SENATE BILL NO. 357–SENATORS ATKINSON, SEGERBLOM, SPEARMAN, DENIS, PARKS; CANCELA, CANNIZZARO, FORD, MANENDO AND WOODHOUSE

MARCH 20, 2017

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions governing the use of apprentices on public works. (BDR 53-534)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 apprentices; requiring the State Apprenticeship Council to approve or deny certain written requests submitted by a public body concerning the required use of an apprentice on a public work; authorizing the Council to suspend the right of a contractor on a public work to participate in a program of apprenticeship under certain circumstances; requiring a public body that awards a contract for a public work to ensure an apprentice performs a certain percentage of the total hours of labor on the public work in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law creates the State Apprenticeship Council and requires the Council to establish standards for programs of apprenticeship. (NRS 610.030, 610.090, 610.095) The purposes of such programs include, without limitation: (1) the creation of the opportunity for persons to obtain training that will equip those persons for profitable employment and citizenship; and (2) the establishment of an organized program for the voluntary training of those persons by providing facilities for training and guidance in the arts and crafts of industry and trade. (NRS 610.020) Existing law sets forth the requirements for a public body which sponsors or finances a public work to award a contract to a contractor for the construction of the public work. (Chapter 338 of NRS) Such requirements include, without limitation: (1) the payment of the prevailing wage in the county in which the public work is located; and (2) the establishment of certain fair employment practices for contractors in connection with the performance of work under the contract awarded by the public body. (NRS 338.020, 338.125)

Section 4 of this bill requires a public body that awards a contract for a public work for which the estimated cost exceeds $1,000,000 to ensure that an apprentice performs not less than a certain percentage of the total hours of labor on the public work, starting at 3 percent for a contract awarded in calendar year 2018 and rising to 15 percent for a contract awarded in or after calendar year 2022. **Section 4** also imposes that requirement upon the Department of Transportation if the estimated cost of the contract exceeds $2,000,000. In addition, **section 4**: (1) authorizes a public body to submit, pursuant to **section 1** of this bill, a request to the Council for a waiver or modification of the requirement to use an apprentice on a public work for the minimum percentage of hours; (2) exempts from the requirement a contractor who cannot, as a result of membership in or affiliation with, or the lack thereof, a labor organization, retain the apprentices necessary to provide the required hours of labor; and (3) authorizes a contractor to submit a request to the Labor Commissioner to waive the requirement if a change in circumstances makes the completion of the public work subject to the requirement impracticable.

Section 3 of this bill authorizes the Council to suspend, for not more than 1 year, the right of any contractor on a public work to participate in a program of apprenticeship if the Council determines that the contractor willfully violated the provisions of the contract concerning the use of an apprentice on the public work for the minimum percentage of hours.

Section 5 of this bill expands the definition of "offense" set forth in existing law relating to public works to include the failure by a contractor to ensure that an apprentice is used on a public work for the required number of hours, thereby subjecting the contractor to a possible civil action to recover damages resulting from the commission of the offense and the temporary disqualification of the contractor from an award of a contract for a public work. (NRS 338.010, 338.016, 338.017)

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

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

1. If, pursuant to section 4 of this act, a public body submits a written request for a waiver or modification of the requirements of that section, the State Apprenticeship Council shall, within 90 days after receiving the request:

(a) Approve or deny the request in writing; and

(b) Notify the public body of the approval or denial of the request.

2. In approving or denying a request submitted pursuant to subsection 1, the State Apprenticeship Council shall:

(a) Balance the purposes of programs specified in NRS 610.020 and the need for cost-effective and efficient completion of public works; and

(b) Consider:

(1) Whether a demonstrated lack of qualified apprentices exists in a specific geographic area;

(2) Whether a disproportionately high ratio of material costs to labor costs for a public work makes the minimum hours of labor required to be performed by an apprentice for the public work unfeasible; and

(3) Any other information specified by the State Apprenticeship Council.

3. A decision by the State Apprenticeship Council pursuant to this section is subject to review by the Labor Commissioner pursuant to NRS 607.207.

Sec. 2. NRS 610.095 is hereby amended to read as follows:

610.095 The State Apprenticeship Council shall:

1. Register and approve or reject proposed programs and standards for apprenticeship.

2. After providing notice and a hearing and for good cause shown, deny an application for approval of a program, suspend, terminate, cancel or place conditions upon any approved program, or place an approved program on probation for any violation of the provisions of this title as specified in regulations adopted by the State Apprenticeship Council.

3. Approve or deny a written request for a waiver or modification submitted pursuant to section 1 of this act.

Sec. 3. NRS 610.185 is hereby amended to read as follows:

610.185 The State Apprenticeship Council ~~[shall]~~ ***:***

1. Shall suspend for 1 year the right of any employer, association of employers or organization of employees acting as agent for an employer to participate in a program under the provisions of this chapter if the Nevada Equal Rights Commission, after notice and hearing, finds that the employer, association or organization has discriminated against an apprentice because of race, color, creed, sex, sexual orientation, gender identity or expression, religion, disability or national origin in violation of this chapter.

2. May suspend for not more than 1 year the right of any contractor on a public work to participate in a program pursuant to the provisions of this chapter if the State Apprenticeship Council determines that, during any period in which the labor of an apprentice is used on a public work, as required by section 4 of this act, a contractor willfully violated the terms of the contract for the public work, including, without limitation, any ratio of apprentices to journeymen, supervision, wages and methods of work set forth in the contract. As used in this subsection, "public work" has the meaning ascribed to it in NRS 338.010.

Sec. 4. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsections 2 to 5, inclusive, if a public body awards a contract for which the estimated cost exceeds $1,000,000, the public body shall ensure that an apprentice performs:

(a) For a contract awarded in calendar year 2018, not less than 3 percent of the total hours of labor on the public work.

(b) For a contract awarded in calendar year 2019, not less than 6 percent of the total hours of labor on the public work.

(c) For a contract awarded in calendar year 2020, not less than 9 percent of the total hours of labor on the public work.

(d) For a contract awarded in calendar year 2021, not less than 12 percent of the total hours of labor on the public work.

(e) For a contract awarded in calendar year 2022 or any calendar year thereafter, not less than 15 percent of the total hours of labor on the public work.

2. Except as otherwise provided in subsections 3, 4 and 5, if the Department of Transportation awards a contract for which the estimated cost exceeds $2,000,000, the Department shall ensure that an apprentice performs:

(a) For a contract awarded in calendar year 2018, not less than 3 percent of the total hours of labor on the public work.

(b) For a contract awarded in calendar year 2019, not less than 6 percent of the total hours of labor on the public work.

(c) For a contract awarded in calendar year 2020, not less than 9 percent of the total hours of labor on the public work.

(d) For a contract awarded in calendar year 2021, not less than 12 percent of the total hours of labor on the public work.

(e) For a contract awarded in calendar year 2022 or any calendar year thereafter, not less than 15 percent of the total hours of labor on the public work.

3. A public body may, pursuant to section 1 of this act, submit a written request to the State Apprenticeship Council for a waiver or modification of the requirements of subsection 1 or 2, as applicable. If a public body submits such a request, the public body shall not request bids for or enter into a contract for which the public body submitted the request until the State Apprenticeship Council approves or denies the request pursuant to section 1 of this act.

4. The provisions of subsections 1 and 2 do not apply to a contractor engaged on a public work who cannot retain the apprentices necessary to meet the requirements of subsection 1 or 2, as applicable, as a result of membership in or affiliation with

any labor organization or the lack of such membership or affiliation.

5. Except as otherwise provided in this subsection, each contractor engaged on a public work requiring the use of apprentices pursuant to this section shall ensure that an apprentice is used on the public work for at least the minimum percentage of hours of labor required for the public work. A contractor may submit a written request to the Labor Commissioner to waive the requirements of this section if a change in circumstances makes the completion of the public work using the apprentices required pursuant to this section impracticable. The Labor Commissioner may, for good cause shown, grant a request submitted pursuant to this subsection.

6. As used in this section, "apprentice" has the meaning ascribed to it in NRS 610.010.

Sec. 5. NRS 338.010 is hereby amended to read as follows:

338.010 As used in this chapter:

1. "Authorized representative" means a person designated by a public body to be responsible for the development, solicitation, award or administration of contracts for public works pursuant to this chapter.

2. "Contract" means a written contract entered into between a contractor and a public body for the provision of labor, materials, equipment or supplies for a public work.

3. "Contractor" means:

(a) A person who is licensed pursuant to the provisions of chapter 624 of NRS.

(b) A design-build team.

4. "Day labor" means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a worker or workers employed by them on public works by the day and not under a contract in writing.

5. "Design-build contract" means a contract between a public body and a design-build team in which the design-build team agrees to design and construct a public work.

6. "Design-build team" means an entity that consists of:

(a) At least one person who is licensed as a general engineering contractor or a general building contractor pursuant to chapter 624 of NRS; and

(b) For a public work that consists of:

(1) A building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS.

(2) Anything other than a building and its site, at least one person who holds a certificate of registration to practice architecture

pursuant to chapter 623 of NRS or landscape architecture pursuant to chapter 623A of NRS or who is licensed as a professional engineer pursuant to chapter 625 of NRS.

7. "Design professional" means:

(a) A person who is licensed as a professional engineer pursuant to chapter 625 of NRS;

(b) A person who is licensed as a professional land surveyor pursuant to chapter 625 of NRS;

(c) A person who holds a certificate of registration to engage in the practice of architecture, interior design or residential design pursuant to chapter 623 of NRS;

(d) A person who holds a certificate of registration to engage in the practice of landscape architecture pursuant to chapter 623A of NRS; or

(e) A business entity that engages in the practice of professional engineering, land surveying, architecture or landscape architecture.

8. "Division" means the State Public Works Division of the Department of Administration.

9. "Eligible bidder" means a person who is:

(a) Found to be a responsible and responsive contractor by a local government or its authorized representative which requests bids for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373; or

(b) Determined by a public body or its authorized representative which awarded a contract for a public work pursuant to NRS 338.1375 to 338.139, inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or 338.1382.

10. "General contractor" means a person who is licensed to conduct business in one, or both, of the following branches of the contracting business:

(a) General engineering contracting, as described in subsection 2 of NRS 624.215.

(b) General building contracting, as described in subsection 3 of NRS 624.215.

11. "Governing body" means the board, council, commission or other body in which the general legislative and fiscal powers of a local government are vested.

12. "Local government" means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318, 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, and any agency or department of a county or city which prepares a budget separate from that of the parent political

subdivision. The term includes a person who has been designated by the governing body of a local government to serve as its authorized representative.

13. "Offense" means failing to:

(a) Pay the prevailing wage required pursuant to this chapter;

(b) Pay the contributions for unemployment compensation required pursuant to chapter 612 of NRS;

(c) Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS; ~~[or]~~

(d) Comply with subsection 5 or 6 of NRS 338.070 ~~[.]~~ ***; or***

(e) Ensure that an apprentice is used on a public work for the minimum amount of hours of labor required pursuant to section 4 of this act.

14. "Prime contractor" means a contractor who:

(a) Contracts to construct an entire project;

(b) Coordinates all work performed on the entire project;

(c) Uses his or her own workforce to perform all or a part of the public work; and

(d) Contracts for the services of any subcontractor or independent contractor or is responsible for payment to any contracted subcontractors or independent contractors.

➥ The term includes, without limitation, a general contractor or a specialty contractor who is authorized to bid on a project pursuant to NRS 338.139 or 338.148.

15. "Public body" means the State, county, city, town, school district or any public agency of this State or its political subdivisions sponsoring or financing a public work.

16. "Public work" means any project for the new construction, repair or reconstruction of a project financed in whole or in part from public money for:

(a) Public buildings;

(b) Jails and prisons;

(c) Public roads;

(d) Public highways;

(e) Public streets and alleys;

(f) Public utilities;

(g) Publicly owned water mains and sewers;

(h) Public parks and playgrounds;

(i) Public convention facilities which are financed at least in part with public money; and

(j) All other publicly owned works and property.

17. "Specialty contractor" means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.

18. "Stand-alone underground utility project" means an underground utility project that is not integrated into a larger project, including, without limitation:

(a) An underground sewer line or an underground pipeline for the conveyance of water, including facilities appurtenant thereto; and

(b) A project for the construction or installation of a storm drain, including facilities appurtenant thereto,

➥ that is not located at the site of a public work for the design and construction of which a public body is authorized to contract with a design-build team pursuant to subsection 2 of NRS 338.1711.

19. "Subcontract" means a written contract entered into between:

(a) A contractor and a subcontractor or supplier; or

(b) A subcontractor and another subcontractor or supplier,

➥ for the provision of labor, materials, equipment or supplies for a construction project.

20. "Subcontractor" means a person who:

(a) Is licensed pursuant to the provisions of chapter 624 of NRS or performs such work that the person is not required to be licensed pursuant to chapter 624 of NRS; and

(b) Contracts with a contractor, another subcontractor or a supplier to provide labor, materials or services for a construction project.

21. "Supplier" means a person who provides materials, equipment or supplies for a construction project.

22. "Wages" means:

(a) The basic hourly rate of pay; and

(b) The amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training or other similar programs or other bona fide fringe benefits which are a benefit to the worker.

23. "Worker" means a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker or unskilled worker in the service of a contractor or subcontractor under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. The term does not include a design professional.

Sec. 6. NRS 338.015 is hereby amended to read as follows:

338.015 1. The Labor Commissioner shall enforce the provisions of NRS 338.010 to 338.130, inclusive ~~[.]~~ ***, and section 4 of this act.***

2. In addition to any other remedy or penalty provided in this chapter, if any person, including, without limitation, a public body, violates any provision of NRS 338.010 to 338.130, inclusive, ***and***

section 4 of this act or any regulation adopted pursuant thereto, the Labor Commissioner may, after providing the person with notice and an opportunity for a hearing, impose against the person an administrative penalty of not more than $5,000 for each such violation.

3. The Labor Commissioner may, by regulation, establish a sliding scale based on the severity of the violation to determine the amount of the administrative penalty to be imposed against the person pursuant to this section.

4. The Labor Commissioner shall report the violation to the Attorney General, and the Attorney General may prosecute the person in accordance with law.

Sec. 7. The amendatory provisions of this act do not apply to a contract for a public work that is awarded before January 1, 2018.

Sec. 8. This act becomes effective on January 1, 2018.