

SENATE BILL NO. 82—SENATOR DALY

PREFILED JANUARY 26, 2023

Referred to Committee on Government Affairs

SUMMARY—Revises provisions related to public works.
(BDR 28-535)

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

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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 public works; revising provisions relating to the use of apprentices on public works; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires contractors or subcontractors engaged on public works to use one or more apprentices for a certain percentage of the total hours performed on a public work, depending on the number of workers employed on the public work, and to enter into an apprenticeship agreement for all apprentices so required. (NRS 338.01165) **Section 1** of this bill: (1) eliminates the threshold number of workers for the applicability of the requirements for using apprentices; (2) applies those requirements based on all public works performed by a contractor or subcontractor during a calendar year instead of based on each public work; and (3) limits the requirement to enter into an apprenticeship agreement to those contractors or subcontractors who are not signatories to a collective bargaining agreement with a sponsoring union.

Existing law: (1) sets forth a procedure that authorizes the Labor Commissioner, upon request by a public body, to grant a modification or waiver from the requirements for using apprentices upon a finding of good cause; and (2) defines the circumstances that constitute "good cause." (NRS 338.01165) **Section 1**: (1) eliminates that procedure; (2) requires a contractor or subcontractor to maintain and provide to the Labor Commissioner any supporting documentation to show that the contractor or subcontractor made a good faith effort to comply with the annual requirements to use one or more apprentices for a certain percentage of the total hours performed on public works; and (3) sets forth certain requirements for such supporting documentation.

Existing law provides that an apprentice who graduates from an apprenticeship program while employed on a public work is deemed to be an apprentice on the public work for purposes of the requirements for using apprentices and a journeyman for certain purposes, including the payment of wages. (NRS 338.01165) **Section 1** expands the circumstances under which a person is treated as an apprentice for those requirements.



Section 1 also requires, on or before February 15 of each year, a contractor or subcontractor to submit certain information to the Labor Commissioner regarding the hours that were worked in a calendar year on vertical or horizontal construction for each apprenticed craft or type of work performed. **Section 2** of this bill requires that the first such annual report be submitted on or before February 15, 2025, and address calendar year 2024.

Finally, **section 1** sets forth a penalty schedule for violations of certain provisions relating to the requirements for a contractor or subcontractor to use one or more apprentices for a certain percentage of the total hours performed on a public work.

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

Section 1. NRS 338.01165 is hereby amended to read as follows:

338.01165 1. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor engaged in vertical construction who employs ~~{a worker}~~ *workers* on ~~{a}~~ *one or more* public ~~{work}~~ *works during a calendar year* pursuant to NRS 338.040 shall use one or more apprentices for at least 10 percent , *or any increased percentage established pursuant to subsection 3*, of the total hours of labor worked for each apprenticed craft or type of work to be performed on ~~{the}~~ *those* public ~~{work for which more than three workers are employed.}~~ *works*.

2. Notwithstanding any other provision of this chapter and except as otherwise provided in this section, a contractor or subcontractor engaged in horizontal construction who employs ~~{a worker}~~ *workers* on ~~{a}~~ *one or more* public ~~{work}~~ *works during a calendar year* pursuant to NRS 338.040 shall use one or more apprentices for at least 3 percent , *or any increased percentage established pursuant to subsection 3*, of the total hours of labor worked for each apprenticed craft or type of work to be performed on ~~{the}~~ *those* public ~~{work for which more than three workers are employed.}~~ *works*.

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. *If a contractor or subcontractor who is a signatory to a collective bargaining agreement with a union that sponsors an apprenticeship program for an apprenticed craft or type of work requests an apprentice from that apprenticeship program and an apprentice in the appropriate craft or type of work is not available, the apprenticeship program may provide a person who graduated from the apprenticeship program in that craft or type of work within the 3 years immediately preceding the request from the contractor or subcontractor. Such a person:*

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

(b) *Shall be deemed a journeyman for all other purposes, including, without limitation, the payment of wages and benefits to a journeyman pursuant to the collective bargaining agreement.*

6. A contractor or subcontractor 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.

~~[6.—A]~~

7. *A contractor or subcontractor engaged on a public work shall maintain and provide to the Labor Commissioner any supporting documentation to show that the contractor or subcontractor made a good faith effort to comply with subsection 1 or 2, as applicable. ~~[public body may, upon the request of a contractor or subcontractor, submit a request]~~ For purposes of this subsection, a contractor or subcontractor:*

(a) *Makes a good faith effort to comply with subsection 1 or 2, as applicable, if the contractor or subcontractor:*

(1) *Submits to the apprenticeship program, on the form prescribed by 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 any supporting documentation, including, without limitation, proof of denial of or failure to approve a request for apprentices pursuant to subparagraph (3) of paragraph (d) of subsection 10.~~*

~~—7.]~~, *a request for an apprentice not earlier than 10 days before the contractor or subcontractor is scheduled to begin work on the*



public work and not later than 5 days after the contractor or subcontractor actually begins work on the public work.

(2) If the apprenticeship program does not provide an apprentice for the appropriate apprenticed craft or type of work upon a request pursuant to subparagraph (1), submits additional requests to the apprenticeship program, on the form prescribed by the Labor Commissioner, at least once every 30 days during the period that the contractor or subcontractor is working on the public work. If a contractor or subcontractor does not work continuously on the public work, the contractor or subcontractor shall submit an additional request each time that the contractor or subcontractor resumes work on the public work not earlier than 10 days before the contractor or subcontractor is scheduled to resume work on the public work and not later than 5 days after the contractor or subcontractor actually resumes work on the public work. The requirement for the submission of an additional request in this subparagraph does not apply whenever a contractor or subcontractor has one or more apprentices employed for that apprenticed craft or type of work.

(b) Does not make a good faith effort to comply with subsection 1 or 2, as applicable, if the contractor or subcontractor is required to enter into an apprenticeship agreement pursuant to subsection 16 and refuses to do so.

8. The supporting documentation required pursuant to subsection 7 must include, without limitation:

(a) Documentation of the submission by the contractor or subcontractor of one or more requests, as applicable, pursuant to subsection 7; and

(b) Documentation that the apprenticeship program denied such a request, did not respond to such a request or responded that the program was unable to provide the requested apprentice.

9. The contractor or subcontractor and the apprenticeship program shall coordinate the starting date for any apprentice provided by the program.

10. On or before February 15 of each year, a contractor or subcontractor engaged in vertical or horizontal construction, as applicable, who employs a worker on one or more public works pursuant to NRS 338.040 shall report to the Labor Commissioner, on the form prescribed by 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.~~



~~8.1~~, the following information regarding those public works for the previous calendar year:

(a) For each apprenticed craft or type of work, the total number of hours worked on vertical construction.

(b) For each apprenticed craft or type of work, the total number of hours worked on horizontal construction.

(c) For each apprenticed craft or type of work, the total number of hours worked by apprentices on vertical construction.

(d) For each apprenticed craft or type of work, the total number of hours worked by apprentices on horizontal construction.

(e) For each apprenticed craft or type of work, the percentage of the total number of hours worked on vertical construction that were worked by apprentices.

(f) For each apprenticed craft or type of work, the percentage of the total number of hours worked on horizontal construction that were worked by apprentices.

11. The information required to be reported pursuant to subsection 10 must not include any identifying information about a public work or an apprentice or employee.

12. If the Labor Commissioner, on his or her own initiative or based on a complaint, makes a determination based on the information submitted pursuant to subsection 10 that a contractor or subcontractor did not make a good faith effort to comply with the provisions of subsection 1 or 2, as applicable, the Labor Commissioner shall notify the contractor or subcontractor in writing of the determination and:

(a) Except as otherwise provided in paragraph (b), shall assess a penalty as follows:

(I) If the apprentice utilization rate by the contractor or subcontractor on vertical construction of a public work is:

(I) Seven and one-half percent or more but less than 10 percent of the total hours of labor worked for an apprenticed craft or type of work, a penalty of \$2,500 or \$2 for each hour below the percentage required, whichever is higher.

(II) More than 4 percent but less than 7.5 percent of the total hours of labor worked for an apprenticed craft or type of work, a penalty of \$3,000 or \$4 for each hour below the percentage required, whichever is higher.

(III) Four percent or less of the total hours of labor worked for an apprenticed craft or type of work, a penalty of \$5,000 or \$6 for each hour below the percentage required, whichever is higher.

(2) If the apprentice utilization rate by the contractor or subcontractor on horizontal construction of a public work is:



(I) Two percent or more but less than 3 percent of the total hours of labor worked for an apprenticed craft or type of work, a penalty of \$2,500 or \$2 for each hour below the percentage required, whichever is higher.

(II) More than 1 percent but less than 2 percent of the total hours of labor worked for an apprenticed craft or type of work, a penalty of \$3,000 or \$4 for each hour below the percentage required, whichever is higher.

(III) One percent or less of the total hours of labor worked for an apprenticed craft or type of work, a penalty of \$5,000 or \$6 for each hour below the percentage required, whichever is higher.

(b) Shall not assess a penalty if the total number of hours of labor required to be worked by apprentices:

(1) On vertical construction pursuant to subsection 1, as applicable, during the previous calendar year is less than 40 hours.

(2) On horizontal construction pursuant to subsection 2, as applicable, during the previous calendar year is less than 24 hours.

13. Except for good cause, the Labor Commissioner may not initiate his or her own investigation or accept a complaint based on the information submitted by a contractor or subcontractor pursuant to subsection 10 after May 1 immediately following the date on which the report was received by the Labor Commissioner.

14. In addition to the penalties set forth in subsection 12, if the Labor Commissioner, on his or her own initiative or based on a complaint, makes a determination that a contractor or subcontractor did not submit the report required pursuant to subsection 10 or did not make a good faith effort to comply with the provisions of subsection 1 or 2, as applicable, the Labor Commissioner shall:

(a) Impose a penalty of not less than \$10,000 but not more than \$75,000; or

(b) Disqualify the contractor or subcontractor from being awarded a contract for a public work for at least 180 days but not more than 2 years.

15. A ~~public body~~ contractor or subcontractor may request a hearing on the determination of the Labor Commissioner pursuant to subsection 12 or 14 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.

~~[9.] 16.~~ A contractor or subcontractor *who is not a 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 ~~[all apprentices]~~ *each apprentice* 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.]~~

~~—10.] 17.~~ 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.~~

~~➔ 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)] (e)~~ “State Apprenticeship Council” means the State Apprenticeship Council created by NRS 610.030.

Sec. 2. The initial report required pursuant to subsection 10 of NRS 338.01165, as amended by section 1 of this act, must be submitted on or before February 15, 2025, and must include information for the period which begins on January 1, 2024, and ends on December 31, 2024.



1 **Sec. 3.** 1. This section becomes effective upon passage and
2 approval.

3 2. Sections 1 and 2 of this act become effective:

4 (a) Upon passage and approval for the purpose of adopting any
5 regulations and performing any other preparatory administrative
6 tasks that are necessary to carry out the provisions of this act; and

7 (b) On January 1, 2024, for all other purposes.

