

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; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires contractors or subcontractors engaged on public works to
2 use one or more apprentices for a certain percentage of the total hours performed on
3 a public work, depending on the number of workers employed on the public work,
4 and to enter into an apprenticeship agreement for all apprentices so required. (NRS
5 338.01165) **Section 1** of this bill: (1) eliminates the threshold number of workers
6 for the applicability of the requirements for using apprentices; (2) applies those
7 requirements based on all public works performed by a contractor or subcontractor
8 during a calendar year instead of based on each public work; and (3) limits the
9 requirement to enter into an apprenticeship agreement to those contractors or
10 subcontractors who are not signatories to a collective bargaining agreement with a
11 sponsoring union.

12 Existing law: (1) sets forth a procedure that authorizes the Labor
13 Commissioner, upon request by a public body, to grant a modification or waiver
14 from the requirements for using apprentices upon a finding of good cause; and (2)
15 defines the circumstances that constitute “good cause.” (NRS 338.01165) **Section**
16 **1**: (1) eliminates that procedure; (2) requires a contractor or subcontractor to
17 maintain and provide to the Labor Commissioner any supporting documentation to
18 show that the contractor or subcontractor made a good faith effort to comply with
19 the annual requirements to use one or more apprentices for a certain percentage of
20 the total hours performed on public works; and (3) sets forth certain requirements
21 for such supporting documentation.

22 Existing law provides that an apprentice who graduates from an apprenticeship
23 program while employed on a public work is deemed to be an apprentice on the
24 public work for purposes of the requirements for using apprentices and a
25 journeyman for certain purposes, including the payment of wages.



26 (NRS 338.01165) **Section 1** expands the circumstances under which a person is
27 treated as an apprentice for those requirements.

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

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

38 **Section 1.5** of this bill makes an appropriation to the Office of Labor
39 Commissioner in the Department of Business and Industry for certain expenses to
40 carry out the provisions of this bill.

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

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

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

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

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



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

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

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

9 5. *If a contractor or subcontractor who is a signatory to a*
10 *collective bargaining agreement with a union that sponsors an*
11 *apprenticeship program for an apprenticed craft or type of work*
12 *for which the term of apprenticeship is not more than 3 years*
13 *requests an apprentice from that apprenticeship program and an*
14 *apprentice in the appropriate craft or type of work is not available,*
15 *the contractor or subcontractor may utilize a person who*
16 *graduated from the apprenticeship program in that craft or type of*
17 *work within the 3 years immediately preceding the request from*
18 *the contractor or subcontractor. Such a person:*

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

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

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

28 ~~{6. A public body may, upon the request of a contractor or~~
29 ~~subcontractor, submit a request}~~

30 7. *A contractor or subcontractor engaged on a public work*
31 *shall maintain and provide to the Labor Commissioner any*
32 *supporting documentation to show that the contractor or*
33 *subcontractor made a good faith effort to comply with subsection 1*
34 *or 2, as applicable, as determined by the Labor Commissioner. For*
35 *purposes of this subsection, a contractor or subcontractor:*

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

38 (1) *Submits to the apprenticeship program, on the form*
39 *prescribed by the Labor Commissioner* ~~{to modify or waive the~~
40 ~~percentage of hours of labor provided by one or more apprentices~~
41 ~~required pursuant to subsection 1 or 2 for good cause. A public body~~
42 ~~must submit such a request, before an advertisement for bids has~~
43 ~~been placed, the opening of bids or the award of a contract for a~~
44 ~~public work or after the public body has commenced work on the~~
45 ~~public work. Such a request must include any supporting~~



1 ~~documentation, including, without limitation, proof of denial of or~~
2 ~~failure to approve a request for apprentices pursuant to subparagraph~~
3 ~~(3) of paragraph (d) of subsection 10.~~

4 ~~—7.], a request for an apprentice not earlier than 10 days before~~
5 ~~the contractor or subcontractor is scheduled to begin work on the~~
6 ~~public work and not later than 5 days after the contractor or~~
7 ~~subcontractor actually begins work on the public work.~~

8 (2) *If the apprenticeship program does not provide an*
9 *apprentice for the appropriate apprenticed craft or type of work*
10 *upon a request pursuant to subparagraph (1), submits additional*
11 *requests to the apprenticeship program, on the form prescribed by*
12 *the Labor Commissioner, at least once every 30 days during the*
13 *period that the contractor or subcontractor is working on the*
14 *public work. If a contractor or subcontractor does not work*
15 *continuously on the public work, the contractor or subcontractor*
16 *shall submit an additional request each time that the contractor or*
17 *subcontractor resumes work on the public work not earlier than*
18 *10 days before the contractor or subcontractor is scheduled to*
19 *resume work on the public work and not later than 5 days after the*
20 *contractor or subcontractor actually resumes work on the public*
21 *work. The requirement for the submission of an additional request*
22 *in this subparagraph does not apply whenever a contractor or*
23 *subcontractor has one or more apprentices employed for that*
24 *apprenticed craft or type of work.*

25 (b) *Does not make a good faith effort to comply with*
26 *subsection 1 or 2, as applicable, as determined by the Labor*
27 *Commissioner, if the contractor or subcontractor is required to*
28 *enter into an apprenticeship agreement pursuant to subsection 16*
29 *and refuses to do so.*

30 8. *The supporting documentation required pursuant to*
31 *subsection 7 may include, without limitation:*

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

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

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

41 10. *On or before February 15 of each year, a contractor or*
42 *subcontractor engaged in vertical or horizontal construction, as*
43 *applicable, who employs a worker on one or more public works*
44 *pursuant to NRS 338.040 shall report to the Labor Commissioner,*
45 *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.], 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.~~



1 (III) Four percent or less of the total hours of labor
2 worked for an apprenticed craft or type of work, a penalty of
3 \$5,000 or \$6 for each hour below the percentage required,
4 whichever is higher.

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

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

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

15 (III) One percent or less of the total hours of labor
16 worked for an apprenticed craft or type of work, a penalty of
17 \$5,000 or \$6 for each hour below the percentage required,
18 whichever is higher.

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

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

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

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

32 14. In addition to the penalties set forth in subsection 12, if
33 the Labor Commissioner, on his or her own initiative or based on
34 a complaint, makes a determination that a contractor or
35 subcontractor did not submit the report required pursuant to
36 subsection 10 or made no attempt to comply with the provisions of
37 subsection 1 or 2, as applicable, the Labor Commissioner shall:

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

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

43 15. A ~~public body~~ contractor or subcontractor may request a
44 hearing on the determination of the Labor Commissioner pursuant
45 to subsection 12 or 14 within 10 days after receipt of the



1 determination of the Labor Commissioner. The hearing must be
2 conducted in accordance with regulations adopted by the Labor
3 Commissioner. If the Labor Commissioner does not receive a
4 request for a hearing pursuant to this subsection, the determination
5 of the Labor Commissioner is a final decision for the purposes of
6 judicial review pursuant to chapter 233B of NRS.

7 ~~9.] 16.~~ A contractor or subcontractor *who is not a signatory*
8 *to a collective bargaining agreement with the union sponsoring*
9 *the apprenticeship program for an apprenticed craft or type of*
10 *work* engaged on a public work shall enter into an apprenticeship
11 agreement for ~~[all apprentices]~~ *each apprentice* required to be used
12 in the construction of a public work. ~~[If the Labor Commissioner~~
13 ~~granted a modification or waiver pursuant to subsection 7 because~~
14 ~~the Labor Commissioner finds that a request for apprentices was~~
15 ~~denied or the request was not approved within 5 business days as~~
16 ~~described in subparagraph (3) of paragraph (d) of subsection 10 and~~
17 ~~apprentices are later provided, then the contractor or subcontractor~~
18 ~~shall enter into an apprenticeship agreement for all apprentices later~~
19 ~~provided.~~

20 ~~—10.] 17.~~ As used in this section:

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

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

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

28 (d) ~~“Good cause” means:~~

29 ~~—— (1) There are no apprentices available from an apprenticeship~~
30 ~~program within the jurisdiction where the public work is to be~~
31 ~~completed as recognized by the State Apprenticeship Council;~~

32 ~~—— (2) The contractor or subcontractor is required to perform~~
33 ~~uniquely complex or hazardous tasks on the public work that require~~
34 ~~the skill and expertise of a greater percentage of journeymen; or~~

35 ~~—— (3) The contractor or subcontractor has requested apprentices~~
36 ~~from an apprenticeship program and the request has been denied or~~
37 ~~the request has not been approved within 5 business days.~~

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

41 ~~—(e)]~~ “Journeyman” has the meaning ascribed to it in
42 NRS 624.260.

43 ~~{(f)}~~ (e) “State Apprenticeship Council” means the State
44 Apprenticeship Council created by NRS 610.030.



1 **Sec. 1.5.** 1. There is hereby appropriated from the State
2 General Fund to the Office of Labor Commissioner in the
3 Department of Business and Industry the sum of \$376,876 for
4 personnel, travel, operating, equipment and information services
5 expenses to carry out the provisions of this act.

6 2. Any remaining balance of the appropriation made by
7 subsection 1 must not be committed for expenditure after June 30,
8 2025, by the entity to which the appropriation is made or any entity
9 to which money from the appropriation is granted or otherwise
10 transferred in any manner, and any portion of the appropriated
11 money remaining must not be spent for any purpose after
12 September 19, 2025, by either the entity to which the money was
13 appropriated or the entity to which the money was subsequently
14 granted or transferred, and must be reverted to the State General
15 Fund on or before September 19, 2025.

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

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

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

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

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

28 3. Section 1.5 of this act becomes effective on July 1, 2024.

