

LCB File No. R068-01

**PROPOSED REGULATION OF THE
STATE CONTRACTORS' BOARD**

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Workshop and Hearing for the Adoption, Amendment or Repeal of Regulations
Of
The State of Nevada Contractors' Board

The State of Nevada Contractors' Board ("Board") will hold a workshop and public hearing at the Board's Las Vegas Office located at 4220 South Maryland Parkway, Bldg. D, Las Vegas, Nevada 89118 on Wednesday, July 11, 2001. The workshop will begin at 10:00 a.m. The hearing will begin at 1:00 p.m. The purpose of the workshop and hearing is to receive comments from all interested persons regarding the adoption, amendment or repeal of regulations that pertain to Chapter 624 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.060 and 233B.0603:

1. The need for and purpose of the proposed regulation or amendment.

Pursuant to NRS 624.560, the Board shall adopt regulations to carry out the provisions of NRS 624.400 to 624.560 including the disbursement of money from the Recovery Fund account and the manner in which a complaint is filed with the board or its designee pursuant to NRS 624.480.

2. Either the terms or the substance of the regulations to be adopted, amended or repealed or a description of the subjects and issues involved.

The proposed regulation sets forth the application process and rules of procedure for the administration of the Recovery Fund. A copy of the proposed regulation may be obtained by writing to the Board's offices at 9670 Gateway Drive, Reno, Nevada 89511.

3. The estimated economic effect of this proposed regulation on the business which it is to regulate and on the public.

(a) Adverse and beneficial effects.

Beneficial effects include providing harmed homeowners with a process to recover monetary losses they have incurred. Contractors are assessed a fee based on the monetary license limit of the license.

(b) Both immediate and long-term effects.

Immediate and long-term effects include the ability of a homeowner to recover monetary losses incurred by the failure of a residential contractor to properly perform qualified

services.

- 4. The estimated cost to the Agency for enforcement of the proposed regulation.**
The enforcement of the proposed regulation will be paid by the fund.
- 5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary.**
The proposed regulation does not overlap or duplicate any regulation of other state or local governmental entities.
- 6. If the regulation is required pursuant to federal law, a citation and description of the federal law.**
Does not apply.
- 7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**
Does not apply.
- 8. Whether proposed regulation establishes a new fee or increases an existing fee.**
Does not apply.

Persons wishing to comment upon the proposed action of the Board may appear at the scheduled public hearings or may address their comments, data, views or arguments, in written form to the Executive Officer of the Nevada State Contractors' Board, 4220 South Maryland Parkway, Building D, Suite 800, Las Vegas, Nevada 89119 or in Reno at 9670 Gateway Drive, Suite 100, Reno, Nevada 89511. Written submissions must be received by the Board on or before Friday, July 6, 2001. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted, amended or repealed will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notices and the regulation to be adopted will be available at the State Contractors' Board, 4220 South Maryland Parkway, Building D, Suite 800, Las Vegas, Nevada 89119 and 9670 Gateway Drive, Suite 100, Reno, Nevada 89511. In all counties in which an office of the Board is not maintained, a copy of this notice and the text of the proposed regulation will also be available for public inspection and copying at the main public library during business hours. This notice and the text of the proposed regulation will be available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the Board, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice has been mailed to all persons on the agency's mailing list of administrative regulations and posted at the following locations:

Washoe County Court House
Washoe County Library
Reno City Hall
Las Vegas City Hall
Sawyer State Building
Clark County Library
Offices of the State Contractors' Board in Reno and Las Vegas

Dated: June 8, 2001

LCB File No. R068-01

**PROPOSED REGULATION OF THE
STATE CONTRACTORS' BOARD**

**RULES OF PROCEDURE
OF THE RECOVERY FUND OF THE
STATE CONTRACTORS' BOARD (NAC 624.400)**

(Effective July 1, 2001)

1. **Definitions:** *As used in these rules, unless the context requires otherwise:*
1. *“Accused Contractor” means a contractor properly licensed under Chapter 624 of NRS who has been accused of performing qualified services inadequately.*
 2. *“Applicant” means “injured person,” who applies for monetary recovery from the Fund.*
 3. *“Application” means the form required by the State Contractors’ Board to report and substantiate a Claim.*
 4. *“Board” means the State Contractors’ Board of the State of Nevada.*
 5. *“Board Staff” means the employee(s) of the State Contractors’ Board given the responsibility to investigate claims presented to the Committee.*
 6. *“Chairman” means the chairman of the State Contractors Board.*
 7. *“Claim” means a claim for monetary recovery from the Fund in the form required by the Committee.*
 8. *“Committee” means the Recovery Fund Committee of the State Contractors’ Board consisting of three (3) members of the State Contractors’ Board or the Executive Officer and two (2) members of the Board, as may be appointed by the Chairman of the Board from time to time.*
 9. *“Inadequate Services” means construction services performed by a contractor that are determined, by the Committee, to be in violation of NRS 624.301, 624.3011 or 624.3017(1).*
 10. *“Fund” means the Recovery Fund of the State Contractors’ Board created under NRS 624.470.*

11. *“Loss” means “actual damages” consisting of a loss of money, or monetary value of real or personal property, by an Applicant as a direct result of the failure of a contractor to perform adequate residential construction services.*

12.

2. *Recovery Fund Committee: Function and terms of the Committee.*

1. *The Committee shall hold hearings on Applications, rule upon Claims and issue orders for distribution of monies from the Fund.*

2. *The Chairman of the Board shall appoint a committee Chairman to conduct the committee hearing of any applications to the Fund.*

3. *Consideration of Claims:*

1. *All monetary awards from the Fund shall be a matter of grace in the sole discretion of the Committee and not a matter of right. No person shall have any right in the Fund as a third-party beneficiary or otherwise either before or after allowance of a Claim.*

2. *No Claim shall be approved by the Committee unless the claimant is “eligible” under NRS 624.510, and unless all of the following conditions exist:*

1. *Such circumstances exist which, in the sole discretion of the Committee, justify the Committee’s consideration of such Claim in order to further the objectives of the Fund and/or the State Contractors’ Board*

2. *The alleged “Inadequate Performance” of construction occurred during the time the Accused Contractor was properly licensed in the State of Nevada and acting within the scope of his license.*

3. *The Applicant has made a reasonable effort under the circumstances of the particular case to recover the Loss from the Accused Contractor, such Accused Contractor’s estate, and/or other third party sources of recovery; and*

4. *The Applicant, other than the construction contract at issue, is not associated in business, nor is a partner, personal representative, associate or spouse or other member of the immediate family of the Accused Contractor.*

4. *Application for Reimbursement from the Fund:*

Applications for monetary recovery from the Fund shall be on a form provided by the State Contractors' Board and shall contain such information as the State Contractors' Board and the Committee may reasonably require, including, without limitation, the following:

1. *The name, address and telephone number of the Applicant.*
2. *The name, address, license number and telephone number (if available) of the Accused Contractors.*
3. *The facts alleged to constitute the Inadequate Construction services and the nature and the extent of the claimed Loss.*
4. *The date on which or the period during which the alleged Loss occurred.*
5. *A statement of the efforts made by the Applicant to recover the Loss from the Accused Contractor, such Accused Contractor's estate, and/or other third party sources of recovery.*
6. *Such other information the State Contractors' Board or the Committee may reasonably require.*

The Applicant has an ongoing responsibility to notify the State Contractors' Board of any changes of address or telephone numbers, and any changes pertaining to Claimant's efforts to recover from other sources.

5. *Processing of Applications:*

1. *The State Contractors' Board Staff shall send a copy of each Application to the Executive Officer, who will notify the Board Chairman of the Claim, and initiate staff investigation of said Claim.*
2. *The Executive Officer shall promptly send a copy of the Application, by registered or certified mail, to the Accused Contractor, and shall, within ninety (90) days thereafter, report, in writing, to the Chairman and the Board, the results of the investigation. If the Applicant is eligible under 624.510, the Executive Officer shall schedule, a Committee hearing on the Application. The time for investigation and report may be extended by the Chairman if circumstances so require.*
3. *The Chairman shall appoint the members of any Committee required to hear Claims.*
4. *At the request of any member of the Committee, or at the request in writing of the Accused Contractor or the Applicant, the Committee shall afford an opportunity to both the Application and the Accused Contractor to appear*

before the Committee and present evidence and arguments. Any such proceedings shall be informal, and all relevant testimony and evidence may be considered.

5. *Any Applicant an any Accused Contractor may be represented by counsel at any hearing before the Committee but no attorney may receive compensation from the Fund for assisting or representing an Applicant or an Accused Contractor in connection with an Application for Recovery from the Fund.*
6. *The members of the Committee may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence in the manner provided in Nevada Revised Statutes 624.170.*
7. *Where multiple claims are filed or likely to be filed against a single contractor, Committee hearings and decisions may be continued to accommodate pro-rata or other equitable distributions of recovery funds between eligible claimants.*

6. *Payment of Claims:*

1. *The Committee shall have sole discretion to determine whether or not any Application shall be granted in whole or in part, and its decision shall not be reviewable.*
2. *In making its decision, the Committee shall consider all relevant matters, including, without limitation:*
 1. *The condition of the Fund.*
 2. *The nature and size of the Claim.*
 3. *The promptness of the Applicant's action upon discovery of the Inadequate Performance of Construction.*
 4. *The comparative hardship the Applicant has suffered as a result of the Loss.*
 5. *The degree, if any, to which the Applicant's conduct may have contributed to or made more likely the Inadequate Performance.*
 6. *The credibility of the testimony and evidence presented to the Committee by the Applicant and the Accused Contractor or other persons presenting evidence.*
 7. *Equitable division of recovery money between multiple claimants.*

3. *The Committee may pay a Claim at any time or may, in its sole discretion, defer payment of any or all Claims until a later date to determine the total amount of Claims in relation to the total amount of monies in the Fund.*
4. *The Committee shall apply the following limits to awards for reimbursement from the Fund:*
 1. *The maximum amount which any Applicant may recover from the Fund arising from an instance or course of Inadequate Performance of construction is \$30,000.*
 2. *The maximum aggregate amount which all Applicants may recover arising from an instance or course of Inadequate Construction by any Accused Contractor is \$200,000., subject to the availability of funds and the following limitations:*

7. *Subordination Agreement:*

Payment from the Fund for reimbursement of any Loss shall be made only upon the condition that the Applicant enter into an agreement with the State Contractors' Board pursuant to which the State Contractors' Board is subrogated to the rights of the Applicant against the Accused Contractor and/or his estate in an amount equal to the amount of the reimbursement plus any costs incurred by the State Contractors' Board in recovering the amount of reimbursement from the Accused Contractor or his estate, personal representatives, assignees, or successors in interest. The subordination agreement shall also provide that the Applicant will cooperate with State Contractors' Board in any proceedings it may choose to commence for recovery of the amount of reimbursement. Any amounts received may be used first to pay the costs of collection and the remainder shall be paid to the Fund.

8. *Administration:*

1. *The Committee shall hold hearings on dates as the Chairman shall designate as permitted under NRS 624.500.*
2. *Hearings of the Committee shall be public if the Claimant or Accused Contractor shall request a public hearing, in writing, at least thirty days before the scheduled hearing.*
3. *Written minutes of each hearing of the Committee shall be prepared by the State Contractors' Board Staff and retained for a period of _____ years.*
4. *If the appointed Committee Chairman is absent from any hearing, the Board Chairman or the members of the Committee shall elect a temporary chairman to preside at the hearing.*
5. *The Chairman may authorize the Executive Officer or State Contractors' Board Treasurer to sign checks and vouchers on behalf of the Committee.*