

ASSEMBLY BILL NO. 50—COMMITTEE
ON COMMERCE AND LABOR

(ON BEHALF OF THE STATE CONTRACTORS' BOARD)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing the issuance of cease and desist orders for unlicensed activity by the State Contractors' Board. (BDR 54-323)

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; revising provisions governing the actions that may be taken by the State Contractors' Board after the issuance of a cease and desist order for unlicensed activity; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Contractors' Board to issue a cease and desist order to a person for acting as a contractor or submitting a bid on a job in this State without a license as a contractor and sets forth the actions that the Board is required to take if the person has not complied with the order. Such required actions include, without limitation: (1) for a first violation, imposing written administrative citations and administrative fines, conditioned upon the person's submission of an application for a license as a contractor; and (2) for a second or subsequent violation, reporting the violation for possible criminal prosecution. Additionally, if the person has not complied with the cease and desist order, the Board is authorized to apply for injunctive relief to enjoin the person from continuing to violate the order. (NRS 624.212) This bill eliminates the requirement that the Board take the specified acts and, instead, authorizes the Board to: (1) issue an administrative citation and impose an administrative fine; (2) require the person to submit an application for a license as a contractor; (3) report the violation for criminal prosecution; and (4) apply for injunctive relief to enjoin further violation of the cease and desist order.



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

Section 1. NRS 624.212 is hereby amended to read as follows:

624.212 1. The Executive Officer, on behalf of the Board, shall issue an order to cease and desist to any person:

(a) Acting as a contractor, including, without limitation, commencing work as a contractor; or

(b) Submitting a bid on a job situated in this State,

↪ without a valid license issued pursuant to this chapter. The order must be served personally or by certified mail and is effective upon receipt. For the purposes of this section, a person shall be deemed to have a valid license if the person has an active license and is performing work in conformity with the requirements of subsection 4 of NRS 624.220.

2. After confirming that the cease and desist order has been received by the person to whom it was issued, the Board shall return to the job site or take any other action required to confirm that the terms of the cease and desist order have been complied with. The person to whom the cease and desist order was issued may, while in the course of stopping work on the job, take any necessary action within 48 hours after receiving the cease and desist order to protect the public, the project, any other contractors, laborers and equipment on the site and to limit the loss of any perishable goods.

~~3. If the Board determines that any term of a cease and desist order has not been complied with and no exception applies:~~

~~—(a) The person to whom the cease and desist order was issued shall be deemed noncompliant with the cease and desist order and the person may not complete the project, except for taking any necessary action to protect the public, the project, any other contractors, laborers and equipment and to limit the loss of any perishable goods.~~

~~—(b) Except as otherwise provided in paragraph (c), for a first violation, the Board shall issue a written administrative citation pursuant to NRS 624.341, which may include any reasonable investigatory fees and costs, conditioned upon the submission by the person of a bona fide application for the issuance of a license pursuant to this chapter within a reasonable period established by the Board.~~

~~—(c) For a second or subsequent violation, or for any first violation for which the reasonable value of the unlicensed work exceeds \$50,000, the Board shall:~~

~~—(1) Report the violation of the cease and desist order to the appropriate district attorney for possible criminal prosecution pursuant to NRS 624.700; and~~



~~— (2) Provide any reasonable assistance in the prosecution.~~

~~— (d) The Board may apply for injunctive relief pursuant to the Nevada Rules of Civil Procedure to enjoin the person to whom the cease and desist order was issued from continuing to violate the cease and desist order in any county in which the person may be found. If such an action is filed, irreparable injury is presumed and the likelihood of success on the merits may be established by a showing that, on the date the cease and desist order was issued, the person did not hold a valid license issued pursuant to this chapter and had bid for or undertaken work for which such a license is required.~~

~~— 4. If the Board determines that the person to whom the~~ *After issuing a* ~~cease and desist order , [was issued has complied with the order.]~~ the Board ~~[-~~

~~— (a) Shall issue] may:~~

(a) Issue an administrative citation pursuant to NRS 624.341 and impose an administrative fine against the person in accordance with NRS 624.710, in addition to any reasonable investigatory fees and costs . ~~[-; and]~~

(b) [May require] Require the person to submit a bona fide application for the issuance of a license pursuant to this chapter within a reasonable period established by the Board . ~~[-~~

~~— 5.] (c) Report the violation of the provisions of this chapter for possible criminal prosecution pursuant to NRS 624.700. If any such violation is prosecuted, the Board shall provide any reasonable assistance in the prosecution.~~

(d) Apply for injunctive relief pursuant to the Nevada Rules of Civil Procedure to enjoin the person to whom the cease and desist order was issued from continuing to violate the cease and desist order in any county in which the person may be found. If such an action is filed, irreparable injury is presumed and the likelihood of success on the merits may be established by a showing that, on the date the cease and desist order was issued, the person did not hold a valid license issued pursuant to this chapter and had bid for or undertaken work for which such a license is required.

4. When assessing an administrative fine pursuant to this section, the Board may:

(a) Require the person to whom the cease and desist order was issued to remedy any loss or damage caused by the unlicensed activity for which the order was issued, including, without limitation, the disgorgement of any amount of money collected from the owner of the project that was not for material delivered to the job site and that has not been damaged or altered by the person;



(b) Reduce or stay any administrative fine imposed pursuant to subsection ~~[4]~~ 3 pending completion by the person of a program of training or an examination required by the Board; or

(c) Reduce or stay any administrative fine imposed pursuant to subsection ~~[4]~~ 3 if the person obtains a valid license issued pursuant to this chapter.

~~[6]~~ 5. When imposing an administrative fine pursuant to this section, the Board shall impose the maximum administrative fine established pursuant to this chapter for the unlicensed activity if more than one of the following circumstances exist:

(a) The person has previously committed the same or a similar violation as the violation for which the administrative fine is imposed;

(b) The unlicensed activity involves more than one trade or craft;

(c) The unlicensed activity resulted in harm to any person or property;

(d) The unlicensed activity involved an elderly person or a person with a diagnosed physical or mental disability; or

(e) The unlicensed activity was for a project having a contract value in excess of \$50,000.

~~[7]~~ 6. Within 15 business days after receiving a cease and desist order, the person against whom the order was issued may petition the Board in writing to lift or alter the order. The petition may assert:

(a) As an absolute defense:

(1) Licensure of the person pursuant to this chapter;

(2) Any applicable exception to licensure set forth in NRS 624.031; or

(3) Misidentification of the person.

(b) As a partial defense:

(1) Overbreadth of any term of the cease and desist order;

(2) Vagueness or ambiguity of any term of the cease and desist order;

(3) Consideration of any necessary action taken by the person to protect the public, the project, any other contractors, laborers and any equipment on the job site and to limit any loss of perishable goods; or

(4) Any other ~~[defect]~~ *deficiency* in the terms of the cease and desist order.

~~[8]~~ 7. After considering any assertion made in a petition pursuant to:

(a) Paragraph (a) of subsection ~~[7]~~ 6, the Board shall, if facts are established to the satisfaction of the Board to support the



1 absolute defense asserted in the petition, vacate the cease and desist
2 order or any portion thereof.

3 (b) Paragraph (b) of subsection ~~[7.]~~ 6, the Board shall, if facts
4 are established to the satisfaction of the Board to support the partial
5 defense asserted in the petition, reasonably clarify any terms of the
6 cease and desist order requested by the petitioner.

7 ~~[9.]~~ 8. When considering an application for the issuance of a
8 license pursuant to this chapter, the Board may consider:

9 (a) Any cease and desist order issued against the applicant;

10 (b) Compliance by the applicant with any cease and desist order
11 issued against him or her;

12 (c) Any criminal conviction of the applicant for failure to
13 comply with any cease and desist order; or

14 (d) The payment by the applicant of any criminal or
15 administrative fine and any administrative fee or cost imposed
16 against the applicant.

17 ~~[10.]~~ 9. If the court finds that a person violated an order issued
18 pursuant to subsection 1 without an established absolute defense set
19 forth in paragraph (a) of subsection ~~[7.]~~ 6, it shall impose a fine of
20 not less than \$250 nor more than \$1,000 for each violation of the
21 order.

22 **Sec. 2.** This act becomes effective upon passage and approval.



