints.

5. The Board may obtain records of a law enforcement agency or any other agency that maintains records of criminal history, including, without limitation, records of:

- (a) Arrests;
- (b) Guilty and guilty but mentally ill pleas;
- (c) Sentencing;
- (d) Probation;
- (e) Parole;
- (f) Bail;
- (g) Complaints; and
- (h) Final dispositions,

for the investigation of a licensee or an applicant for a contractor's license.

Sec. 5. NRS 624.3017 is hereby amended to read as follows:

624.3017 The following acts, among others, constitute cause for disciplinary action under NRS 624.300:

1. Workmanship which is not commensurate with standards of the trade in general or which is below the standards in the building or construction codes adopted by the city or county in which the work is performed. If no applicable building or construction code has been adopted locally, then workmanship must meet the standards prescribed in the ~~Uniform Building Code,~~ Uniform Plumbing Code , ~~the~~ National Electrical Code , International Building Code or International Residential Code in the form of the code most recently approved by the Board. The Board shall review each edition of the ~~Uniform Building Code,~~ Uniform Plumbing Code , ~~the~~ National Electrical Code , International Building Code or International Residential Code that is published after the 1996 edition to ensure its suitability. Each new edition of the code shall be deemed approved by the Board unless the edition is disapproved by the Board within 60 days of the publication of the code.

2. Advertising projects of construction without including in the advertisements the name and license number of the licensed contractor who is responsible for the construction.

3. Advertising projects of construction beyond the scope of the license.

Sec. 6. NRS 624.510 is hereby amended to read as follows:

624.510 1. Except as otherwise provided in NRS 624.490 and subsection 2, an injured person is eligible for recovery from the account if the Board or its designee finds that the injured person suffered actual damages as a result of an act or omission of a residential contractor that is in violation of this chapter or the regulations adopted pursuant thereto.

2. An injured person is not eligible for recovery from the account if:

(a) The injured person is ~~the spouse of~~ cohabitating with the licensee, is related to the licensee by blood or marriage to the licensee, or ~~by blood in the first or second degree of consanguinity,~~ or ~~is~~ a personal representative of ~~the spouse of~~ a person cohabitating with the licensee or related to the licensee by

~~blood or marriage to the licensee;~~ or by blood in the first or second degree of consanguinity;

(b) The injured person was associated in a business relationship with the licensee other than the contract at issue; ~~for~~

(c) At the time of contracting with the residential contractor, the license of the residential contractor was suspended or revoked pursuant to NRS 624.300 ~~H~~ ;

(d) *The injured person:*

(1) *Applied for and obtained any building permit for the single-family residence at which the act or omission occurred and for which the injured person wishes to recover actual damages from the account; or*

(2) *Constructed the residence as the owner-builder of the residence;*

(e) *The claim submitted by the injured person for recovery from the account contains:*

(1) *A false or misleading statement; or*

(2) *A forged or altered receipt or other document which includes an improvement, upgrade or work that exceeds the scope of the contract at issue;*

(f) *The injured person is a lien claimant who has not filed a lien in accordance with the provisions of NRS 108.221 to 108.246, inclusive; or*

(g) *The single-family residence at which the act or omission occurred and for which the injured person wishes to recover actual damages from the account was constructed, remodeled, repaired or improved with the intent of renting, leasing or selling the residence within 1 year after the date of completion of the construction, remodeling, repair or improvement. The offering of the residence for rent, lease or sale within 1 year after that date creates a rebuttable presumption that the construction, remodeling, repair or improvement was performed with the intent to rent, lease or sell the residence.*

3. If the Board or its designee determines that an injured person is eligible for recovery from the account pursuant to this section or NRS 624.490, the Board or its designee may pay out of the account:

(a) The amount of actual damages suffered, but not to exceed \$35,000; or

(b) If a judgment was obtained as set forth in NRS 624.490, the amount of actual damages included in the judgment and remaining unpaid, but not to exceed \$35,000.

4. The decision of the Board or its designee regarding eligibility for recovery and all related issues is final and not subject to judicial review.

5. If the injured person has recovered a portion of his or her loss from sources other than the account, the Board shall deduct the amount recovered from the other sources from the amount payable upon the claim and direct the difference to be paid from the account.

6. To the extent of payments made from the account, the Board is subrogated to the rights of the injured person, including, without limitation, the right to collect from a surety bond or a cash bond. The Board and the Attorney General shall promptly enforce all subrogation claims.

7. The amount of recovery from the account based upon claims made against any single contractor must not exceed \$400,000.

8. As used in this section, "actual damages" includes attorney's fees or costs in contested cases appealed to the appellate court of competent jurisdiction. The term does not include any other attorney's fees or costs.

Sec. 7. 1. This section and section 1 of this act become effective upon passage and approval.

2. Sections 2 to 6, inclusive, of this act become effective on October 1, 2015.